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MEMORANDUM

TO: The Senate Committee On Government Operations
FROM: J. Stephen Monahan Director Workers' Compensation and Safety Division
CC: Lindsay Kurrle, Commissioner
DATE: April 23, 2018
RE: H.908 - An Act Relating to the Administrative Procedure Act (No. 1.1 4-13-2018)

Madame Chair and Committee Members,

Thank you for the opportunity to testify on this bill. The Department of Labor supports the underlying concept of the bill to make the rulemaking process more efficient and transparent. However, the bill as passed by the House and the proposed strike-all, do not increase the efficiency of the rulemaking process, and if passed, would make complying with the proposed provisions extremely costly and time consuming for the Department. In addition, the bill as currently written, will inhibit the Department's ability to respond to changing federal procedures, grant requirements, and state and federal court decisions in a timely fashion.

I have outlined some of the Department of Labor's specific concerns by section below.

Definitions section

The definitions for the terms *procedure* and *guidance document* are vague and capable of being interpreted so broadly that they could encompass almost any written document or email on a subject. Additionally, the use of the term "including" in the definition section suggests that the term is broader than just written practices.

§835

The breadth of the terms included in §835 are of concern because the proposed section (page 12 of the current draft) requires an Agency or Department to index and publish all guidance documents and procedures to the internet. As you may or may not know, the Vermont Department of Labor must comply with numerous federal requirements, which are constantly subject to change by the federal agency. In some circumstances, Federal laws requires that for reasons of financial risk or security, the material kept and created at the Department must be kept confidential and not public. Much of this material currently exists as paper documents, and we have estimated our current inventory to total several thousands of hard copy pages. To comply with the provisions in this section, it will require the Department to hire additional staff and purchase appropriate enterprise software. This software will need to be complex in that it will have to be capable of scanning the material into suitable electronic form, indexing all creating a catalog of all materials, and publishing the scanned material to the web. Even more complex, and therefore costly, will be the requirement that this system be managed from within the Department, and be software that is easily modified in order to accept changes due to policy and

guidance updates by the Federal Government. Any new IT system will also have to be modified due to factual circumstances of State or Federal court cases.

Lack of Funding and Support

The bill contains no funding mechanism enabling the Department to achieve costly compliance. The Department would like to note that the bill does not address or indicate how the Secretary of State's Office will pay to develop and maintain the Centralized Rule System envisioned by section 818 (page 6 of the draft strike-all).

Deference

If the bill were to pass in any form, it is the Department's position that subsection (b) of section 835 be struck. Deference ought to be given to an Agency charged with interpreting a statute or its rules. It is odd that one section would require an Agency to go through considerable time and expense to compile, index and publish procedures and guidance documents that are then given no weight or deference when the Agency seeks to follow and enforce its rules. Furthermore, many of the procedures and guidance documents utilized by the Department of Labor track the procedures and interpretations the Federal Government has provided as conditions of Federal grants or rule enforcement. For example: the Vermont Occupational Safety and Health Administration (VOSHA) program must agree to adopt and enforce occupational safety and health rules that are *at least as effective* as those adopted and enforced by Federal OSHA. Failure to do so may lead to a loss in Federal funding. As a result, VOSHA generally adopts OSHA rules and follows identical Federal procedures and interpretations of those rules.

Thank you for the opportunity to comment.

Sincerely,



J. Stephen Monahan
Director Workers' Compensation and Safety Division