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## **QUICK REFERENCE GUIDE:**

### **LEGISLATIVE AUTHORITY IN THE CONTEXT OF LEGISLATIVE MEETINGS AND SPACE NEEDS**

#### **General Rules re: Legislative Authority**

#### **I. Each Chamber Regulates Itself**

The [Vermont Constitution](#) and caselaw interpreting it indicate that each chamber regulates its own procedure and members. Vt. Const. Ch. II, § 14 provides the House with the power to “judge of the elections and qualifications” and expel its members. Vt. Const. Ch. II, § 19 similarly provides the Senate with “the like powers to decide on the election and qualifications of, and to expel any of, its members, [and to] make its own rules . . . as are incident to, or are possessed by, the House of Representatives.”<sup>1</sup> The Supreme Court of Vermont has acknowledged the chambers’ separate, exclusive regulatory authority.<sup>2</sup>

This principle is repeated in *Mason’s Manual of Legislative Procedure*, which is a body of parliamentary law based on legislative precedent and customs and judicial caselaw, and which has been adopted by both chambers as their supplemental parliamentary procedure.<sup>3</sup> Relevant *Mason’s* provisions include:

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<sup>1</sup> The Vt. Const. does not explicitly provide the House with rulemaking authority, but implies the House has that authority in its Ch. II, § 19 reference to the Senate having rulemaking authority as is incident to, or possessed by the House. The House had been adopting its own rules of procedure before the Senate was constitutionally created in 1836. See also the SCOV’s recognition of House rulemaking authority in the [Brady v. Dean](#) case described in FN2.

<sup>2</sup> The Vt. Const. Ch. II, § 14 authority of the House to judge its members’ elections and qualifications “places the final determination of the election and qualifications of its members exclusively in the House of Representatives of the General Assembly as part of its legislative powers.” [Kennedy v. Chittenden](#), 142 Vt. 397, 399 (1983) (holding unconstitutional a statute that purported to give the Judicial Branch the authority to determine the outcome of a contested legislative election). Later, the Court held that the House’s authority to judge member qualifications was an “exclusive constitutional prerogative” that “encompasses the authority to determine whether a member’s personal or pecuniary interest requires *dis* qualification from voting on a question before it[.]” noting that the House “has adopted rules addressed to this very problem.” [Brady v. Dean](#), 173 Vt. 542, 544 (2001) (holding that whether House members who participated in a betting pool on the civil unions bill vote should have voted on the bill presented a nonjusticiable political question).

<sup>3</sup> [House Rule 88](#) and [Senate Rule 91](#).

- Sec. 2-3: “A house of a state legislature has complete authority concerning its procedure, so far as it is not limited by constitutional provisions.”
- Sec. 10-4: “Either house of a state legislature may make special rules for itself, and they may be partly or wholly different from those of the established parliamentary procedure.”
- Sec. 561-1: “A legislative body has the right to regulate the conduct of its members and may discipline a member as it deems appropriate, including reprimand, censure[,] or expulsion.”
- Sec. 561-2: “A state legislative body possesses inherent powers of self-protection.”
- Sec. 705-3: “A legislative body has absolute control of its chamber[.]”
- Sec. 805-5: “A legislative body has the right to regulate its own halls.”
- Sec. 615-1: “Committees are instruments or agencies of the body appointing them, and their function is to carry out the will of that body.”

Each chamber may regulate itself through its leadership, its Rules Committee, or by a chamber resolution or other vote of the chamber.

## II. The Chambers Agree on Matters of Joint Interest

In regard to matters of joint interest, the chambers may reach agreement through the House Speaker and Senate President *Pro Tempore*, a joint committee, by joint resolution, or by joint rule. *See e.g.* these general [Joint Rules](#) provisions:

- Joint Rule 4: Joint Rules “govern all matters of common concern to and involving joint action by both houses.”
- Joint Rule 8: Joint assemblies are held in the House chamber, and are held at times and for purposes expressed in a joint resolution.
- Joint Rule 22: Joint committees comprising members of each chamber may be created by joint rules, statute, or joint resolution.
- Joint Rule 23: House and Senate committees of like functions may meet together for public hearings.

**Current Chamber and Committee Meeting Requirements  
and Related Provisions**

**I. Matters of Joint Interest**

*A. Joint Rules; Generally*

The [Joint Rules](#) currently regulate specific issues relating to legislative meetings:

- [Joint Rule 25](#) confirms that permission to use either legislative chamber for other than statutory purposes may be granted in accordance with that chamber's rules.
- [Joint Rule 26](#) regulates public conduct in the State House. This rule:
  - Generally requires people to refrain from conduct that would create a risk of harm to others or disrupt essential governmental operations; regulates banners and signs; and prohibits weapons, except for official purposes. Subsecs. (a)–(c).
  - Confirms that the presiding officers have general supervision over their respective chambers and that committee chairs have general supervision over their respective committee or hearing rooms, and authorizes them to order the Sergeant at Arms to restore order or clear the area in the case of a violation of this rule. Subsec. (d).
  - Provides the Sergeant at Arms with general supervision over public conduct in the State House and authorizes the Sergeant at Arms to take measures necessary to prevent the disruption of essential governmental operations consistent with legislative rules. Subsec. (e).

*B. Joint Committees; Remote Authority*

Pursuant to [J.R.S. 24](#), joint committees' remote meeting authority has expired, but it may be reauthorized by the Joint Rules Committee if the Governor reissues capacity restrictions or requires masks/physical distancing in response to COVID-19. Specifically, the 1<sup>st</sup> Resolved Clause:

- Amended [temporary Joint Rule 22A](#) to provide that the authority for the Joint Rules Committee to permit joint committees to meet remotely expired 30 days following the date on which the Governor rescinded capacity restrictions and mask/physical distancing requirements in response to COVID-19 (ie., on July 15, 2021).
- Provides that if the Governor reissues capacity restrictions or mask/physical distancing requirements in response to COVID-19, the Joint Rules Committee is again authorized to meet remotely and to permit other joint committees to meet remotely.

### *C. Joint Rules Committee; Legislative Meeting Spaces*

[J.R.S. 24](#)'s 2<sup>nd</sup> Resolved Clause provides that if the Joint Rules Committee determines that there should be conditions on the public entering the State House or other legislative meeting spaces, or limitations on access to legislative meeting spaces, due to air quality or construction, the inability to comply with CDC guidelines, or other similar reasons, the Joint Rules Committee is authorized to issue orders to the Sergeant at Arms that condition or limit that public access.

### *D. Joint Resolutions; Joint Assemblies*

Joint resolutions normally determine the manner of joint assemblies. *See e.g.* 2021 [J.R.S. 4](#) (canvassing committee), [J.R.S. 5](#) (Governor message), [J.R.S. 9](#) (Governor budget message), [J.R.S. 13](#) (elections of Sgt at Arms, A&IG, and UVM Trustees), and [J.R.S. 18](#) (judicial retention), each of which provided that those joint assemblies were conducted remotely.

## II. House Chamber, Sessions, and Committees

### A. Use of House Chamber

[House Rules](#) regulate the use of the House chamber:

- [House Rule 84](#) specifies the persons authorized in the well of the House.
- [House Rule 86](#) provides that the presiding officer must give permission for the taking of pictures on the House floor or the machine recording of session proceedings.
- [House Rule 87](#) provides that requests for the use of the House chamber “for other than statutory purposes”<sup>4</sup> may be authorized by the House Rules Committee while the General Assembly is in session, or by the Sergeant at Arms with the Speaker’s permission if the General Assembly is in adjournment for more than seven days.

### B. House Sessions and Committees; Remote Authority

The House adopted [H.R. 11](#), which is similar to J.R.S. 24. Pursuant to the 1<sup>st</sup> and 2<sup>nd</sup> Resolved Clauses of H.R. 11, the remote authority of the House and its committees expired on July 15, 2021, but it may be reauthorized by the House Rules Committee if the Governor reissues capacity restrictions or requires masks/physical distancing in response to COVID-19.

### C. House Sessions; Alternative In-Person Procedures

The 3<sup>rd</sup> Resolved Clause of H.R. 11 provides that if, during a time in which the Governor has not imposed capacity restrictions or required masks/physical distancing in response to COVID-19—but during which time the House cannot meet in the House chamber according to its rules due to State House construction, the inability to comply with CDC guidelines, or other similar reasons—the House Rules Committee is authorized

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<sup>4</sup> [2 V.S.A. § 2](#) provides that the House and Senate chambers “shall not be used for purposes other than legislation or business connected therewith, except as the two houses may by joint rule or resolution provide.” [Joint Rule 25](#) states that “[p]ermission to use either legislative chamber for other than statutory purposes may be granted in accordance with the rules of the house in question.” Hence, House Rule 87 controls use of the House chamber.

to adopt alternative procedures that allow the House to meet, debate, and vote in-person in a different manner within the chamber or at another physical location.

### **III. Senate Chamber, Sessions, and Committees**

#### *A. Generally*

Please discuss with the Senate Secretary any questions relating to Senate procedure. What follows are references to Senate Rules, which are within the Secretary's purview.

#### *B. Use of Senate Chamber*

[Senate Rule 89](#) allows the presiding officer to “make temporary or permanent arrangements for the use or non-use of any portion of the Senate Chamber by members of the news media[,] including the press, television[,] and radio.” This rule also requires permission of the presiding officer for the taking of pictures on the Senate chamber floor during session or the machine recording of proceedings.

#### *C. Senate Sessions and Committees; Remote Authority*

Pursuant to [S.R. 2](#), the Senate adopted [Senate Rules 9A and 32A](#), which provide that when the Governor declares any state of emergency, the Senate Rules Committee is authorized to permit Senate sessions and Senate committees to meet remotely. The Committee's authority terminates upon the expiration of the Governor's state of emergency.

Thereafter, the Senate adopted [S.R. 9](#), which notwithstanding the current provisions of Senate Rules 9A and 32A so that their provisions remain in effect until the later of:

- 1) the expiration of the Governor's COVID-19 state of emergency; or
- 2) January 7, 2022 (ie., the first Friday of the 2022 session).

## Review of Jurisdictions:

### Joint Rules Committee and Joint Legislative Management Committee

#### *I. Joint Rules Committee*

- General focus: Joint procedures of the two chambers, procedures of joint committees, and any other issues relating to the Joint Rules.
- [Joint Rule 7](#): The Committee “shall propose and have referred to it matters relating to the Joint Rules of the General Assembly.”
  - The Joint Rules address joint assemblies, procedure for bills and joint resolutions, committees of conference, joint committees and joint hearings, and miscellaneous provisions, which include the joint canvassing committee, use of legislative chambers, and public conduct in the State House.
- Other duties and powers:
  - [1 V.S.A. § 823\(b\)](#): Interchange of State employees.
  - [2 V.S.A. § 62\(a\)\(1\)](#): Providing orders to be executed by Sergeant at Arms.
  - Permitting joint committees to meet remotely as authorized by [J.R.S. 24](#).

#### *II. Joint Legislative Management Committee*

- General focus: General oversight, management, and coordination of staff.
- [2 V.S.A. § 41\(a\)](#): JLMC “shall provide general oversight and management across the offices of the General Assembly and shall coordinate the operations of the Office of Legislative Operations in its delivery of shared administrative services to the legislative offices and the General Assembly.”
- [2 V.S.A. § 42](#):
  - Prepares a proposed budget for the Leg. Branch that includes a budget for each Leg. office;
  - Approves permanent positions in staff offices, as appropriate, for inclusion in the Leg. budget;
  - Approves reallocation of existing positions among staff offices, as appropriate;
  - Approves policies that apply across the Leg. Branch, including compensation and benefit plans, personnel policies, and IT policies; and
  - “attend to other relevant management and oversight matters.”

- Other duties and powers re: specific offices:

#### **Sergeant at Arms.**

- [2 V.S.A. § 62\(a\)\(1\) and \(d\)](#): Provide orders to be executed by Sergeant at Arms and provide guidance to and adopt policies that must be complied with by the Sergeant at Arms and the Sergeant's employees.
- [2 V.S.A. § 64](#): Approve positions and adopt policies for employees of the Sergeant at Arms. Includes ability to waive exempt status of these employees.
  - [2020 Act No. 144](#), Sec. 1 deleted the authority of the Joint Rules Committee to waive exempt status and substituted JLMC in lieu thereof.
- [2 V.S.A. § 68](#): Receives proposed budget of Sergeant at Arms.
- [2 V.S.A. § 70\(e\)](#): Approves Capitol Police Department's strategic plan.

#### **Office of Legislative Counsel.**

- [2 V.S.A. § 402\(a\) and \(b\)](#): Employs Director and Chief Counsel of Office of Legislative Counsel; approves new, permanent positions in the Office; and adopts personnel policies for the Office.
- [2 V.S.A. § 404](#): Reviews budget of Office of Legislative Counsel.

#### **Office of Human Resources.**

- [2 V.S.A. § 462](#): Employs Director of Human Resources; approves new, permanent positions in the Office; and adopts personnel policies for the Office.
- [2 V.S.A. § 463\(a\)\(1\)](#): Reviews and approves personnel policies for legislative offices and employees developed by the Director of Human Resources.

#### **Joint Fiscal Office.**

- [2 V.S.A. § 522\(a\)\(2\), \(b\), and \(c\)](#): Approves new, permanent positions in JFO; adopts personnel policies for JFO; and may waive exempt status for JFO employees.
  - Via [2 V.S.A. § 522\(a\)\(1\)](#), the Joint Fiscal Committee employs JFO's Chief Fiscal Officer.
- [2 V.S.A. § 524](#): Reviews budget of JFO.