

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 908 entitled “An act relating to the Administrative Procedure Act”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. PURPOSE

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

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

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

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

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

15 CHAPTER 25. ADMINISTRATIVE PROCEDURE

16 Subchapter 1. General Provisions

17 § 800. PURPOSE

18 The General Assembly intends that:

19 (1) ~~agencies~~ Agencies maximize the involvement of the public in the
20 development of rules;

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

8 * * *

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

11 (i) There is no factual basis for the decision made by the agency.

12 (ii) The decision made by the agency is not rationally connected to
13 the factual basis asserted for the decision.

14 (iii) The decision made by the agency would not make sense to a
15 reasonable person.

16 **(B) The General Assembly intends that this definition be applied**
17 **in accordance with the Vermont Supreme Court’s application of**
18 **“arbitrary” in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re***
19 ***Town of Sherburne*, 154 Vt. 596 (1990).**

20 (14) “Guidance document” means a written record **of general**
21 **applicability** that has not been adopted in accordance with sections 836

1 through 844 of this title ~~but states an agency's~~ **and that is issued by an**
2 **agency to assist the public by providing an agency's** current approach to or
3 interpretation of law or ~~describes describing~~ how and when an agency will
4 exercise discretionary functions. **The term does not include:**

5 **(A) a written document issued in a contested case that imposes**
6 **substantive or procedural requirements on the parties to the case;**

7 **(B) a statement that concerns only the internal management of an**
8 **agency and does not affect private rights or procedures available to the**
9 **public;**

10 **(C) an intergovernmental or interagency memorandum,**
11 **directive, or communication that does not affect private rights or**
12 **procedures available to the public;**

13 **(D) an opinion of the Attorney General; or**

14 **(E) a statement that establishes criteria or guidelines to be used**
15 **by the staff of an agency in performing audits, investigations, or**
16 **inspections, settling commercial disputes, negotiating commercial**
17 **arrangements, or defending, prosecuting, or settling cases, if disclosure of**
18 **the criteria or guidelines would ~~compromise an investigation or the health~~**
19 **and safety or an employee or member of the public, enable persons**
20 **violating the law to avoid detection, facilitate disregard of requirements**

1 **imposed by law, or give an improper advantage to persons that are in an**
2 **adverse position to the State.**

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

6 * * *

7 § 806. PROCEDURE TO REQUEST ADOPTION OF RULES OR
8 PROCEDURES; GUIDANCE DOCUMENTS

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

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

19 * * *

1 Subchapter 2. Contested Cases

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

3 * * *

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

12 * * *

13 Subchapter 3. Rulemaking; Procedures; Guidance Documents

14 § 817. LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

15 * * *

16 § 818. SECRETARY OF STATE; CENTRALIZED RULE SYSTEM

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

21 (b) The Secretary shall design the centralized rule system to:

1 (1) facilitate public notice of and access to the rulemaking process;

2 (2) provide the public with greater access to current and previous
3 versions of adopted rules; and

4 (3) promote more efficient and transparent filing by State agencies of
5 rulemaking documents and review by the committees established in this
6 chapter.

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

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

13 * * *

14 § 831. REQUIRED POLICY STATEMENTS AND RULES

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

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

20 (c) An agency shall initiate rulemaking to adopt as a rule an existing
21 practice or; procedure, or guidance document when so requested by 25 or

1 more persons or by the Legislative Committee on Administrative Rules. An
2 agency shall not be required to initiate rulemaking with respect to any practice
3 **or** procedure, **or guidance document**, except as provided by this subsection.

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

7 (e) Within 30 days after an agency discovers that the text of a final
8 proposed rule as submitted to the Legislative Committee on Administrative
9 Rules deviates from the text that the agency intended to submit to the
10 Committee, the agency shall initiate rulemaking to correct the rule if the period
11 for final adoption of the rule under subsection 843(c) of this title has elapsed.

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

14 **§ 831a. DE MINIMIS RULEMAKING PROHIBITED**

15 **Where a statute endows an agency with discretion to adopt rules, an**
16 **agency may exercise that discretion to initiate rulemaking and adopt rules**
17 **only if they will have an effect on the status quo that is greater than de**
18 **minimis.**

19 **(1) This section shall apply whether an agency proposes to adopt**
20 **rules on its own motion or in response to a petition under this chapter.**

1 **(2) Factors to be considered in determining whether a rule has de**
2 **minimis effect include the size of the population affected or protected by**
3 **the rule, the amount of time spent by agency personnel in developing the**
4 **rule and conducting the rulemaking process, and the substantive benefits**
5 **and costs of the rule in comparison to the full cost of developing and**
6 **proposing the rule. In this subdivision, “population” refers to the**
7 **category regulated or protected by a rule, whether that category consists**
8 **of humans, animals, plants, business entities, facilities, or other entities or**
9 **items.**

10 **(3) This section shall not apply to rule amendments that clarify or**
11 **reorganize existing rules or to the adoption of an existing practice or**
12 **procedure as a rule.**

13 * * *

14 § 832a. ~~RULES AFFECTING SMALL BUSINESSES~~

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

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

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

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

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

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

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

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

12 ~~§ 832b. ADMINISTRATIVE RULES AFFECTING SCHOOL DISTRICTS~~

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

1 ~~purposes of the proposed rule. The Legislative Committee on Administrative~~
2 ~~Rules may object to any proposed rule if a local school cost impact statement~~
3 ~~is not filed with the proposed rule, or the Committee finds the statement to be~~
4 ~~inadequate, in the same manner in which the Committee may object to an~~
5 ~~economic impact statement under section 842 of this title. [Repealed.]~~

6 § 833. STYLE OF RULES

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

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

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

19 (c) The Secretary of State may issue a guidance document suggesting how
20 agencies may draft rules and procedures in accordance with this section. The

1 guidance document may include suggestions on style, numbering, and drafting
2 the content of the filings required under this subchapter.

3 * * *

4 § 835. COMPILATION OF PROCEDURES AND GUIDANCE
5 DOCUMENTS

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

16 (b) Use in proceedings. A procedure or guidance document shall not have
17 the force of law.

18 (1) An agency that proposes to rely on a procedure or guidance
19 document to the detriment of a person in any contested case or other
20 administrative proceeding shall afford the person an adequate opportunity to
21 contest the legality or wisdom of a position taken in the document. The agency

1 shall not use the document to foreclose consideration of issues raised in the
2 document.

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

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

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

15 § 836. PROCEDURE FOR ADOPTION OF RULES

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

18 (1) prefiling, when required;

19 (2) filing the proposed rule;

20 (3) publishing the proposed rule;

21 (4) holding a public hearing and receiving comments;

1 (5) filing the final proposal;

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

4 (7) filing the adopted rule.

5 (b) During the rulemaking process, the agency proposing the rule shall post
6 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 lists
9 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 proposed
13 rule and the address for such submission.

14 (C) The date and location of any public hearing.

15 (D) Each comment submitted to the agency on the proposed rule.

16 The agency shall redact sensitive personal information from the posted
17 comments. As used in this subdivision (D), “sensitive personal information”
18 means each of the items listed in 9 V.S.A. § 2430(5)(A)(i)–(iv) and does not
19 include the name, affiliation, and contact information of the commenter.

20 (E) The final proposed rule as filed under section 841 of this title.

1 (F) Each document submitted by the agency to the Legislative
2 Committee on Administrative Rules.

3 (3) The agency shall maintain the information required by this
4 subsection on its website until the earliest of the following dates: filing of a
5 final adopted rule under section 843 of this title; withdrawal of the proposed
6 rule; or expiration of the period for final adoption under subsection 843(c) of
7 this title.

8 **(4) If an agency is a board or commission exercising quasi-judicial**
9 **functions and members of the public can access all of the information**
10 **required by subdivision (2) of this subsection through the agency’s online**
11 **case-management system, this information need not also be posted on the**
12 **agency’s website. Instead, the list of proposed rules on the agency’s**
13 **website shall include the case number for each proposed rule and**
14 **instructions for accessing all of the information about the proposed rule in**
15 **the agency’s online case-management system.**

16 * * *

17 § 838. FILING OF PROPOSED RULES

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

- 1 (1) ~~a cover sheet;~~ The name of the agency and the subject or title of
2 the rule.
- 3 (2) ~~an~~ An analysis of economic impact statement;
- 4 (3) ~~an incorporation~~ An analysis of environmental impact.
- 5 (4) An explanation of all material incorporated by reference statement, if
6 the proposed rule includes an incorporation by reference; any.
- 7 ~~(4) an adopting page;~~
- 8 (5) ~~the~~ The text of the proposed rule;
- 9 (6) ~~an~~ An annotated text showing changes from existing rules; The
10 annotated text of the rule shall include markings to indicate clearly changed
11 wording from any existing rule.
- 12 (7) ~~an~~ An explanation of the strategy for maximizing public input on the
13 proposed rule as prescribed by the Interagency Committee on Administrative
14 Rules; and.
- 15 (8) ~~a~~ A brief summary of the scientific information upon which the
16 proposed rule is based to the extent the proposed rule depends on scientific
17 information for its validity. The summary shall refer to the scientific studies
18 on which the proposed rule is based and shall explain the procedure for
19 obtaining such studies from the agency.
- 20 ~~(b) The cover sheet shall be on a form prepared by the Secretary of State~~
21 ~~containing at least the following information:~~

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

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

3 ~~(3)~~(9) a A concise summary in plain language explaining ~~the effect of~~
4 the rule; and its effect.

5 ~~(4)~~(10) the The specific statutory authority for the rule, and, if none
6 exists, the general statutory authority for the rule;

7 ~~(5)~~(11) ~~an~~ An explanation of why the rule is necessary;

8 ~~(6)~~(12) ~~an~~ An explanation of the people, enterprises, and government
9 entities affected by the rule;

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

11 **(13) A brief explanation of why the agency believes the rule is not**
12 **prohibited by section 831a of this title.**

13 ~~(8)~~(14) the The name, address, and telephone number of an individual in
14 the agency able to answer questions and receive comments on the proposal;

15 ~~(9)~~(15) a A proposed schedule for completing the requirements of this
16 chapter, including, if there is a hearing scheduled, the date, time, and place of
17 that hearing and a deadline for receiving comments;

18 ~~(10)~~(16) ~~whether~~ Whether the rule contains an exemption from
19 inspection and copying of public records, or otherwise contains a Public
20 Records Act exemption by designating information as confidential or limiting

1 its public release and, if so, the asserted statutory authority for the exemption
2 and a brief summary of the reason for the exemption; ~~and,~~

3 ~~(11)(17)~~ a A signed and dated statement by the adopting authority
4 approving the contents of the filing.

5 ~~(e)(b)~~ Economic impact analysis; rules affecting small businesses and
6 school districts.

7 (1) General requirements. The economic impact ~~statement~~ analysis
8 shall analyze the anticipated costs and benefits to be expected from adoption of
9 the rule. Specifically, each economic impact ~~statement~~ analysis shall, for each
10 requirement in the rule:

11 (A) ~~List categories~~ list each category of people, enterprises, and
12 government entities potentially affected and estimate for each the costs and
13 benefits anticipated; ~~and~~ and

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

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

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

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

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

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

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

1 (iii) increase the risk to the health, safety, or welfare of the public
2 or to the beneficiaries of the regulation or compromise the environmental
3 standards of the State.

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

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

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

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

18 (4) Most appropriate method. In addition, each economic impact
19 statement analysis shall conclude that the rule is the most appropriate method
20 of achieving the regulatory purpose and, with respect to small businesses,
21 contain any findings required by section 832a of this title. Only employees of

1 the agency and information either already available to the agency or available
2 at reasonable cost ~~shall~~ need be used in preparing economic impact ~~statements~~
3 analyses.

4 (c) Environmental impact analysis. The environmental impact analysis
5 shall:

6 (1) Analyze the anticipated environmental impacts, whether positive or
7 negative, from adoption of the rule. Examples of environmental impacts
8 include the emission of greenhouse gases; the discharge of pollutants to water;
9 and effects on the ability of the environment to provide benefits such as food
10 and fresh water, regulation of climate and water flow, and recreation.

11 (2) Compare the environmental impact of the rule with the
12 environmental impact of other alternatives to the rule, including having no rule
13 on the subject.

14 (d) Incorporation by reference.

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

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

1 (B) the reference in the rule fully identifies the incorporated code,
2 standard, or rule by citation, date, and place where copies are available.

3 (2) Materials incorporated by reference shall be readily available to the
4 public. As used in this subsection, “readily available” means **that all of the**
5 **following apply:**

6 (A) Each filing states where copies of the incorporated code,
7 standard, or rule are available in written or electronic form from the agency
8 adopting the rule or the agency of the United States, this State, another state, or
9 the organization or association originally issuing the code, standard, or rule.

10 (B) A copy of the code, standard, or rule is readily available, **in the**
11 **manner set forth in 1 V.S.A. § 316, at the principal office of the agency for**
12 **public inspection and, unless prohibited by law or legally enforceable**
13 **contract, for copying at the principal office of the agency in the manner set**
14 **forth in 1 V.S.A. § 316.**

15 (C) The incorporated code, standard, or rule is made available for
16 free public access online unless the agency is prevented from providing such
17 access by law or ~~the size of the incorporated material~~ **legally enforceable**
18 **contract.**

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

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

16 ~~(g) The brief summary of scientific information shall refer to scientific~~
17 ~~studies upon which the proposed rule is based and shall explain the procedure~~
18 ~~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 summary in plain language of the effect of the rule;

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

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

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

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

14 (8) the deadline for receiving comments.

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

18 (c) Newspaper publication. The Secretary of State shall arrange for one
19 formal publication, in a consolidated advertisement in newspapers having
20 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;

12 (E) the sufficiency of the economic impact analysis; and

13 (F) the sufficiency of the environmental impact analysis.

14 (2) ~~Where~~ When an agency decides in a final proposal to overrule

15 substantial arguments and considerations raised for or against the original

16 proposal or to reject suggestions with respect to separate requirements for

17 small businesses, the final proposal shall include a description of the reasons

18 for the agency's decision.

19 * * *

1 § 842. REVIEW BY LEGISLATIVE COMMITTEE

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

15 (b) **Grounds for objection.** The Committee may object under this
16 subsection if:

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

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

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

8 (7) the environmental impact analysis fails to recognize a substantial
9 environmental impact of the proposed rule; or

10 **(8) the proposed rule does not comply with section 831a of this title.**

11 **(c) Certified objections; tie vote and deemed objections; legal effect.**

12 **(1)** When objection is made under this ~~subsection~~ section, and the
13 objection is not withdrawn after the agency responds, on majority vote of the
14 entire Committee, it may file the objection in certified form with the Secretary
15 of State. The objection shall contain a concise statement of the Committee's
16 reasons for its action. The

17 **(2) Notwithstanding any contrary provision of this section, the**
18 **Committee shall be considered to have objected to a rule if, within the**
19 **time frame described in subsection (a) of this section, there was a motion**
20 **before the Committee either to approve or object to the rule that did not**

1 **pass because of a tie vote, and the Committee did not pass another motion**
2 **to approve or reject the rule.**

3 **(3) When the Committee files a certified objection, the** Secretary
4 shall affix to each objection a certification of its filing and as soon as
5 practicable transmit a copy to the agency. **When the Committee is**
6 **considered to have objected to a rule under subdivision (2) of this**
7 **subsection, the Secretary shall issue a certification to this effect and**
8 **transmit a copy of this certification to the agency.**

9 **(4)** After a Committee objection is filed with the Secretary under this
10 subsection, or on the same grounds under subsection 817(d) of this title, to the
11 extent that the objection covers a rule or portion of a rule, the burden of proof
12 thereafter shall be on the agency in any action for judicial review or for
13 enforcement of the rule to establish that the part objected to is within the
14 authority delegated to the agency, is consistent with the intent of the
15 Legislature, is not arbitrary, and **is written in a satisfactory style in accordance**
16 **with section 833 of this title, and that the agency did adhere to the strategy for**
17 **maximizing public input prescribed by the Interagency Committee on**
18 **Administrative Rules and its economic and environmental impact analyses did**
19 **not fail to recognize a substantial economic or environmental impact. The**
20 **objection of the Committee shall not be admissible evidence in any**
21 **proceeding other than to establish the fact of the objection.** If the agency

1 fails to meet its burden of proof, the ~~Court~~ court shall declare the whole or
2 portion of the rule objected to invalid.

3 **(5) The burden of proof set forth in subdivision (4) of this subsection**
4 **(c) shall apply to the agency when the Committee is considered to have**
5 **objected to the rule under subdivision (2) of this subsection (c).**

6 **(6)** The failure of the Committee to object to a rule is not an implied
7 legislative authorization of its substantive or procedural lawfulness.

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

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

16 ~~(e)~~ **Notice of objection; inclusion on rule copies.** When an objection is
17 made under subsection (b) of this section and has been certified by the
18 Secretary of State **or the Committee is considered to have objected to a rule**
19 **under subdivision (c)(2) of this section,** notice of the objection shall be
20 included on all copies of the rule distributed to the public.

21 * * *

1 § 843. FILING OF ADOPTED RULES

2 (a) An adopting authority may adopt a properly filed final proposed rule
3 after:

4 (1) The passage of 30 days from the date a rule is first placed on the
5 committee's agenda or 45 days after filing of a final proposal under section
6 841 of this title, whichever occurs first, provided the agency has not received
7 notice of objection from the Legislative Committee on Administrative
8 Rules; or

9 (2) Receiving notice of approval from the Legislative Committee on
10 Administrative Rules; or

11 (3) Responding to an objection of the Legislative Committee on
12 Administrative Rules under section 842 of this title. **After responding to**
13 **such an objection, an agency may adopt the rule without change or may**
14 **make a germane change in accordance with subsection (b) of this section.**

15 (b) The text of the adopted rule shall be the same as the text of the final
16 proposed rule submitted under section 841, except that any germane change
17 may be made by the agency in response to an objection or expressed concern
18 of the Legislative Committee on Administrative Rules.

19 (c) Adoption shall be complete upon proper filing with the Secretary of
20 State and with the Legislative Committee on Administrative Rules. An agency
21 shall have eight months from the date of initial filing with the Secretary of

1 State to adopt a rule unless extended by action or request of the Legislative
2 Committee on Administrative Rules. The Secretary of State shall refuse to
3 accept a final filing after that date, except that:

4 (1) Within 30 days after discovering that the text of a final adopted rule
5 deviates from the text of a final proposed rule as approved by the Legislative
6 Committee on Administrative Rules, an agency shall correct the adopted rule
7 to conform to the final proposed rule as so approved and shall refile the
8 adopted rule in the manner set forth in this section, along with documentation
9 demonstrating that the refiled adopted rule conforms to the final proposed rule
10 as approved.

11 (2) An agency may refile a final adopted rule in the manner set forth in
12 this section solely for the purpose of correcting one or more typographic errors
13 that do not change the substance or effect of the rule.

14 * * *

15 § 844. EMERGENCY RULES

16 (a) Where an agency believes that there exists an imminent peril to public
17 health, safety, or welfare, it may adopt an emergency rule. The rule may be
18 adopted without having been prefiled or filed in proposed or final proposed
19 form, and may be adopted after whatever notice and hearing ~~that~~ the agency
20 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 **(g) In the alternative to the grounds specified in subsection (a) of this**
11 **section, an agency may adopt emergency amendments to existing rules**
12 **using the process set forth in this section if each of the subdivisions (1)–(5)**
13 **of this subsection applies. On a majority vote of the entire Committee, the**
14 **Legislative Committee on Administrative Rules may object to the**
15 **emergency amendments on the basis that one or more of these**
16 **subdivisions do not apply or under subdivision (e)(1)(A), (B), or (C) of this**
17 **section, or both.**

18 **(1) The existing rules implement a program controlled by federal**
19 **statute or rule or by a multistate entity.**

20 **(2) The controlling federal statute or rule has been amended to**
21 **require a change in the program or the multistate entity has made a**

1 **change in the program that is to be implemented in all of the participating**
2 **states.**

3 **(3) The controlling federal statute or rule or the multistate entity**
4 **requires implementation of the change within 120 days or less.**

5 **(4) The adopting authority finds each of the following in writing:**

6 **(A) The agency cannot by the date required for implementation**
7 **complete the final adoption of amended rules using the process set forth in**
8 **sections 837 through 843 of this title.**

9 **(B) Failure to amend the rules by the date required for**
10 **implementation would cause significant harm to the public health, safety,**
11 **or welfare or significant financial loss to the State.**

12 **(5) On the date the emergency rule amendments are adopted**
13 **pursuant to this subsection, the adopting authority profiles a**
14 **corresponding permanent rule pursuant to section 837 of this title.**

15 § 845. EFFECT OF RULES

16 (a) Rules shall be valid and binding on persons they affect, and shall have
17 the force of law unless amended or revised or unless a court of competent
18 jurisdiction determines otherwise. Except as provided by subsections
19 842(b)(c) and 844(e) of this title, rules shall be prima facie evidence of the
20 proper interpretation of the matter ~~that~~ to which they refer ~~to~~.

1 (b) No agency shall grant **routine** waivers of or variances from any
2 provisions of its rules without either amending the rules, or providing by rule
3 for a process and specific criteria under which the agency may grant a waiver
4 or variance procedure in writing. The duration of the waiver or variance may
5 be temporary if the rule so provides.

6 * * *

7 § 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY
8 OF STATE

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

14 (b) Register; code.

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

19 (2) The Secretary ~~also~~ shall publish a code of administrative rules that
20 contains the rules adopted under this chapter. The requirement to publish a
21 code shall be considered satisfied if a commercial publisher offers such a code

1 in print at a competitive price and at no charge online. However, if the
2 Secretary establishes the centralized rule system under section 818 of this title
3 as a digital system, then the system shall include the online publication of
4 this code.

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

9 ~~(c) The bulletin may omit any rule if either:~~

10 ~~(1) a commercial publisher offers a comparable publication at a~~
11 ~~competitive price; or~~

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

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

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

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

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

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

5 § 848. RULES REPEAL; ~~OPERATION OF LAW~~ AMENDMENT OF
6 AUTHORITY; NOTICE BY AGENCY

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

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

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

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

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

1 (c) Repeal for nonpublication.

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

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

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

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

12 (d) Amendment of authority for rule.

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

1 Committee on Administrative Rules ~~whether repeal or revision of the rule is~~
2 ~~required by the statutory amendment, in such manner as the Secretary may~~
3 ~~prescribe by rule or procedure.~~

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

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

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

20 Sec. 3. REDESIGNATION

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

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

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

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

4 **Sec. 4. MISFILING OF EDUCATION RULES**

5 **(a) Filing of incorrect rule text.**

6 **(1) On or about April 16, 2013, the State Board of Education (SBE)**
7 **approved revisions to its rules on special education, Series 2360 (the**
8 **Rules) for submission to the Legislative Committee on Administrative**
9 **Rules (LCAR). The rulemaking number for the proposed revisions was**
10 **12-P55.**

11 **(2) On May 30, 2013, LCAR approved revisions to the Rules**
12 **proposed by the SBE. LCAR approved the Rules as it received them,**
13 **without change.**

14 **(3) On or about June 4, 2013, the SBE submitted the approved rule**
15 **in final adopted form to LCAR and the Secretary of State (SOS). The**
16 **number for the final adopted rule was 13-03.**

17 **(4) In 2013, the versions of the Rules submitted by the SBE for**
18 **approval by LCAR and for final adoption were not the correct version**
19 **and were submitted in error.**

1 **(5) The correct version of the Rules was the text approved by the**
2 **SBE on or about April 16, 2013. This version was distributed by the**
3 **Agency of Education to the public as if it were the adopted rule.**

4 **(b) Notwithstanding any contrary provision of 3 V.S.A. § 836, 843, or**
5 **845, on or before 30 days after the effective date of this section, the SBE**
6 **shall file the version of the Rules approved by the SBE on or about**
7 **April 16, 2013 as a final proposal pursuant to 3 V.S.A. § 841. The SBE**
8 **shall include with this filing a certification signed by the Chair of the SBE**
9 **that the text of the final proposal is the same as the version of the rules**
10 **approved by the SBE on or about April 16, 2013.**

11 Sec. 5. EFFECTIVE DATES

12 **(a) This section and Sec. 4 (misfiling of education rules) shall take**
13 **effect on passage.**

14 **(b) The remainder of this act shall take effect on July 1, 2018, except that**
15 **in Sec. 2, 3 V.S.A. §§ 818 and 847(b) and (c) shall take effect on July 1, 2019.**

16
17

18 (Committee vote: _____)

19

20

Senator _____

21

FOR THE COMMITTEE