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March 30, 2026

Legislative Committee on Administrative Rules  
115 State Street  
Montpelier, VT 05633

**Re: RBES and CBES Final Proposed Rules**

Dear Committee Members,

At LCAR’s March 26 meeting, Legislative Counsel provided additional background information on the RBES and CBES rules and highlighted key considerations for evaluating the rules with respect to statutory authority and legislative intent. The Committee then heard testimony from several stakeholders with different views as to the need for, and the practical impacts of, the proposed changes. Recognizing that the Committee’s time is limited, the Department provides this letter in advance of the April 2 meeting to briefly address: (1) the reasons for the proposed changes; (2) statutory authority and legislative intent; and (3) practical considerations regarding the proposed changes.

First and foremost, the proposed rules are designed to provide flexibility and cost-reduction opportunities for Vermont’s housing sector – in the midst of a severe housing shortage and ever-increasing affordability challenges. The State’s 2025 Housing Needs Assessment, prepared by the Vermont Housing Finance Agency for the Department of Housing and Community Development, provides a detailed look at the urgency and depth of the problem. Some of the high-level takeaways are sobering:

- “Construction costs have increased at an annual pace of 30% since the beginning of the pandemic, compounding Vermont’s housing supply and affordability challenges.”<sup>1</sup>
- “The pace of home building will need to increase to create the 24,000-36,000 additional year-round homes needed in 2025-2029 to meet demand, normalize vacancy rates, house the homeless and replace homes lost from the stock through flooding and other causes.”<sup>2</sup>
- “Vermont’s rental vacancy rate is 3.2%. This is lower than what experts consider to be a healthy vacancy rate, which is typically around 4% to 6%. Rates below this level can make

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<sup>1</sup> 2025 Vermont Housing Needs Assessment, Housing Stock Fact Sheet, available at: <https://accd.vermont.gov/housing/plans-data-rules/needs-assessment>.

<sup>2</sup> 2025 Vermont Housing Needs Assessment, Executive Summary at 6, available at: <https://accd.vermont.gov/housing/plans-data-rules/needs-assessment>.





it difficult for renters to find an affordable, suitable home and allow property owners to charge more for rent.”<sup>3</sup>

Vermont’s housing difficulties are evolving year-on-year, and it has become clear that the realities of high cost and low availability represent persistent, long-term challenges. The proposed rules are a direct response to these conditions, which have worsened since the last RBES and CBES updates were developed. Importantly, the Department is not proposing to jettison the existing standards. What is needed is flexibility. The proposed rules provide two options: (1) the 2020 standards to reduce up-front costs and design complexity, and (2) the 2024 standards to achieve higher efficiency and energy savings, with additional up-front investment. It is worth reiterating that the 2020 standards still provide stringent efficiency requirements, matching or exceeding the current energy codes in most states.

There is a pressing need for the flexibility embodied in the proposed rules. The Department’s exercise of informed judgment in this regard is supported by the enabling statutes and the legislative intent behind them. Within certain bounds, both the RBES and CBES statutes grant the Commissioner of Public Service the authority to direct “timely and appropriate revisions” to the energy codes.<sup>4</sup> The use of the word “appropriate” suggests an assignment of discretion, entrusting the formulation of the codes to the Department’s expertise. However, that discretion is tempered by additional statutory requirements which should guide any rule updates. Any amendments to the RBES and CBES must be consistent with State energy policy under 30 V.S.A. § 202a.<sup>5</sup> Amendments to the RBES must also be consistent with State housing policy, and “cost-effective and affordable from the consumer’s perspective.”<sup>6</sup>

With respect to State energy policy under § 202a, the statute seeks a balance among key priorities. Alongside efficiency, reliability, emissions reductions, least-cost planning, and other considerations, the statute emphasizes affordability and economic vitality.<sup>7</sup> As to housing policy, the first priority in Vermont’s Housing and Urban Development (“HUD”) Consolidated Plan for 2025-2029 is to: “Increase the supply and quality of affordable housing.”<sup>8</sup> The State’s Draft Annual Action Plan, which builds on the Consolidated Plan, is headlined by three guiding principles including “achieving the perpetual affordability of housing resources and investments.”<sup>9</sup> Considering the information available, together with the policies and priorities that must be balanced when regulating the design and construction of new buildings throughout the state, the Department submits that the proposed rules are timely, appropriate, and consistent with the authority granted in 30 V.S.A. §§ 51 and 53.

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<sup>3</sup> 2025 Vermont Housing Needs Assessment, Renters Fact Sheet, available at: <https://accd.vermont.gov/housing/plans-data-rules/needs-assessment>.

<sup>4</sup> 30 V.S.A. §§ 51(c), 53(c).

<sup>5</sup> 30 V.S.A. §§ 51(c)(1), 53(c)(1).

<sup>6</sup> 30 V.S.A. § 51(c)(1).

<sup>7</sup> 30 V.S.A. §§ 202a(1)–(3).

<sup>8</sup> State of Vermont HUD Consolidated Plan at 5, available at: <https://accd.vermont.gov/housing/plans-data-rules/hud>.

<sup>9</sup> Draft 2026 Vermont Annual Action Plan at 1, available at: <https://accd.vermont.gov/housing/plans-data-rules/hud>.





As noted by Legislative Counsel, the RBES and CBES statutes historically required updates to the codes every three years, in parallel with the cycle of updates to the International Energy Conservation Code and ASHRAE 90.1. The last mandatory update was in 2023, when the Department proposed the rules that would become the 2024 RBES and CBES. At that time, LCAR heard testimony from numerous members of the building community raising concerns about the cost and technical feasibility of the new standards. LCAR also heard testimony about ongoing challenges with RBES compliance, although that topic is outside the scope of the rulemakings. With respect to cost and feasibility, the Department made significant responsive changes during the 2023 rulemaking process and, after further consultation with LCAR, agreed to delay the effective date of the rules by a full year. While delaying the effective date was helpful, it was widely recognized that part of the difficulty surrounding the rulemaking stemmed from the statutory mandate to update every three years: a cycle that was beginning to strain the capabilities of all parties involved.

Act 151 of 2024 was introduced and enacted in the next legislative session, removing the mandatory update cycle by replacing “shall ensure appropriate revisions are made” with “may direct the timely and appropriate revision of” the RBES and CBES.<sup>10</sup> The Act made findings regarding declining compliance rates for the RBES and CBES, and established a Building Energy Code Working Group to recommend strategies for increasing compliance. While compliance was certainly a focus, Act 151 was seen at least in part as a response to the rulemakings in 2023. From the Department’s perspective, the legislative intent was to break the mandatory cycle of increasingly complex code revisions and allow more flexibility and common-sense moderation for future updates. The proposed rules now before the Committee are consistent with that intent, responding to current conditions and enabling two pathways for compliance to assist builders, designers, developers, and buyers grappling with strong headwinds in all directions.

Returning to the practical considerations at hand: the proposed rules allow compliance with either the 2020 or 2024 RBES and CBES. These are previously adopted standards, which were formulated over the course of years with the assistance of advisory committees and significant stakeholder engagement. In contrast to prior RBES and CBES rulemakings, the proposed rules do not introduce any new requirements – nor do they change any technical components of the energy standards themselves. As such, all supporting materials, tools, and resources associated with the proposed rules are already available.

For those working with the energy codes every day, or factoring the cost into their commitments and decisions, the proposed rules offer a simple financial choice: reduce up-front costs or maximize long-term savings. Both the 2020 and 2024 standards have been shown to be cost effective, that is, both standards will recoup the up-front investment and more by saving money on energy bills over time. However, the fact remains that the 2024 standards require significantly more up-front investment, in a time of severe housing need and ever-increasing costs. Though there is much to be said for maximizing long term savings, those benefits are meaningless if the up-front cost prevents or discourages the investment in the first place. The proposed rules provide the flexibility needed to alleviate further strain on

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<sup>10</sup> Public Act No. 151 (2024 Vt. Sess.), available at: <https://legislature.vermont.gov/bill/status/2024/S.253>.





Vermont's housing sector and encourage compliance by offering a more attainable path to efficiency improvements.

The Department is grateful for the Committee's consideration and respectfully asks that the proposed rules be approved.

Sincerely,

*/s/ Ben Civiletti*

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