

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 **each of the following:**

6 (A) a rule adopted under sections 836-844 of this title;

7 (B) a written document issued in a contested case that imposes  
8 substantive or procedural requirements on the parties to the case;

9 (C) a statement that concerns only the internal management of  
10 an agency and does not affect private rights or procedures available to the  
11 public;

12 (D) an intergovernmental or interagency memorandum,  
13 directive, or communication that does not affect private rights or  
14 procedures available to the public;

15 (E) an opinion of the Attorney General; or

16 (F) a statement that establishes criteria or guidelines to be used  
17 by the staff of an agency in performing audits, investigations, or  
18 inspections, settling commercial disputes, negotiating commercial  
19 arrangements, or defending, prosecuting, or settling cases, if disclosure of  
20 the criteria or guidelines would compromise an investigation or the health  
21 and safety of an employee or member of the public, enable persons

1 **violating the law to avoid detection, facilitate disregard of requirements**  
2 **imposed by law, or give an improper advantage to persons that are in an**  
3 **adverse position to the State.**

4 \* \* \*

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

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

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

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

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

16 (14) “Guidance document” means a written record ~~of general~~  
17 **applicability** that has not been adopted in accordance with sections 836-844 of  
18 this title ~~but states an agency’s and that is issued by an agency to assist the~~  
19 **public by providing an agency’s current approach to or interpretation of law**  
20 **or ~~describes describing~~ how and when an agency will exercise discretionary**

1 functions. **The term does not include the documents described in**  
2 **subdivisions (8)(A) through (F) of this section.**

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 \* \* \*

15 § 832a. ~~RULES AFFECTING SMALL BUSINESSES~~

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



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

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

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

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

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

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

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

15       ~~§ 832b. ADMINISTRATIVE RULES AFFECTING SCHOOL DISTRICTS~~

16       ~~If a rule affects or provides for the regulation of public education and public~~  
17       ~~schools, the agency proposing the rule shall evaluate the cost implications to~~  
18       ~~local school districts and school taxpayers, clearly state the associated costs,~~  
19       ~~and report them in a local school cost impact statement to be filed with the~~  
20       ~~economic impact statement on the rule required by subsection 838(c) of this~~  
21       ~~title. An agency proposing a rule affecting school districts shall also consider~~

1 ~~and include in the local school cost impact statement an evaluation of~~  
2 ~~alternatives to the rule, including no rule on the subject which would reduce or~~  
3 ~~ameliorate costs to local school districts while achieving the objectives or~~  
4 ~~purposes of the proposed rule. The Legislative Committee on Administrative~~  
5 ~~Rules may object to any proposed rule if a local school cost impact statement~~  
6 ~~is not filed with the proposed rule, or the Committee finds the statement to be~~  
7 ~~inadequate, in the same manner in which the Committee may object to an~~  
8 ~~economic impact statement under section 842 of this title. [Repealed.]~~

9 § 833. STYLE OF RULES

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

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

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



1 ~~administrative proceeding shall afford the person an adequate~~  
2 ~~opportunity to contest the legality or wisdom of a position taken in the~~  
3 ~~document. The agency shall not use the document to foreclose~~  
4 ~~consideration of issues raised in the document.~~

5 (2) This subsection shall not apply to a procedure if a statute that  
6 specifically enables the procedure states that it has the force of law. This  
7 subsection is not intended to affect whether a court or quasi-judicial body  
8 gives deference to a procedure or guidance document issued by an agency  
9 whose action is before the court or body.

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

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

21 § 836. PROCEDURE FOR ADOPTION OF RULES

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

3           (1) prefiling, when required;

4           (2) filing the proposed rule;

5           (3) publishing the proposed rule;

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

7           (5) filing the final proposal;

8           (6) responding to the Legislative Committee on Administrative Rules

9 when required; and

10           (7) filing the adopted rule.

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

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

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

17           (A) The proposed rule as filed under section 838 of this title.

18           (B) The date by which comments may be submitted on the proposed  
19 rule and the address for such submission.

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

1           (D) Each comment submitted to the agency on the proposed rule.  
2           The agency shall redact sensitive personal information from the posted  
3           comments. As used in this subdivision (D), “sensitive personal information”  
4           means each of the items listed in 9 V.S.A. § 2430(5)(A)(i)–(iv) and does not  
5           include the name, affiliation, and contact information of the commenter.

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

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

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

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

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§ 838. FILING OF PROPOSED RULES

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

- (1) ~~a cover sheet;~~ The name of the agency and the subject or title of the rule.
- (2) ~~an~~ An analysis of economic impact statement;
- (3) ~~an incorporation~~ An analysis of environmental impact.
- (4) An explanation of all material incorporated by reference statement, if ~~the proposed rule includes an incorporation by reference;~~ any.
- (4) ~~an adopting page;~~
- (5) ~~the~~ The text of the proposed rule;
- (6) ~~an~~ An annotated text showing changes from existing rules; The annotated text of the rule shall include markings to indicate clearly changed wording from any existing rule.
- (7) ~~an~~ An explanation of the strategy for maximizing public input on the proposed rule as prescribed by the Interagency Committee on Administrative Rules; ~~and.~~
- (8) ~~a~~ A brief summary of the scientific information upon which the proposed rule is based to the extent the proposed rule depends on scientific

1 information for its validity. The summary shall refer to the scientific studies  
2 on which the proposed rule is based and shall explain the procedure for  
3 obtaining such studies from the agency.

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

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

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

8 ~~(3)~~(9) a A concise summary in plain language explaining ~~the effect of~~  
9 ~~the rule; and its effect.~~

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

12 ~~(5)~~(11) an An explanation of why the rule is necessary;

13 ~~(6)~~(12) an An explanation of the people, enterprises, and government  
14 ~~entities affected by the rule;~~

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

16 ~~(8)~~(13) the The name, address, and telephone number of an individual in  
17 ~~the agency able to answer questions and receive comments on the proposal;~~

18 ~~(9)~~(14) a A proposed schedule for completing the requirements of this  
19 ~~chapter, including, if there is a hearing scheduled, the date, time, and place of~~  
20 ~~that hearing and a deadline for receiving comments;~~



1           ~~(10)~~(15) ~~whether~~ Whether the rule contains an exemption from  
2 inspection and copying of public records, or otherwise contains a Public  
3 Records Act exemption by designating information as confidential or limiting  
4 its public release and, if so, the asserted statutory authority for the exemption  
5 and a brief summary of the reason for the exemption; ~~and~~.

6           ~~(11)~~(16) a A signed and dated statement by the adopting authority  
7 approving the contents of the filing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           (c) Environmental impact analysis. The environmental impact analysis  
9 shall:

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

15           (2) Compare the environmental impact of the rule with the  
16 environmental impact of other alternatives to the rule, including having no rule  
17 on the subject.

18           (d) Incorporation by reference.

19           (1) A rule may incorporate by reference all or any part of a code,  
20 standard, or rule that has been adopted by an agency of the United States, this

1 State, or another state or by a nationally recognized organization or  
2 association, if:

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

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

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

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

14 (B) A copy of the code, standard, or rule is **readily made** available  
15 for public inspection **at the principal office of the agency, and is available at**  
16 **that office for** copying ~~at the principal office of the agency in the manner~~  
17 ~~set forth in 1 V.S.A. § 316~~ **and subject to the exceptions set forth in 1**  
18 **V.S.A. § 317(c).**

19 (C) The incorporated code, standard, or rule is made available for  
20 free public access online unless the agency is prevented from providing such

1 ~~access by law or **the size of the incorporated material legally enforceable**~~  
2 ~~**contract.**~~

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

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

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

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

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

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

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

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

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

4       § 839. PUBLICATION OF PROPOSED RULES

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

8           (1) the name of the agency;

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

10          (3) a concise summary in plain language of the effect of the rule;

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

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

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

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

17          (8) the deadline for receiving comments.

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

1 (c) Newspaper publication. The Secretary of State shall arrange for one  
2 formal publication, in a consolidated advertisement in newspapers having  
3 general circulation in different parts of the State as newspapers of record  
4 approved by the Secretary of State, of information relating to all proposed rules  
5 that includes the following information:

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

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

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

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

15 \* \* \*

16 § 841. FINAL PROPOSAL

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



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

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

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

8 (B) why the proposed rule is not contrary to the intent of the  
9 Legislature;

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

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

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

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

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

17 substantial arguments and considerations raised for or against the original

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

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

20 for the agency's decision.

21 \* \* \*

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. The agency shall within 14 days ~~of~~ after  
10 receiving notice respond in writing to the Committee and send a copy to the  
11 Secretary of State. In its response, the agency may include revisions to the  
12 proposed rule or filing documents that seek to cure defects noted by the  
13 Committee. After receipt of this response, the Committee may withdraw or  
14 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.

10           **(c) Objections; legal effect.**

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

17           (2) After a Committee objection is filed with the Secretary under this  
18           subsection, or on the same grounds under subsection 817(d) of this title, to the  
19           extent that the objection covers a rule or portion of a rule, the burden of proof  
20           thereafter shall be on the agency in any action for judicial review or for  
21           enforcement of the rule to establish that the part objected to is within the

1 authority delegated to the agency, is consistent with the intent of the  
2 Legislature, is not arbitrary, and is written in a satisfactory style in accordance  
3 with section 833 of this title, and that the agency did adhere to the strategy for  
4 maximizing public input prescribed by the Interagency Committee on  
5 Administrative Rules and its economic and environmental impact analyses did  
6 not fail to recognize a substantial economic or environmental impact. **The**  
7 **objection of the Committee shall not be admissible evidence in any**  
8 **proceeding other than to establish the fact of the objection.** If the agency  
9 fails to meet its burden of proof, the ~~Court~~ court shall declare the whole or  
10 portion of the rule objected to invalid.

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

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

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

1       (e) **Notice of objection; inclusion on rule copies.** When an objection is  
2       made under subsection (b) of this section and has been certified by the  
3       Secretary of State, notice of the objection shall be included on all copies of the  
4       rule distributed to the public.

5       § 843. FILING OF ADOPTED RULES

6       (a) An adopting authority may adopt a properly filed final proposed rule  
7       after:

8           (1) The passage of 30 days from the date a rule is first placed on the  
9           committee's agenda or 45 days after filing of a final proposal under section  
10          841 of this title, whichever occurs first, provided the agency has not received  
11          notice of objection from the Legislative Committee on Administrative  
12          Rules; or

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

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

19       (b) The text of the adopted rule shall be the same as the text of the final  
20       proposed rule submitted under section 841, except that any germane change

1 may be made by the agency in response to an objection or expressed concern  
2 of the Legislative Committee on Administrative Rules.

3 (c) Adoption shall be complete upon proper filing with the Secretary of  
4 State and with the Legislative Committee on Administrative Rules. An agency  
5 shall have eight months from the date of initial filing with the Secretary of  
6 State to adopt a rule unless extended by action or request of the Legislative  
7 Committee on Administrative Rules. The Secretary of State shall refuse to  
8 accept a final filing after that date, except that:

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

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

19 \* \* \*

1 § 844. EMERGENCY RULES

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

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

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

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

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

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

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

3 (A) beyond the authority of the agency;

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

5 (C) arbitrary; or

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

8 (2) When objection is made under this subsection, on majority vote of  
9 the entire Committee, the Committee may file the objection in certified form  
10 with the Secretary of State. The objection shall contain a concise statement of  
11 the Committee's reasons for its action. The Secretary shall affix to each  
12 objection a certification of its filing and as soon as practicable transmit a copy  
13 to the agency. After a Committee objection is filed with the Secretary under  
14 this subsection, to the extent that the objection covers a rule or portion of a  
15 rule, the burden of proof thereafter shall be on the agency in any action for  
16 judicial review or for enforcement of the rule to establish that the part objected  
17 to is within the authority delegated to the agency, is consistent with the intent  
18 of the Legislature, is not arbitrary, and is justified by an imminent peril to the  
19 public health, safety, or welfare. If the agency fails to meet its burden of proof,  
20 the ~~Court~~ court shall declare the whole or portion of the rule objected to



1 invalid. The failure of the Committee to object to a rule is not an implied  
2 legislative authorization of its substantive or procedural lawfulness.

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

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

16 **(g) In the alternative to the grounds specified in subsection (a) of this**  
17 **section, an agency may adopt emergency amendments to existing rules**  
18 **using the process set forth in this section if each of the subdivisions (1)–(5)**  
19 **of this subsection applies. On a majority vote of the entire Committee, the**  
20 **Legislative Committee on Administrative Rules may object to the**  
21 **emergency amendments on the basis that one or more of these**

1 subdivisions do not apply or under subdivision (e)(1)(A), (B), or (C) of this  
2 section, or both.

3 (1) The existing rules implement a program controlled by federal  
4 statute or rule or by a multistate entity.

5 (2) The controlling federal statute or rule has been amended to  
6 require a change in the program or the multistate entity has made a  
7 change in the program that is to be implemented in all of the participating  
8 states.

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

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

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

15 (B) Failure to amend the rules by the date required for  
16 implementation would cause significant harm to the public health, safety,  
17 or welfare or significant financial loss to the State.

18 (5) On the date the emergency rule amendments are adopted  
19 pursuant to this subsection, the adopting authority prefiles a  
20 corresponding permanent rule pursuant to section 837 of this title.

21 § 845. EFFECT OF RULES

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

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

11 \* \* \*

12 § 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY  
13 OF STATE

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

19 (b) Register; code.

20 (1) The Secretary of State (Secretary) shall keep open to public  
21 inspection a permanent register of rules. The Secretary may satisfy this

1 requirement by incorporating the register into the centralized rule system  
2 created pursuant to section 818 of this title.

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

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

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

15 ~~(1) a commercial publisher offers a comparable publication at a~~  
16 ~~competitive price; or~~

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

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

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



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

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

9           (c) Repeal for nonpublication.

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

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

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

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

20           (d) Amendment of authority for rule.

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

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

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

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

10        Sec. 3. REDESIGNATION

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

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

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

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

15        Sec. 4. MISFILING OF EDUCATION RULES

16            (a) Filing of incorrect rule text.

17            (1) On or about April 16, 2013, the State Board of Education (SBE)  
18            approved revisions to its rules on special education, Series 2360 (the  
19            Rules) for submission to the Legislative Committee on Administrative  
20            Rules (LCAR). The rulemaking number for the proposed revisions was  
21            12-P55.



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

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

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

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

13           **(b) Notwithstanding any contrary provision of 3 V.S.A. § 836, 843, or**  
14           **845, on or before 30 days after the effective date of this section, the SBE**  
15           **shall file the version of the Rules approved by the SBE on or about**  
16           **April 16, 2013 as a final proposal pursuant to 3 V.S.A. § 841. The SBE**  
17           **shall include with this filing a certification signed by the Chair of the SBE**  
18           **that the text of the final proposal is the same as the version of the rules**  
19           **approved by the SBE on or about April 16, 2013.**

1       Sec. 5. EFFECTIVE DATES

2               (a) This section and Sec. 4 (misfiling of education rules) shall take  
3       effect on passage.

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

6

7

8               (Committee vote: \_\_\_\_\_)

9

10

\_\_\_\_\_

Senator \_\_\_\_\_

11

FOR THE COMMITTEE