

25-P047 AND 25-P048 LEGAL CONTEXT

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26 March 2026

ACT 151 OF 2024

AN ACT RELATING TO BUILDING ENERGY CODES

Sec. 1. FINDINGS

The General Assembly finds:

- (1) According to the 2020 State of Vermont Greenhouse Gas Emissions Inventory Update and Forecast, home and business heating and cooling is the second largest source of greenhouse gas (GHG) emissions in Vermont.
- (2) Under 10 V.S.A. § 578, the State has an obligation to meet named GHG reduction requirements. In order to attain these reductions, GHG emissions from the thermal sector, that is, the heating and cooling of homes and businesses, must be reduced.
- (3) One method of reducing thermal sector emissions is to increase the energy efficiency of Vermont's homes and businesses through building to an energy-efficient building energy standard.
- (4) Vermont established the Residential Building Energy Standards (RBES) in 1997 and the Commercial Building Energy Standards (CBES) in 2007. The Department of Public Service is responsible for adopting and updating these codes regularly but does not have the capacity to administer or enforce them.
- (5) The RBES and CBES are mandatory, but while municipalities with building departments handle some aspects of review and inspection, there is no State agency or office designated to interpret, administer, and enforce them.
- (6) The Division of Fire Safety in the Department of Public Safety is responsible for development, administration, and enforcement of building codes but does not currently have expertise or capacity to add administration or enforcement of energy codes in buildings.
- (7) Studies in recent years show compliance with the RBES at about 54 percent and CBES at about 87 percent, with both rates declining. Both codes are scheduled to become more stringent with the goal of "net-zero ready" by 2030.

Sec. 2 established Energy Code Compliance Working Group

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Sec. 3. 30 V.S.A. § 51(c) is amended to read:

- (c) Revision and interpretation of energy standards. The Commissioner of Public Service shall amend and update the RBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. On or before January 1, 2011, the Commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. After January 1, 2011, the Commissioner ~~shall ensure that appropriate revisions are made promptly~~ may direct the timely and appropriate revision of the RBES after the issuance of updated standards for residential construction under the IECC. The Department of Public Service shall provide technical assistance and expert advice to the Commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the Department of Public Service shall convene an Advisory Committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The Advisory Committee may provide the Commissioner with additional recommendations for revision of the RBES.

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Sec. 4. 30 V.S.A. § 53(c) is amended to read:

- (c) Revision and interpretation of energy standards. On or before January 1, 2011, the Commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings. ~~At least every three years after January 1, 2011, the~~ The Commissioner of Public Service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The Commissioner ~~shall ensure that appropriate revisions are made promptly~~ may direct the timely and appropriate revision of the CBES after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. Prior to final adoption of each required revision of the CBES, the Department of Public Service shall convene an Advisory Committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The Advisory Committee may provide the Commissioner of Public Service with additional recommendations for revision of the CBES.

§ 51. RESIDENTIAL BUILDING ENERGY STANDARDS; STRETCH CODE

- (c) Revision and interpretation of energy standards. The Commissioner of Public Service shall amend and update the RBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25.
- On or before January 1, 2011, the Commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC.
- After January 1, 2011, the Commissioner *may direct the timely and appropriate revision* of the RBES after the issuance of updated standards for residential construction under the IECC.
- The Department of Public Service shall provide technical assistance and expert advice to the Commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES.
- Prior to final adoption of each required revision of the RBES, the Department of Public Service shall convene an Advisory Committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts.
- The Advisory Committee may provide the Commissioner with additional recommendations for revision of the RBES.

§ 51. RESIDENTIAL BUILDING ENERGY STANDARDS; STRETCH CODE

(1) Any amendments to the RBES shall be:

(A) consistent with duly adopted State energy policy, as specified in section 202a of this title, and consistent with duly adopted State housing policy;

(B) evaluated relative to their technical applicability and reliability; and

(C) cost-effective and affordable from the consumer's perspective.

(2) Each time the RBES are amended by the Commissioner, the amended RBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Persons commencing residential construction before the effective date of the amended RBES shall have the option of complying with the applicable provisions of the earlier or the amended RBES. After the effective date of the original or the amended RBES, any person commencing residential construction shall comply with the most recent version of the RBES.

(4) (B) ...Each time the RBES are amended by the Commissioner, the Department of Public Service shall develop modified compliance packages that will become available to the public by the date that the amendment becomes effective.

§ 53. COMMERCIAL BUILDING ENERGY STANDARDS

(a) In this subchapter, “commercial buildings” means all buildings that are not residential buildings as defined in subdivision 51(a)(2) of this title or farm structures as defined in 24 V.S.A. § 4413. (there are also some exemptions)

(c) Revision and interpretation of energy standards. On or before January 1, 2011, the Commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings.

The Commissioner of Public Service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25.

The Commissioner *may direct the timely and appropriate* revision of the CBES after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings.

Prior to final adoption of each required revision of the CBES, the Department of Public Service shall convene an Advisory Committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts.

The Advisory Committee may provide the Commissioner of Public Service with additional recommendations for revision of the CBES.

§ 53. COMMERCIAL BUILDING ENERGY STANDARDS

(1) Any amendments to the CBES shall be:

- (A) consistent with duly adopted State energy policy, as specified in 30 V.S.A. § 202a; and
- (B) evaluated relative to their technical applicability and reliability.

(2) Each time the CBES are amended by the Commissioner of Public Service, the amended CBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Persons submitting an application for any local permit authorizing commercial construction, or an application for construction plan approval by the Commissioner of Public Safety pursuant to 20 V.S.A. chapter 173, before the effective date of the amended CBES shall have the option of complying with the applicable provisions of the earlier or the amended CBES. After the effective date of the original or the amended CBES, any person submitting such an application for commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

(3) The Advisory Committee convened under this subsection, in preparing for the CBES updates, shall advise the Department of Public Service with respect to the coordination of the CBES amendments with existing and proposed demand-side management programs offered in the State.

(4) The Commissioner of Public Service is authorized to adopt rules interpreting and implementing the CBES.

(5) The Commissioner of Public Service may grant written variances or exemptions from the CBES or rules adopted under this section where strict compliance would entail practical difficulty or unnecessary hardship, or is otherwise found unwarranted, provided that:

LCAR'S REVIEW OF PROPOSED RULES

- LCAR must act, if it so chooses, on a final proposed permanent rule within 45 days after it is filed with LCAR, unless the adopting agency consents to an extension of LCAR's review period.
- When reviewing a rule, LCAR may:
 - approve the proposed rule;
 - approve the proposed rule with modifications agreed to or proposed by the agency;
 - take no action;
 - or object.
- After reviewing a rule LCAR may also, by a majority vote, request that a standing committee review issues relating to the rule.
 - This can happen whether or not LCAR objects to the proposed rule.

POSSIBLE GROUNDS FOR LCAR OBJECTION

LCAR may object to a rule if:

- proposed rule is beyond the authority of the agency;
- proposed rule is contrary to the intent of the Legislature;
- proposed rule is arbitrary;
- agency did not adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules;
- proposed rule is not written in a satisfactory style;
- the economic impact analysis fails to:
 - recognize a substantial economic impact of the proposed rule;
 - include an evaluation and statement of costs to local school districts; or
 - recognize a substantial economic impact of the rule to such districts; or
- the environmental impact analysis fails to recognize a substantial environmental impact of the proposed rule

HOW DOES LCAR DETERMINE STATUTORY AUTHORITY?

- “...an administrative agency's power to promulgate regulations may extend only as far as its legislative grant of authority.” *Martin v. State Agency of Transp. Dept. of Motor Vehicles*, 2003 VT 14, ¶ 15 (citations omitted).
- Examine plain language of the statute giving words their ordinary meaning unless they are specifically defined in the applicable law.
- Consider statutory language in context of the full statutory scheme.
- Consider interaction of statute with other State and federal laws and any cross-referenced statutes.

HOW DOES LCAR DETERMINE LEGISLATIVE INTENT?

- Consult with Chairs.
- LCAR members' memory of legislative intent.
- Review intent statements in legislation.
- Examine language of the statute, giving words their plain and ordinary meaning unless they are specifically defined in the applicable law.
- Consider statutory language in context of the full statutory scheme.

GUIDANCE ON DETERMINING LEGISLATIVE INTENT FROM THE VERMONT SUPREME COURT

- “If the legislative intent is clear from the plain language of the statute, we enforce the statute according to its terms. If the statute is ambiguous, however, ‘legislative intent must be determined through consideration of the entire statute, including its subject matter, [and its] effects and consequences.’” *Brownington Center Church of Brownington, Vermont, Inc. v. Town of Irasburg*, 87 A.3d 502, 504 (Vt. 2013) (citations omitted).
- “...we will not enforce the common and ordinary meaning of statutory language if doing so would render the statute ineffective or lead to irrational results. When the plain meaning of statutory language appears to undermine the purpose of the statute, we are not confined to a literal interpretation...” *Town of Killington v. State*, 172 Vt. 182, 188 (2001) (citations omitted).

WHEN IS A RULE ARBITRARY UNDER THE VERMONT APA?

- Under 3 V.S.A. § 801(13) a rule or administrative action is arbitrary if one or more of the following apply:
 - There is no factual basis for the decision made by the agency.
 - The decision made by the agency is not rationally connected to the factual basis asserted for the decision.
 - The decision made by the agency would not make sense to a reasonable person.