



Institute for Energy
& the Environment
VERMONT LAW & GRADUATE SCHOOL

To: Legislative Committee on Administrative Rules
From: Sydney Abraham, Energy Clinician and Jenny Carter, Professor and
Senior Attorney
Date: March 30, 2026

Testimony to LCAR re. Proposed DPS RBES & CBES Rules 25-P047 and 25-P048

On behalf of Vermont Law and Graduate School's Energy Clinic, we are writing to express concern over the rollback of the 2024 Residential Building Energy Code and Commercial Building Energy Code. The proposed rollbacks have little justification and do not meet the requirements of the RBES and CBES enabling statutes and the Vermont APA.

Most notably, the proposed rules do **not** meet the APA's requirement for meaningful environmental and economic impact statements, and they do not meet the RBES and CBES requirements that rules be consistent with state energy policy. Second, the given rationale for adoption of the new rule is to reduce housing construction costs, yet the CBES rollback applies to **ALL** commercial construction, not just multi-families.

Violations of Vermont APA: No Meaningful Economic or Environmental Impact Statements:

The proposed changes to RBES and CBES standards have not met [3 V.S.A. § 838](#) (a)(2) and (3) requirements that any proposed rule shall include an environmental impact statement and economic impact statement. With the exception of a little anecdotal information, the [RBES](#) and [CBES](#) proposed rule documents include only the analyses conducted for the 2020 and 2024 RBES and CBES. ^{1 2 3}

There has been no analysis conducted specifically on the increased costs of construction materials or labor since the 2024 rule analysis was completed in 2022. There has also been no analysis of the effects on energy affordability given higher fuel costs since 2022. But, the department in its rule proposal still stands by its original cost-benefit analysis and acknowledges that the 2024 codes are still a net positive. It provides no real evidence or analysis to justify its proposed rollbacks.

Violation of RBES/CBES State Energy Goals Requirement:

Both RBES and CBES enabling statutes require that “Any amendments ...shall be: (A) consistent with duly adopted State energy policy, as specified in section 202a of this title ...”^{4 5} A joint letter that was submitted to committee members on March 24 on behalf of VNRC, CLF, VLGS and others goes into detail about how the proposed rollbacks are inconsistent with State Energy Policy. We incorporate that letter by reference and attach it for your convenience. See especially paragraphs 6-8.

Potential Violation of RBES & CBES ambiguous “Advisory Committee” language:

The RBES and CBES statutes both state: “Prior to final adoption of each *required* revision ..., the Department of Public Service shall convene an Advisory Committee.”^{6 7} Confusion and ambiguity around this Advisory Committee requirement were created when the legislature amended the law in 2024 (Act 151). They changed it from requiring regular RBES/CBES revisions to making them discretionary. Because there are no more required revisions, the legislature appears to have forgotten to take out the word “required” before “revision” as there are no more “required revisions”.

The law has essentially set up a bit of a Catch 22. If indeed an advisory committee only need be convened for “required revisions”, then there would

² RBES: <https://publicservice.vermont.gov/sites/dps/files/documents/12.9.25%20-%20PSD%20-%20Residential%20Building%20Energy%20Standards%20%28ICAR%20Filing%29.pdf>, pages 8-12

³ CBES: <https://publicservice.vermont.gov/sites/dps/files/documents/12.9.25%20-%20PSD%20-%20Commercial%20Building%20Energy%20Standards%20%28ICAR%20Filing%29.pdf>, pages 8-14

⁴ RBES: 30 V.S.A. § 51 (1) (A) <https://legislature.vermont.gov/statutes/section/30/002/00051>

⁵ CBES: 30 V.S.A. § 53 (1) (A) <https://legislature.vermont.gov/statutes/section/30/002/00053>

⁶ RBES: 30 V.S.A. § 51 (c) <https://legislature.vermont.gov/statutes/section/30/002/00051>

⁷ CBES: 30 V.S.A. § 53 (c) <https://legislature.vermont.gov/statutes/section/30/002/00053>

never be a need for an advisory committee as there are no longer any required updates. Legislative intent on this is for LCAR to decide.

Justification for CBES Rollback:

The Commercial Building Energy Standard applies to all non-residential structures and multi-families four stories or more, per 30 V.S.A. § 53 (a). This can include, but is not limited to, stores, warehouses, industrial buildings, schools, large multifamily units, dorms, and more.

Governor Scott and the DPS have stated that the intended benefit of the rollbacks is to promote housing construction. Nowhere have we even seen them try to make the case that all commercial construction needs the same help. In fact, the CBES statute does not even contain the same “cost-effectiveness” requirement that CBES does. **Yet, the rollback of CBES will apply to all commercial construction - not just that related to housing.** Why is the DPS even asking to rollback all of CBES instead of applying the rollback only to the housing covered by CBES?

Our Recommendation for LCAR Objections:

Given the above, we believe LCAR should object to both of the proposed rules because they are “contrary to the intent of the legislature” and are “arbitrary”. They are contrary to the intent of the Legislature because they violate both the APA and RBES/CBES enabling statutes. And they are arbitrary because no meaningful analysis was done to justify the proposed rule. ([3 V.S.A. § 842 \(b\)](#))

Thank you very much for your consideration. We are always happy to answer any questions you might have.



February 9, 2026

Department of Public Service
Kerrick Johnson, Commissioner
Brittney Wilson, Deputy Commissioner
112 State Street
Montpelier, VT 05620-2601

RE: Vermont Residential Building Energy Standards (RBES) Rulemaking

Commissioner Johnson and Deputy Commissioner Wilson,

Thank you for the opportunity to comment on the Vermont Residential Building Energy Standards rulemaking. We are writing to express our organizations' concerns about proposed or potential changes to the adopted 2024 Residential Building Energy Standards. Our concerns largely relate to the absence of the usual, comprehensive, stakeholder and data-informed process to warrant an update at this time, as well as the potential for a less stringent energy code to conflict with state energy goals, policies, and requirements and the likely impact on durable energy affordability.

We recognize the need for and support the development of more housing in Vermont. We also recognize and are sympathetic to the potential impacts of recent federal changes that could be creating supply chain issues and additional costs. On top of that, since Governor Scott issued [Executive Order 6-25](#), we understand that it has been a challenging landscape for contractors who have been asked to choose between two different compliance standards – 2020 or 2024 –

creating market confusion and an uneven playing field for contractors who build to (or quote costs for) a higher energy efficiency standard. If these and other potential legitimate issues are creating market confusion and additional costs, we urge a full, comprehensive, data-driven and transparent energy code rulemaking – not what appears to be a fast tracked and more opaque effort.

As you know, in 2023, after more than a two-year, robust, PSD-led public and stakeholder process, the State of Vermont adopted an update to the 2020 Vermont Residential Building Energy Standards (RBES). Among the more significant changes from the 2020 RBES to the 2024 RBES per [an April 2023 amendment](#) are: *“Increased insulation R- values for basements; tighter air sealing requirements; efficient balanced whole-house ventilation system with heat recovery requirement; and EV Capable requirements.”*

The [2023 RBES amendment](#) also stated an economic rationale for the 2024 update. *“... Adoption of the rule will result in an incremental cost increase for the parties involved in new home construction, purchase, and ownership, and existing home renovation compared to the 2020 RBES, currently in effect. On the other hand, adoption of the rule will provide economic benefits of reduced energy costs, reduced environmental impacts, and improved indoor air quality for the lifetime of the home/building.”¹*

In short: That comprehensive rulemaking effort concluded that an update to the 2020 standard met a core threshold for adoption – cost effectiveness. Despite that, Governor Scott’s [EO 6-25](#) contradicts that vetted state conclusion and confuses the implementation of the 2024 RBES standard; lowering the bar on energy efficiency, enabling contractors to comply with *either* the 2020 code or the 2024 code, and creating confusion and uneven application of energy codes.

More specifically, our concerns relate to:

1. **Undermining the robust public- and stakeholder-engaged process and informed conclusion that led to the adoption of an updated 2024 RBES.** Over two years, the PSD convened a diverse group of stakeholders to examine a potential code update. The result of that effort was the adoption of an updated 2024 RBES. This new effort fundamentally disregards and undercuts that public process and its conclusion. The PSD should not override the 2024 rule without a thorough public process that includes diverse stakeholder engagement and an advisory group, public hearings, and expert analysis, including an updated and comprehensive cost-effectiveness test. In fact, 30 V.S.A. § 51(c)

¹ The Department noted that “[f]or the home buyer or home owner, this rule will result in a positive cash flow and an 8% to 27% (35% including the social cost of carbon) return on investment (ROI) for a typical new home compared to the same home built to the 2020 RBES, [then] currently in effect.”

envisioning an Advisory Committee be established prior to each rule revision. The law also requires the rule to be “*cost-effective and affordable from the consumer's perspective.*” The current process appears to fall short on these fronts, and has not been robust or involved robust engagement: the posting of the rule was not far in advance of the initial ICAR hearing, the recent virtual hearing(s) held on February 3, 2026 were poorly attended, and there has been limited data and analysis used to support the PSD’s decision to amend the rule.

2. **A shortsighted analysis of affordability and cost effectiveness.** The analysis undertaken to develop and adopt a 2024 RBES found it to be cost effective to the consumer at that time. That means, when a homeowner buys or builds a new home that complies with the 2024 standard, the annual energy cost savings are estimated to be more than the incremental cost of the investment needed to adhere to a higher level of efficiency. That makes it cash flow positive for the homeowner over time by saving them money through the increased efficiency improvements delivered by a higher energy standard; meaning that it will cost less to own a home built to the 2024 standard over time than to build to the 2020 standard. Nowhere in the PSD’s new proposal, as far as we’ve seen, are the economic impacts on residents over the life of a home analyzed, including energy savings, which would be necessary to determine affordability. In short: It is unclear what updated, vetted, and data-driven analysis the PSD would be – or is – relying on to update the rule at this time.
3. **The creation of market confusion and likely accompanying challenges when we need to be building more housing – and more durably affordable housing – more quickly.** The Executive Order – which is not legally binding – de facto enables contractors to either comply with the 2020 *or* 2024 code. This ambivalence creates market uncertainty, inconsistencies and confusion for both contractors and consumers, potentially slowing down building at a time when we need to be bringing more housing to market. It also creates an inequitable playing field for contractors who do comply with the more stringent code.
4. **The timing of this rulemaking procedure.** While we haven’t been able to get a clear sense of the focus and timing, it is our understanding that the PSD has a study planned for the coming months that will re-assess the baseline efficiency and code compliance, with results expected sometime this coming April or May. As we noted, it may well be reasonable to reassess the costs and benefits of compliance at this moment – considering the significant market changes imposed by tariffs, inflation and beyond – but

adopting a new rule before this study is released, and a more comprehensive, stakeholder-engaged and data-driven process is conducted, simply doesn't make sense.

5. **Disregarding other benefits of compliance with the 2024 RBES.** Beyond the goal we all share of saving Vermonters money and energy, there are other benefits of adhering to the 2024 code. That includes building homes that are more comfortable for people to live in, more healthy to live in (with better air quality), and that improve building durability by fostering better ventilation and avoiding moisture and mold issues.

6. **Disregarding core principles that guide how to best meet the energy needs of Vermonters.** Per 30 V.S.A. § 202a, Vermont is to look to meet its energy needs in a manner that is *“adequate, reliable, secure and sustainable; that ensures affordability and encourages the State’s economic vitality, the efficient use of energy resources, and cost-effective demand-side management; and that is environmentally sound.”* Retreating from a more efficient energy code driven largely by a short-term, potentially shortsighted view of affordability directly contradicts and makes several state energy goals of 30 V.S.A. § 202a more difficult to achieve. Retreating also conflicts with 30 V.S.A. § 51(c)(1) which requires *“(1) Any amendments to the RBES shall be: (A) consistent with duly adopted State energy policy, as specified in section 202a of this title ...”*

Building more energy inefficient houses today will require a greater use of energy to maintain those homes over time; directly contradicting a stated energy goal of efficient use of energy resources – as well as proactively undermining potential demand side management benefits of building more efficient homes out of the gate. When it comes to the state’s obligation to provide “adequate,” “reliable,” “sustainable,” and “efficient use of energy resources,” adhering to the more stringent 2024 energy code will help the state meet that obligation. That’s because building energy efficient homes, from the outset, will require less energy use, meaning less power procured and/or fossil fuels consumed in the state. We also know that it’s often far more difficult and expensive to retrofit and weatherize existing homes than it is to make that investment upfront. So enabling building to less efficient standards locks homeowners into using more energy than necessary and the state and energy providers to procure more supply than is otherwise necessary. In short: A less stringent energy code directly contradicts several provisions of state energy policy.

7. **The lack of an authority having clear jurisdiction over compliance.** Currently, and problematically, there is no enforcement of energy standards. This creates a significant disadvantage for builders who abide by the updated codes compared to builders who do

not. To create a more even playing field for builders and to better ensure long-term energy affordability for homeowners, the Division of Fire Safety should be named as the authority having jurisdiction over energy standards compliance, and every builder should follow the same standards. This, unfortunately, is not a new problem and carries over no matter what code contractors are (or are not) abiding by. Enforcement – and one authorized entity to enforce them – is desperately needed. Solving for this significant challenge is largely outside of the bounds of this rulemaking and will likely require statutory change.

8. Undermining Vermont’s efforts – and legal obligation – to reduce climate pollution. In Vermont, that will require strategies that significantly curb reliance on fossil fuels.

Lowering the efficiency bar which new homes must meet simply doesn’t make sense. It’s bad economic policy for consumers and the State of Vermont as a whole, since we import all of the fossil fuels we collectively use, creating a significant economic drain on our economy and sending over 70% of the dollars Vermonters spend on fossil-fired energy out of state. It’s also bad economics for homeowners – especially over time. Again, the 2024 RBES was found to be cost effective over time for consumers. While builders and consumers might balk at potential upfront, additional costs to build more efficiently, that upfront investment will likely save them money over time – potentially significantly. When it comes to the state’s guiding energy policy to provide “adequate,” “reliable,” “sustainable,” and “efficient use of energy resources,” adhering to the more stringent 2024 energy code will help the state meet that obligation. That’s because, as we noted above, building energy efficient homes from the outset will require less power be procured and fossil fuels delivered to and consumed in the state. Inefficient homes use more energy and lock homeowners into avoidable and unnecessarily high energy bills over time. A less stringent rule that will increase energy consumption (and costs) to homeowners while increasing greenhouse gas emissions is also in direct opposition to Vermont’s legal obligation to cut planet-warming pollution in line with the requirements of the Global Warming Solutions Act and adopted Climate Action Plan.

For these reasons, we respectfully urge the PSD to pause this rulemaking procedure and direct builders, contractors and architects to comply with the adopted 2024 RBES to avoid further market confusion and help level the playing field for contractors who are voluntarily complying with the updated code. Any further changes to the RBES should be premised on the results of another full rulemaking proceeding – with all its public procedures and analyses – as well informed by the updated baseline analysis we have heard the PSD will be undertaking, with results available this spring.

While we have focused our comments on the RBES, we also have similar concerns about the process and potential economic, environmental and public health issues as it relates to the Commercial Building Energy Standards.

We would look forward to participating in a new, robust rulemaking process that fairly and comprehensively examines current cost compliance and other considerations in what we recognize is a vastly shifting market landscape, while also advancing a shared goal of getting more durably affordable and sorely needed homes built in this moment.

Thank you for your consideration of this input and, in advance, for your responsiveness to it.

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Peter Sterling, Renewable Energy Vermont

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