

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:

10                   (i) the internal management of an agency and does not affect  
11 private rights or procedures available to the public;

12                   (ii) the internal management of facilities that are secured for the  
13 safety of the public and the individuals residing within them; or

14                   (iii) guidance regarding the safety or security of the staff of an  
15 agency or its designated service providers or of individuals being provided  
16 services by the agency or such a provider;

17                   (D) an intergovernmental or interagency memorandum, directive, or  
18 communication that does not affect private rights or procedures available to the  
19 public;

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





1 rulemaking proceedings; shall amend or repeal the guidance document; or shall  
2 deny the request, giving its reasons in writing.

3 \* \* \*

4 Subchapter 2. Contested Cases

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

6 \* \* \*

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

15 \* \* \*

16 Subchapter 3. Rulemaking; Procedures; Guidance Documents

17 § 817. LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

18 \* \* \*

19 § 818. SECRETARY OF STATE; CENTRALIZED RULE SYSTEM

20 (a) The Secretary of State shall establish and maintain a centralized rule  
21 system that is open and available to the public. The system shall include all

1 rules in effect or proposed as of July 1, 2019 and all rules proposed and  
2 adopted by agencies of the State after that date.

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

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

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

7 (3) promote more efficient and transparent filing by State agencies of  
8 rulemaking documents and review by the committees established in this  
9 chapter.

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

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

16 \* \* \*

17 § 831. REQUIRED POLICY STATEMENTS AND RULES

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

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

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

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

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

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

18 \* \* \*

19 § 832a. ~~RULES AFFECTING SMALL BUSINESSES~~

20 (a) ~~Where a rule provides for the regulation of a small business, an agency~~  
21 ~~shall consider ways by which a small business can reduce the cost and burden~~



1 of compliance by specifying less numerous, detailed or frequent reporting  
2 requirements, or alternative methods of compliance.

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

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

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

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

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

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

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

17 § 832b. ~~ADMINISTRATIVE RULES AFFECTING SCHOOL DISTRICTS~~

18 If a rule affects or provides for the regulation of public education and public  
19 schools, the agency proposing the rule shall evaluate the cost implications to  
20 local school districts and school taxpayers, clearly state the associated costs,  
21 and report them in a local school cost impact statement to be filed with the

1 ~~economic impact statement on the rule required by subsection 838(c) of this~~  
2 ~~title. An agency proposing a rule affecting school districts shall also consider~~  
3 ~~and include in the local school cost impact statement an evaluation of~~  
4 ~~alternatives to the rule, including no rule on the subject which would reduce or~~  
5 ~~ameliorate costs to local school districts while achieving the objectives or~~  
6 ~~purposes of the proposed rule. The Legislative Committee on Administrative~~  
7 ~~Rules may object to any proposed rule if a local school cost impact statement~~  
8 ~~is not filed with the proposed rule, or the Committee finds the statement to be~~  
9 ~~inadequate, in the same manner in which the Committee may object to an~~  
10 ~~economic impact statement under section 842 of this title. [Repealed.]~~

11 § 833. STYLE OF RULES

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

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

20 (2) All new rules adopted by agencies shall use, to the fullest extent  
21 possible, respectful language consistent with the Vermont Statutes Annotated

1 and the respectful language study produced in accordance with 2012 Acts and  
2 Resolves No. 24, Sec. 1, where appropriate.

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

7 \* \* \*

8 § 835. COMPILATION OF PROCEDURES AND GUIDANCE  
9 DOCUMENTS

10 (a) Procedures and guidance documents shall be maintained by the agency  
11 in an official current compilation that is indexed by subject includes an index.  
12 Each addition, change, or deletion to the official compilation shall also be  
13 dated, indexed, and recorded. The compilation shall be a public record. The  
14 agency shall publish the compilation and index on its Internet website and  
15 make all procedures and guidance documents available to the public. On or  
16 after January 1, 2024, an agency shall not rely on a procedure or guidance  
17 document or cite it against any party to a proceeding, unless the procedure or  
18 guidance document is included in a compilation maintained and published in  
19 accordance with this subsection.

20 (b) A procedure or guidance document shall not have the force of law.  
21 However, this subsection shall not apply to a procedure if a statute that

1 specifically enables the procedure states that it has the force of law. This  
2 subsection is not intended to affect whether a court or quasi-judicial body gives  
3 deference to a procedure or guidance document issued by an agency whose  
4 action is before the court or body.

5 § 836. PROCEDURE FOR ADOPTION OF RULES

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

8 (1) prefiling, when required;

9 (2) filing the proposed rule;

10 (3) publishing the proposed rule;

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

12 (5) filing the final proposal;

13 (6) responding to the Legislative Committee on Administrative Rules  
14 when required; and

15 (7) filing the adopted rule.

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

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

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

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

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

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

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

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

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

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

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

18           (4) If an agency is a board or commission exercising quasi-judicial  
19 functions and members of the public can access all of the information required  
20 by subdivision (2) of this subsection through the agency’s online case-  
21 management system, this information need not also be posted on the agency’s

1 website. Instead, the list of proposed rules on the agency’s website shall  
2 include the case number for each proposed rule and instructions for accessing  
3 all of the information about the proposed rule in the agency’s online case-  
4 management system.

5 \* \* \*

6 § 838. FILING OF PROPOSED RULES

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

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

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

13 (3) ~~an incorporation~~ An analysis of environmental impact.

14 (4) An explanation of all material incorporated by reference ~~statement,~~ if  
15 ~~the proposed rule includes an incorporation by reference;~~ any.

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

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

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

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

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

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

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

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

13           ~~(3)~~(9) ~~a~~ A concise summary in plain language explaining ~~the effect of~~  
14 ~~the rule; and its effect.~~

15           ~~(4)~~(10) ~~the~~ The specific statutory authority for the rule, and, if none  
16 exists, the general statutory authority for the rule;

17           ~~(5)~~(11) ~~an~~ An explanation of why the rule is necessary;

18           ~~(6)~~(12) ~~an~~ An explanation of the people, enterprises, and government  
19 entities affected by the rule;

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

1           ~~(8)(13) the~~ The name, address, and telephone number of an individual in  
2           the agency able to answer questions and receive comments on the proposal;

3           ~~(9)(14) a~~ A proposed schedule for completing the requirements of this  
4           chapter, including, if there is a hearing scheduled, the date, time, and place of  
5           that hearing and a deadline for receiving comments;

6           ~~(10)(15) whether~~ Whether the rule contains an exemption from  
7           inspection and copying of public records, or otherwise contains a Public  
8           Records Act exemption by designating information as confidential or limiting  
9           its public release and, if so, the asserted statutory authority for the exemption  
10          and a brief summary of the reason for the exemption; ~~and~~.

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

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

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

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



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

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

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

17           (2) Small businesses. When a rule provides for the regulation of a small  
18 business, in the economic impact analysis, the agency shall include, when  
19 appropriate, a specific and clearly demarcated evaluation of ways by which a  
20 small business can reduce the cost and burden of compliance by specifying less

1 numerous, detailed, or frequent reporting requirements or alternative methods  
2 of compliance.

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

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

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

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

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

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

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

19 (3) School districts. If a rule affects or provides for the regulation of  
20 public education and public schools, the economic impact analysis shall  
21 include a specific and clearly demarcated evaluation of the cost implications to

1 local school districts and school taxpayers and shall clearly state the associated  
2 costs. This evaluation also shall include consideration of alternatives to the  
3 rule, including having no rule on the subject, that would reduce or ameliorate  
4 costs to local school districts while achieving the objectives or purposes of the  
5 proposed rule.

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

13 (c) Environmental impact analysis. The environmental impact analysis  
14 shall:

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

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

4           (d) Incorporation by reference.

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

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

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

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

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

20                   (B) A copy of the code, standard, or rule is made available for public  
21                  inspection at the principal office of the agency, and is available at that office

1 for copying in the manner set forth in 1 V.S.A. § 316 and subject to the  
2 exceptions set forth in 1 V.S.A. § 317(c).

3 (C) The incorporated code, standard, or rule is made available for  
4 free public access online unless the agency is prevented from providing such  
5 access by law or legally enforceable contract.

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

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

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

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

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

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

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

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

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

6       § 839. PUBLICATION OF PROPOSED RULES

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

10       (1) the name of the agency;

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

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

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

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

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

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

19       (8) the deadline for receiving comments.

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

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

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

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

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

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

18 \* \* \*

19 § 841. FINAL PROPOSAL

20 (a) After considering public comment as required in section 840 of this  
21 title, an agency shall file a final proposal with the Secretary of State and with

1 the Legislative Committee on Administrative Rules. The Committee may  
2 require that the agency include an electronic copy of the final proposal with its  
3 filing.

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

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

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

11 (B) why the proposed rule is not arbitrary;

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

15 (D) the sufficiency of the economic impact analysis; and

16 (E) the sufficiency of the environmental impact analysis.

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



1 \* \* \*

2 § 842. REVIEW BY LEGISLATIVE COMMITTEE

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

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 proceeding  
8 other than to establish the fact of the objection. If the agency fails to meet its  
9 burden of proof, the ~~Court~~ court shall declare the whole or portion of the rule  
10 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 such  
17          an objection, an agency may adopt the rule without change or may make a  
18          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 using  
18 the process set forth in this section if each of the subdivisions (1)–(5) of this  
19 subsection applies. On a majority vote of the entire Committee, the Legislative  
20 Committee on Administrative Rules may object to the emergency amendments



1 on the basis that one or more of these subdivisions do not apply or under  
2 subdivision (e)(1)(A), (B), or (C) of this section, or both.

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

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

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

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

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

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

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

1 § 845. EFFECT OF RULES

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

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

12 \* \* \*

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

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

1        (b) Register; code.

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

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

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

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

18            ~~(1) a commercial publisher offers a comparable publication at a~~  
19        ~~competitive price; or~~

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

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

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

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

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

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

13          § 848. RULES REPEAL; ~~OPERATION OF LAW~~ AMENDMENT OF  
14                 AUTHORITY; NOTICE BY AGENCY

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

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

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

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

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

9           (c) Repeal for nonpublication.

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

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

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

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

20           (d) Amendment of authority for rule.

1           (1) If the statutory authority for a rule, as stated by the agency under  
2           subdivision 838(b)(4) of this title, is amended by the General Assembly, and  
3           the amendment does not transfer authority from the adopting agency to another  
4           agency, the agency within 30 days following the effective date of the statutory  
5           amendment shall review the rule and make a written determination 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 Rules) for  
19        submission to the Legislative Committee on Administrative Rules (LCAR).  
20        The rulemaking number for the proposed revisions was 12-P55.

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

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

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

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

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

19           Sec. 5. EFFECTIVE DATES

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



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

3

4

5        (Committee vote: \_\_\_\_\_)

6

\_\_\_\_\_

7

Senator \_\_\_\_\_

8

FOR THE COMMITTEE