

## AOE Notes on S.166 Draft 2.1

### Agency of Education Comments on S.166, Draft 2.1

1. SBE Rulemaking Authority – see pages 2-3 of AOE Draft, attached.
  - a. The Agency agrees with the principle expressed in the draft, but disagrees with the language as drafted.
  - b. Legislative intent is only contemplated when a statute is unclear on its face. Different readers of the same provision can disagree about legislative intent.
  - c. To avoid this uncertainty, the committee should write a clear statute. The clearest way to express where the State Board will have rulemaking authority is to cite to specific statutes where the duties and powers of the State Board are written in the law itself, as our language does.
2. AOE Rulemaking Authority – see page 7 of AOE Draft, attached.
  - a. The Agency agrees with the principles expressed in the draft, but disagrees with the language as drafted.
  - b. Our language avoids several vague provisions in draft 2.1.
  - c. It is unclear which entities are included in “persons under the Secretary’s supervision and control.” Instead, we suggest referencing “powers and responsibilities given to the Secretary” by law.
  - d. We agree that the Secretary should be directed to carry out duties given by State Board rule. Our language groups this concept with the Secretary’s charge to execute the laws that apply to the Secretary or Agency, including State Board rules, which, like all administrative rules, have the force and effect of law.
3. Adopting ballot language by rule – See draft 2.1 page 17-19.
  - a. In two sections of law, 16 V.S.A. §§ 428 and 511, the State Board is directed to work with the Secretary of State to issue uniform ballot language for school budgets. This duty should remain with the State Board because the language is in Rule 3000, which this bill directs to remain a State Board rule.
  - b. If the duty is given to AOE, we will have to go through a new formal rulemaking in order to adopt the ballot language into an AOE rule.
4. The committee should decide which entity is responsible for CTE – see draft 2.1 page 30-31 and 59-61.
  - a. In § 1531, AOE should have the responsibility for designating service regions. The regions are currently in Rule 2370, which is being moved to AOE in the bill.
  - b. This principle also applies to the following sections: 1541, 1546, 1573.

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 166  
3 entitled “An act relating to the dissolution of the State Board of Education”  
4 respectfully reports that it has considered the same and recommends that the  
5 bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 \* \* \* Transfer of Certain Responsibilities of the State Board of Education to  
8 the Secretary of Education \* \* \*

9 Sec. 1. 16 V.S.A. § 164 is amended to read:

10 § 164. STATE BOARD; GENERAL POWERS AND DUTIES

11 The State Board shall evaluate education policy proposals, including timely  
12 evaluation of policies presented by the Governor and Secretary; engage local  
13 school board members and the broader education community; and establish  
14 and advance education policy for the State of Vermont and, consistent with the  
15 provisions of this title, its own rules, and rules adopted by the Secretary,  
16 establish and regularly update a long-term strategic vision for the delivery of  
17 educational services in Vermont; and advise the General Assembly, the  
18 Governor, and the Secretary of Education on high priority educational policies  
19 and issues as they arise, and act in accordance with Legislative mandates,  
20 including the adoption of rules and executing special assignments. In addition  
21 to other specified duties, the Board shall:

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- (A) the operation and administration of the State Board of Education
- (B) educational quality standards
- (C) independent school program approval, including
- (i) approval of distance learning schools;
- (ii) post-secondary schools; and
- (iii) private kindergarten approval;
- (D) special education, including special education funding and school
- special funding;
- (E) school accountability system based on student achievement;
- (F) superintendents and school district organization; and
- (G) proposals for alternative structures under 20 U.S. Code and Resolutions.

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Commented [RD3]: Note that although the SBE rules series is entitled "school District Org" it deals solely with SU assignment. Using these words here could potentially be seen as expanding the SBE's authority.

Adopt rules pursuant to 3 V.S.A. chapter 25 as required or authorized by this section and sections 165, 166, 175-177, 261 and chapter 101 of this title, or as otherwise required or authorized by the General Assembly.

Commented [ES4]: Chapter 101 is special education; references to rules throughout

(8) Review and comment on rules proposed by the Agency of Education prior to pre-filing the proposed rules with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837.

(9) Implement ~~Promulgate~~ Develop and continually update standards for student performance in appropriate content areas and at appropriate intervals in the continuum from kindergarten prekindergarten to grade 12 and methods of

Commented [RD5]: Promulgate means "publish" – is this what is intended, or is "Develop ... standards" or Adopt .... rules" what is really meant?

1 funds designated for the development or expansion of distance learning  
2 technologies. The guidelines shall encourage, consistent with any terms or  
3 conditions established by the funding source, collaboration between schools  
4 and school districts to realize economic and educational efficiencies.

5 [Repealed.]

6 (17) Report annually on the condition of education statewide and on a  
7 supervisory union and school district basis. The report shall include  
8 information on attainment of standards for student performance adopted under  
9 subdivision (9) of this section, number and types of complaints of hazing,  
10 harassment, or bullying made pursuant to chapter 9, subchapter 5 of this title  
11 and responses to the complaints, financial resources and expenditures, and  
12 community social indicators. The report shall be organized and presented in a  
13 way that is easily understandable by the general public and that enables each  
14 school, school district, and supervisory union to determine its strengths and  
15 weaknesses. To the extent consistent with State and federal privacy laws and  
16 regulations, data on hazing, harassment, or bullying incidents shall be  
17 disaggregated by incident type, including disaggregation by ethnic groups,  
18 racial groups, religious groups, gender, sexual orientation, gender identity,  
19 disability status, and English language learner status. The Secretary shall use  
20 the information in the report to determine whether students in each school,  
21 school district, and supervisory union are provided educational opportunities

1 ~~under the Secretary's supervision and control, except that the Secretary shall~~  
2 ~~not adopt rules in areas reserved to the State Board of Education under section~~  
3 ~~164 of this title, and as directed by the General Assembly, submit rules~~  
4 ~~proposed by the Secretary to the State Board of Education for review and~~  
5 ~~comment prior to pre-filing the proposed rules with the Interagency Committee~~  
6 ~~on Administrative Rules under 3 V.S.A. § 837 within a time frame that~~  
7 ~~accommodates the State Board's review of the proposed rules and the~~  
8 ~~Secretary's ability to respond to State Board comments, implement rules~~  
9 ~~adopted by the Secretary and the State Board in the legal exercise of its their~~  
10 ~~powers, and shall~~ The Secretary, by and through the Agency, shall execute the  
11 duties required by State or federal law, including by State Board rule adopted  
12 in the legal exercise of its powers, and shall adopt rules pursuant to 3 V.S.A.  
13 chapter 25 necessary to execute the powers and responsibilities given to the  
14 Secretary under this title or otherwise required or authorized by State or  
15 federal law. In addition, the Secretary shall:

16 \* \* \*

17 (23) Make rules governing the attendance and records of attendance of  
18 all students and the department of students attending public schools.

19 (24) Establish criteria governing the establishment of a system for the  
20 receipt, deposit, accounting, and disbursement of all funds by supervisory  
21 unions and school districts.

**Commented [E56]:** We propose a re-write of this section below. The sentence had grown too long and we are happy we could accomplish the same task in a clearer, shorter lead-in sentence.

**Commented [E57]:** This will ensure AOE follows and implements SBE rules and that AOE does not make rules in areas that are reserved to the SBE.

**Commented [E58]:** See numbered item 29 for restatement of SBE "review and comment" requirement.