

Senate Calendar

WEDNESDAY, JUNE 21, 2017

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**VETO CALENDAR
GOVERNOR VETO**

S. 22.

An act relating to eliminating penalties for possession of limited amounts of marijuana by adults 21 years of age and older.

Pending question (to be voted by call of the roll): Shall the bill pass, notwithstanding the Governor's refusal to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he *vetoed* and returned unsigned **Senate Bill No. 22** to the Senate is as follows:

May 24, 2017

The Honorable John Bloomer, Jr.
Secretary of the Senate
State House
Montpelier, Vermont 05633-5401

Dear Mr. Bloomer:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning S.22, *An Act Relating To Eliminating Penalties for Possession of Limited Amounts of Marijuana by Adults 21 Years of Age and Older*, without my signature because of my objections described herein:

With a libertarian streak in me, I believe that what adults do behind closed doors and on private property is their choice, so long as it does not negatively impact the health and safety of others, especially children. I also have compassion for those for whom marijuana alleviates the symptoms of debilitating diseases. That is why I have previously supported, and continue to support, medical marijuana laws and decriminalization.

We cannot ignore the fact that marijuana is a widely-consumed substance, and more states, as well as an entire nation to our north, are making marijuana legal and regulating it. I am not philosophically opposed to ending the prohibition on marijuana, and there is a clear societal shift in that direction. However, it is crucial that key questions and concerns involving public safety and health are addressed before moving forward.

We must get this right. That means letting the science inform any policy made around this issue, learning from the experience of other states, and taking whatever time is required to do so. Policymakers have an obligation to Vermonters to address health, safety, prevention and education questions before committing the State to moving forward.

More specifically, before we implement a commercial system we need to know how we will detect and measure impairment on our roadways, fund and implement additional substance abuse prevention education, keep our children safe and penalize those who do not, and measure how legalization impacts the mental health and substance abuse issues our communities are already facing.

This legislation does not yet adequately address these questions. However, there is a path forward to work collaboratively that will take a more thorough look at what public health, safety and education policies are needed before Vermont pursues a comprehensive regulatory system for an adult-use marijuana market.

I will provide the Legislature with recommended changes, and if we can work together, we *can* move forward on this issue.

Those recommendations include the following:

First, this legislation creates confusion around which penalties for the sale and dispensing of marijuana to minors should apply. This legislation opens the door for litigation over which are the appropriate penalties. I believe this legislation must be clear that penalties for the dispensing and sale of marijuana to minors and on school grounds remain severe. These changes must be made to ensure no leniency is intended for those who sell or dispense marijuana to our youth. Weakening these protections and penalties should be totally unacceptable to even the most ardent legalization advocates.

Second, we must aggressively penalize consumption while driving and usage in the presence of minors. For example, while this legislation states that one cannot use marijuana in a vehicle if an adult is smoking with a child in the car, there is *only* a small civil fine equal to the penalty for an adult having an open container of alcohol.

How we protect children from the new classification of limited amounts of what is otherwise a controlled substance is incredibly important. This is not just a concern about impaired driving. According to the best science available, and our own Department of Health, secondhand marijuana smoke can negatively impact a child's brain development. Therefore, if an adult is smoking marijuana in a car or a confined space with a child this should be severely penalized.

Third, we must be sure we are not impeding the ability of public safety officials to enforce remaining drug laws.

Finally, the Marijuana Regulatory Commission proposed in this legislation must have broader membership to include key stakeholder communities who will be faced with the everyday impacts of a fully regulated and taxed system, such as representatives from the Department of Public Safety, the Department of Health, the Department of Taxes, and substance abuse prevention professionals.

At a minimum, the Commission must determine an appropriate regulatory and taxation system; an impairment threshold for operating a motor vehicle; the options for an impairment testing mechanism; an education and prevention strategy for minors; and a plan for continued monitoring and reporting on impacts to public health. The Commission must also produce a detailed estimate of the revenue required for the adequate regulation, enforcement, administration, and education and prevention recommendations it shall make.

As S.22 currently stands, legislation for a regulated system will be introduced before the personal possession and cultivation laws have even changed. The Commission should have more time to thoughtfully complete its work on this complex issue. Given the gravity of this policy change, the Commission must have at least a year before making final recommendations.

We can all work together on this issue in a comprehensive and responsible way. I have already reached out to the Coalition of Northeastern Governors (CONEG) to engage our neighboring states in a discussion about creating a regional highway safety standard. Information gathered and progress made with CONEG will be shared with the Commission to support the goals detailed above.

If the Legislature agrees to make the changes I am seeking, we can move this discussion forward in a way that ensures that the public health and safety of our communities and our children continues to come first.

As noted, based on the outstanding objections outlined above I cannot support this legislation and must return it without my signature pursuant to Chapter II, §11 of the Vermont Constitution.

Sincerely,

/s/ Philip B. Scott

Philip B. Scott
Governor

PBS/jj

Text of Bill As Passed By Senate and House

The text of the bill as passed by the Senate and House of Representatives is as follows:

S. 22 An act relating to eliminating penalties for possession of limited amounts of marijuana by adults 21 years of age and older.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE INTENT; CIVIL AND CRIMINAL PENALTIES

It is the intent of the General Assembly to eliminate all penalties for possession of one ounce or less of marijuana and two mature and four immature marijuana plants for a person who is 21 years of age or older while retaining criminal penalties for possession, dispensing and sale of larger amounts of marijuana. This act also retains civil penalties for possession of marijuana by a person under 21 years of age, which are the same as for possession of alcohol by a person under 21 years of age.

Sec. 2. 18 V.S.A. § 4201 is amended to read:

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

~~(15)(A) “Marijuana” means any plant material of the genus cannabis or any preparation, compound, or mixture thereof except:~~

~~(A) sterilized seeds of the plant;~~

~~(B) fiber produced from the stalks; or~~

~~(C) hemp or hemp products, as defined in 6 V.S.A. § 562 all parts of the plant Cannabis sativa L., except as provided by subdivision (B) of this subdivision (15), whether growing or harvested, and includes:~~

~~(i) the seeds of the plant;~~

~~(ii) the resin extracted from any part of the plant; and~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.~~

~~(B) “Marijuana” does not include:~~

~~(i) the mature stalks of the plant and fiber produced from the stalks;~~

~~(ii) oil or cake made from the seeds of the plant;~~

~~(iii) any compound, manufacture, salt, derivative, mixture, or~~

preparation of the mature stalks, fiber, oil, or cake;

(iv) the sterilized seed of the plant that is incapable of germination; or

(v) hemp or hemp products, as defined in 6 V.S.A. § 562.

* * *

(43) “Immature marijuana plant” means a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.

(44) “Mature marijuana plant” means a female marijuana plant that has flowered and that has buds that may be observed by visual examination.

Sec. 3. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) No person shall knowingly and unlawfully possess more than one ounce of marijuana or more than five grams of hashish or cultivate more than two mature marijuana plants or four immature marijuana plants. For a first offense under this subdivision (A), a person shall be provided the opportunity to participate in the Court Diversion Program unless the prosecutor states on the record why a referral to the Court Diversion Program would not serve the ends of justice. A person convicted of a first offense under this subdivision shall be imprisoned not more than six months or fined not more than \$500.00, or both.

(B) A person convicted of a second or subsequent offense of knowingly and unlawfully possessing more than one ounce of marijuana or more than five grams of hashish or cultivating more than two mature marijuana plants or four immature marijuana plants shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(C) Upon an adjudication of guilt for a first or second offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

(2) A person knowingly and unlawfully possessing two ounces of marijuana or 10 grams of hashish or knowingly and unlawfully cultivating

~~more than three plants of~~ four mature marijuana plants or eight immature marijuana plants shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing more than one pound or more of marijuana or more than 2.8 ounces or more of hashish or knowingly and unlawfully cultivating ~~more than 10 plants of~~ six mature marijuana plants or 12 immature marijuana plants shall be imprisoned not more than five years or fined not more than ~~\$100,000.00~~ \$10,000.00, or both.

(4) A person knowingly and unlawfully possessing more than 10 pounds or more of marijuana or more than one pound or more of hashish or knowingly and unlawfully cultivating ~~more than 25 plants of~~ 12 mature marijuana plants or 24 immature marijuana plants shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(5) If a court fails to provide the defendant with notice of collateral consequences in accordance with 13 V.S.A. § 8005(b) and the defendant later at any time shows that the plea and conviction for a violation of this subsection may have or has had a negative consequence, the court, upon the defendant's motion, shall vacate the judgment and permit the defendant to withdraw the plea or admission and enter a plea of not guilty. Failure of the court to advise the defendant of a particular collateral consequence shall not support a motion to vacate.

(6) The amounts of marijuana in this subsection shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.

* * *

Sec. 4. 18 V.S.A. § 4230a is amended to read:

§ 4230a. MARIJUANA POSSESSION BY A PERSON 21 YEARS OF AGE OR OLDER; ~~CIVIL VIOLATION~~

~~(a)(1) A person 21 years of age or older who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:~~

- ~~(1) not more than \$200.00 for a first offense;~~
- ~~(2) not more than \$300.00 for a second offense;~~
- ~~(3) not more than \$500.00 for a third or subsequent offense.~~

~~(b)(1) Except as otherwise provided in this section, a person 21 years of age or older who possesses one ounce or less of marijuana or five grams or less of hashish~~ and two mature marijuana plants or fewer or four immature

marijuana plants or fewer or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law. The one-ounce limit of marijuana or five grams of hashish that may be possessed by a person 21 years of age or older shall not include marijuana cultivated, harvested, and stored in accordance with section 4230e of this title.

~~(2)(A) A violation of this section shall not result in the creation of a criminal history record of any kind. A person shall not consume marijuana in a public place. "Public place" means any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation as defined in 9 V.S.A. § 4501, and any place where the possession of a lighted tobacco product is prohibited by law.~~

(B) A person who violates this subdivision (a)(2) shall be assessed a civil penalty as follows:

(i) not more than \$100.00 for a first offense;

(ii) not more than \$200.00 for a second offense; and

(iii) not more than \$500.00 for a third or subsequent offense.

~~(e)(1)(b) This section does not exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind and shall not be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana.~~

~~(2) This section is not intended to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this State. Marijuana is contraband pursuant to section 4242 of this title and subject to seizure and forfeiture unless possessed in compliance with chapter 86 of this title (therapeutic use of cannabis).~~

~~(3) This section shall not be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places.~~

~~(d) If a person suspected of violating this section contests the presence of cannabinoids within 10 days of receiving a civil citation, the person may request that the State Crime Laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the State shall reimburse the person at state expense.~~

(1) exempt a person from arrest, citation, or prosecution for being under the influence of marijuana while operating a vehicle of any kind or for consuming marijuana while operating a motor vehicle;

(2) repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana or for consuming marijuana while operating a motor vehicle;

(3) limit the authority of primary and secondary schools to impose administrative penalties for the possession of marijuana on school property;

(4) prohibit a municipality from adopting a civil ordinance to provide additional penalties for consumption of marijuana in a public place;

(5) prohibit a landlord from banning possession or use of marijuana in a lease agreement; or

(6) allow an inmate of a correctional facility to possess or use marijuana or to limit the authority of law enforcement, the courts, the Department of Corrections, or the Parole Board to impose penalties on offenders who use marijuana in violation of a court order, conditions of furlough, parole, or rules of a correctional facility.

(e)(c)(1) A law enforcement officer is authorized to detain a person if:

(A) the officer has reasonable grounds to believe the person has violated subsection (b) of this section; and

(B) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(2) The person may be detained only until the person identifies himself or herself satisfactorily to the officer or is properly identified. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a judge in the Criminal Division of the Superior Court for that purpose. A person who refuses to identify himself or herself to the Court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

~~(f)(d)~~ Fifty percent of the civil penalties imposed by the Judicial Bureau for violations of this section shall be deposited in the Drug Task Force Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Department of Public Safety for the funding of law enforcement officers on the Drug Task Force, except for a \$12.50 administrative charge for each violation which shall be deposited in the Court Technology Special Fund, in accordance with 13 V.S.A. § 7252. The remaining 50 percent shall be deposited in the Youth Substance Abuse Safety Program Special Fund, hereby created to be managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and available to the Court Diversion Program for funding of the Youth Substance Abuse Safety Program as required by section 4230b of this title.

(e) Nothing in this section shall be construed to do any of the following:

(1) require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace;

(2) prevent an employer from adopting a policy that prohibits the use of marijuana in the workplace;

(3) create a cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees; or

(4) prevent an employer from prohibiting or otherwise regulating the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises.

Sec. 5. 18 V.S.A. § 4230b is amended to read:

§ 4230b. MARIJUANA POSSESSION BY A PERSON UNDER 21 YEARS OF AGE; CIVIL VIOLATION

(a) Offense. A person under 21 years of age who knowingly and unlawfully possesses one ounce or less of marijuana or five grams or less of hashish or two mature marijuana plants or fewer or four immature marijuana plants or fewer commits a civil violation and shall be referred to the Court Diversion Program for the purpose of enrollment in the Youth Substance Abuse Safety Program. A person who fails to complete the program successfully shall be subject to:

(1) a civil penalty of \$300.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 30 days, for a first offense; and

(2) a civil penalty of not more than \$600.00 and suspension of the person's operator's license and privilege to operate a motor vehicle for a period of 90 days, for a second or subsequent offense.

* * *

Sec. 6. REPEAL

18 V.S.A. § 4230d (marijuana possession by a person under 16 years of age; delinquency) is repealed.

Sec. 7. 18 V.S.A. § 4230e is added to read:

§ 4230e. CULTIVATION OF MARIJUANA BY A PERSON 21 YEARS OF AGE OR OLDER

(a)(1) Except as otherwise provided in this section, a person 21 years of

age or older who cultivates no more than two mature marijuana plants and four immature marijuana plants shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) Each dwelling unit shall be limited to two mature marijuana plants and four immature marijuana plants regardless of how many persons 21 years of age or older reside in the dwelling unit. As used in this section, “dwelling unit” means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(3) Any marijuana harvested from the plants allowed pursuant to this subsection shall not count toward the one-ounce possession limit in section 4230a of this title provided it is stored in an indoor facility on the property where the marijuana was cultivated and reasonable precautions are taken to prevent unauthorized access to the marijuana.

(4) Cultivation in excess of the limits provided in this subsection shall be punished in accordance with section 4230 of this title.

(b)(1) Personal cultivation of marijuana only shall occur:

(A) on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property; and

(B) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

(2) A person who violates this subsection shall be assessed a civil penalty as follows:

(A) not more than \$100.00 for a first offense;

(B) not more than \$200.00 for a second offense; and

(C) not more than \$500.00 for a third or subsequent offense.

Sec. 8. 18 V.S.A. § 4230g is added to read:

§ 4230g. FURNISHING MARIJUANA TO A PERSON UNDER
21 YEARS OF AGE; CRIMINAL OFFENSE

(a) No person shall:

(1) furnish marijuana to a person under 21 years of age; or

(2) knowingly enable the consumption of marijuana by a person under 21 years of age.

(b) As used in this section, “enable the consumption of marijuana” means creating a direct and immediate opportunity for a person to consume

marijuana.

(c) Except as provided in subsection (d) of this section, a person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(d) A person who violates subsection (a) of this section, where the person under 21 years of age, while operating a motor vehicle on a public highway, causes death or serious bodily injury to himself or herself or to another person as a result of the violation, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(e) This section shall not apply to:

(1) A person under 21 years of age who furnishes marijuana to a person under 21 years of age or who knowingly enables the consumption of marijuana by a person under 21 years of age. Possession of an ounce or less of marijuana by a person under 21 years of age shall be punished in accordance with sections 4230b–4230d of this title and dispensing or selling marijuana shall be punished in accordance with sections 4230 and 4237 of this title.

(2) A dispensary that lawfully provides marijuana to a registered patient or caregiver pursuant to chapter 86 of this title.

Sec. 9. 18 V.S.A. § 4230h is added to read:

§ 4230h. FURNISHING MARIJUANA TO A PERSON UNDER
21 YEARS OF AGE; CIVIL ACTION FOR DAMAGES

(a) A spouse, child, guardian, employer, or other person who is injured in person, property, or means of support by a person under 21 years of age who is impaired by marijuana, or in consequence of the impairment by marijuana of any person under 21 years of age, shall have a right of action in his or her own name, jointly or severally, against any person or persons who have caused in whole or in part such impairment by furnishing marijuana to a person under 21 years of age.

(b) Upon the death of either party, the action and right of action shall survive to or against the party's executor or administrator. The party injured or his or her legal representatives may bring either a joint action against the impaired person under 21 years of age and the person or persons who furnished the marijuana, or a separate action against either or any of them.

(c) An action to recover for damages under this section shall be commenced within two years after the cause of action accrues, and not after.

(d) In an action brought under this section, evidence of responsible actions taken or not taken is admissible if otherwise relevant.

(e) A defendant in an action brought under this section has a right of contribution from any other responsible person or persons, which may be enforced in a separate action brought for that purpose.

(f) A person who knowingly furnishes marijuana to a person under 21 years of age may be held liable under this section if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the marijuana was under 21 years of age.

Sec. 10. 18 V.S.A. § 4230i is added to read:

§ 4230i. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE
PROHIBITED

(a) No person shall manufacture concentrated marijuana by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

Sec. 11. 18 V.S.A. § 4230j is added to read:

§ 4230j. EXCEPTIONS

(a) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses one ounce or less of marijuana or five grams or less of hashish commits a civil violation and shall be assessed a civil penalty as follows:

- (1) not more than \$200.00 for a first offense;
- (2) not more than \$300.00 for a second offense;
- (3) not more than \$500.00 for a third or subsequent offense.

(b) A person who is convicted of a felony for selling marijuana in violation of section 4230 of this title or selling a regulated drug to minors or on school grounds in violation of section 4237 of this title for an offense that occurred on or after July 1, 2018 and who possesses any of the following commits a misdemeanor and is subject to imprisonment of not more than one year or a fine of not more than \$1,000.00, or both:

- (1) more than one ounce, but not more than two ounces of marijuana;

(2) more than five grams, but not more than 10 grams of hashish; or

(3) not more than six mature marijuana plants and 12 immature marijuana plants.

Sec. 12. 18 V.S.A. § 4476 is amended to read:

§ 4476. OFFENSES AND PENALTIES

~~(a) No person shall sell, possess with intent to sell, or manufacture with intent to sell, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a regulated drug in violation of chapter 84 of this title. Whoever violates any provision of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than \$1,000.00, or both.~~

~~(b) Any A person who violates subsection (a) of this section by selling sells drug paraphernalia to a person under 18 years of age shall be imprisoned for not more than two years, or fined not more than \$2,000.00, or both.~~

~~(e)(b) The distribution and possession of needles and syringes as part of an organized community-based needle exchange program shall not be a violation of this section or of chapter 84 of this title.~~

Sec. 13. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this subsection, the prohibition on consumption of marijuana by the operator shall extend to the operator's consumption of secondhand marijuana smoke in the vehicle as a result of another person's consumption of marijuana. As used in this section, "alcoholic beverages" shall have the same meaning as "intoxicating liquor" as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages or marijuana in the passenger area of the motor vehicle.

(c) As used in this section, "passenger area" shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk,

the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than \$500.00. A person who violates subsection (b) of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00. A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.

Sec. 14. 23 V.S.A. § 1134a is amended to read:

§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR POSSESSION OF ALCOHOL OR MARIJUANA

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages or marijuana or possess any open container which contains alcoholic beverages or marijuana in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) As used in this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be ~~fin~~ subject to a civil penalty of not more than \$25.00 \$50.00.

Sec. 15. 23 V.S.A. § 1134b is amended to read:

§ 1134b. SMOKING USING MARIJUANA OR TOBACCO IN A MOTOR VEHICLE WITH CHILD PRESENT

(a) A person shall not use marijuana as defined in 18 V.S.A. § 4201 or a tobacco substitute as defined in 7 V.S.A. § 1001 or possess a lighted tobacco product ~~or use a tobacco substitute as defined in 7 V.S.A. § 1001~~ in a motor vehicle that is occupied by a child required to be properly restrained in a federally approved child passenger restraining system pursuant to subdivision

1258(a)(1) or (2) of this title.

(b) A person who violates subsection (a) of this section shall be subject to a fine civil penalty of not more than \$100.00. No points shall be assessed for a violation of this section.

Sec. 16. 33 V.S.A. § 3504 is amended to read:

§ 3504. MARIJUANA AND TOBACCO USE PROHIBITED AT CHILD CARE FACILITIES

(a) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201 or to cultivate marijuana, or use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time.

(b) No person shall be permitted to use marijuana as defined in 18 V.S.A. § 4201, tobacco products, or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both ~~indoor~~ indoors and in any outdoor area designated for child care, of a licensed or registered family child care home while children are present and in care. If use of marijuana or smoking of tobacco products or tobacco substitutes occurs on the premises during other times, the family child care home shall notify prospective families prior to enrolling a child in the family child care home that their child will be exposed to an environment in which marijuana, tobacco products, or tobacco substitutes, or both, are used. Cultivation of marijuana in a licensed or registered family child care home is not permitted.

Sec. 17. DISPARITIES IN ENFORCEMENT OF DRUG LAWS; MARIJUANA REGULATORY COMMISSION

(a) Findings. The General Assembly finds that:

(1) A 2013 report by the American Civil Liberties Union, The War on Marijuana in Black and White, identified Vermont as 15th in the country and first in New England when comparing discrepancies in citation and arrest rates for marijuana possession. The report stated that African-Americans in Vermont were 4.36 times more likely to be cited or arrested for marijuana possession than whites, higher than the national average of African-Americans being 3.73 more likely than whites to be cited or arrested for marijuana possession. Although Vermont later decriminalized possession of small amounts of marijuana, a 2016 report by Human Rights Watch and the ACLU, Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States, found that Vermont had the third-highest racial disparity in drug possession arrest rates in the country despite nearly identical use rates.

(2) In the report, Driving While Black or Brown in Vermont, University of Vermont researchers, examining 2015 data from 29 police agencies

covering 78 percent of Vermont's population, found significant disparities in how often African-Americans and Hispanics are stopped, searched, and arrested, as compared to whites and Asians. According to the report, African-American drivers are four times more likely than white drivers to be searched by Vermont police, even though they are less likely to be found with illegal items.

(3) As part of efforts to eliminate implicit bias in Vermont's criminal justice system, policymakers must reexamine the State's drug laws, beginning with its policy on marijuana.

(4) According to a 2014 study conducted by the RAND Corporation, an estimated 80,000 Vermont residents regularly consume marijuana. Except for patients on the Vermont Medical Marijuana Registry, these Vermonters obtain marijuana through a thriving illegal market.

(5) In November 2016, voters in Massachusetts and Maine approved possession and cultivation of marijuana for personal use by adults 21 years of age or older. In July 2018, both states will begin to allow retail sales of marijuana and marijuana-infused products through licensed stores. Canada is expected to act favorably on legislation legalizing marijuana possession and cultivation for adults 18 years of age or older and federal administration officials have cited the summer of 2018 as the date at which licensed retail stores will begin selling marijuana and marijuana-infused products to the public.

(6) By adopting a comprehensive regulatory structure for legalizing and licensing the marijuana market, Vermont can revise drug laws that have a disparate impact on racial minorities, help prevent access to marijuana by youths, better control the safety and quality of marijuana being consumed by Vermonters, and use revenues to support substance use prevention and education and enforcement of impaired driving laws.

(b) Creation. There is created the Marijuana Regulatory Commission.

(c) Membership. The Commission shall be composed of the following nine members:

(1) two current members of the House of Representatives and one member of the public who all shall be appointed by the Speaker of the House;

(2) two current members of the Senate and one member of the public who all shall be appointed by the Committee on Committees;

(3) the Attorney General or designee;

(4) the Secretary of Agriculture, Food and Markets or designee; and

(5) one member appointed by the Governor.

(d) Powers and duties. The Commission shall develop legislation that establishes a comprehensive regulatory and revenue system for an adult-use marijuana market that, when compared to the current illegal marijuana market, increases public safety and reduces harm to public health.

(e) Assistance. The Commission shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office for the purpose of preparing legislation and shall have the technical assistance of the Agency of Agriculture, Food and Markets.

(f) Legislation. On or before November 1, 2017, the Commission shall provide the General Assembly and the Governor with its recommended legislation.

(g) Meetings.

(1) The Office of Legislative Council shall call the first meeting of the Commission to occur on or before August 1, 2017.

(2) The members shall elect a chair from the membership.

(3) A majority of the membership shall constitute a quorum.

(4) The Commission shall cease to exist on January 30, 2018.

(h) Reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for no more than six meetings.

(2) Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

Sec. 18. EFFECTIVE DATES

This section and Sec. 17 shall take effect on passage and the remaining sections shall take effect on July 1, 2018.

CONCURRENT RESOLUTIONS FOR ACTION

Concurrent Resolution For Action Under Joint Rule 16

The following joint concurrent resolution has been introduced for approval by the Senate and House. It will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 191

House concurrent resolution honoring former Representative and Deputy Secretary of Education William B. Talbott for his dedicated public service

Offered by: All Members of the House

Whereas, Bill Talbott's distinguished career as an elected and an appointed public official has focused primarily on public education, and

Whereas, he graduated from the University of Florida and later pursued graduate studies at the University of Vermont, and

Whereas, a passion for public education and civic service changed the course of Bill Talbott's career from marine surveying to teaching, and he taught industrial arts and directed an alternative education program in Hinesburg, and

Whereas, in 1986, Bill Talbott stood successfully for the first of five consecutive terms to serve as the member from Monkton in the House of Representatives, and

Whereas, his legislative committee assignments on Appropriations, on Education, on Joint Fiscal, and on Ways and Means sharpened his expertise in public education and financial matters, and he also chaired the House Committee on Health and Welfare, and

Whereas, in 1997, Bill Talbott bravely accepted the challenging assignment to serve as the then Department of Education's chief financial officer, just as Act 60, with its significant fiscal implications for school districts, was coming into effect, and

Whereas, for the past 20 years, Bill Talbott's experience as an educator, education financing expert, and patient and meticulous participant in countless meetings with legislators, local school officials, and citizens across the State has earned him great respect, and

Whereas, the chief of the Agency of Education's Finance and Administration Division carries an extremely important portfolio, and commensurate with these responsibilities, Bill Talbott serves as a Deputy Secretary of Education and has also held the post of acting commissioner, and

Whereas, after two decades of exemplary leadership and financial management as the Agency of Education's Chief Financial Officer, Bill Talbott will conclude his State service on June 30, 2017, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly honors former Representative and Deputy Secretary of Education William B. Talbott for his dedicated public service, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Bill Talbott.

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

S.C.R. 18 (For text of Resolutions, see Addendum to Senate Calendar for June 21, 2017)

HCR 192-197 (For text of Resolutions, see Addendum to House Calendar for June 21, 2017)

FOR INFORMATION

In the event that the House overrides the governor's veto and messages the bill to the Senate, upon the suspension of the Senate Rules the bill may be taken up.

The question to be decided by call of the roll is: Shall the bill pass, notwithstanding the refusal of the Governor to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

H. 509.

An Act Relating to Calculating Statewide Education Tax Rates.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he *vetoed* and returned unsigned **House Bill No. H. 509**, is as follows:

June 6, 2017

The Honorable William M. MaGill
Clerk of the Vermont House of Representatives
State House
Montpelier, VT 05633

Dear Mr. MaGill:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.509, *An Act Relating to Calculating Statewide Education Tax Rates* without my signature because of my objections described herein.

Please note, the following also addresses objections to H.518, *An Act Relating to Making Appropriations for the Support of Government*, as the two bills are inextricably linked and their relationship factors heavily into my decision to return both bills. H.518 will be returned to you in a separate message containing the same objections.

At the beginning of the session, I challenged the Legislature to give residents and businesses a break from new or higher taxes and fees in all bills passed this year. I also urged the Legislature to join me in the work of making Vermont more affordable in every way we can. H.509 and H.518 fail to achieve these goals and, as a result, I cannot support them as written. We must not be afraid to think, and legislate, differently in order to reverse our challenging demographic trends, grow the economy, and make Vermont more affordable. I have made a number of proposals to generate savings in the Education Fund, beginning with my first budget presentation. To date, the Legislature has rejected all such proposals and instead has passed H.509, which, together with and intrinsically linked to H.518, only worsens the unsustainable trajectory towards higher property taxes to support an education system with declining enrollment and extremely high per pupil costs. Instead, we have an opportunity to moderate those rates by rebasing school budgets through the transition to new plans in the Vermont Education Health Initiative (VEHI); and without asking school employees to pay more for healthcare.

Although H.509 appears to provide property tax relief for residential tax payers, it does so through an unequal allocation of the tax burden to other Vermont property taxpayers and the unsustainable, irresponsible allocation of one-time revenue sources. More specifically, H.509 increases the nonresidential property tax rate from \$1.535 per \$100 of assessed value, to \$1.555. Property taxes are not only an impediment to living in Vermont, but also a barrier to creating jobs in our state. Most of the “nonresidential” tax actually falls on Vermonters, like employers, renters and camp owners. In fact, the Department of Taxes reports that about 60 percent of the property that is classified as “non-residential” has a Vermont owner. Small and medium sized businesses are the backbone of our economy, and we must make Vermont a more affordable and attractive place to do business to increase opportunities for all Vermonters. I remain determined to achieving level property tax rates for all payer groups.

Also concerning is that buying down the average residential rate from \$1.527 to \$1.505 in H.509 is achieved in H.518 through two sources of one-time money. First, H.509 reduced the Education Fund's stabilization reserves by \$9.2 million to the Fund's statutory minimum. Second, \$26.1 million in the unallocated and unreserved balance in the Education Fund was applied as it has been over the past few years.

Although the unallocated/unreserved balance in the Education Fund has been used in previous sessions to buy down tax rates, it has been done so under the assumption that the balance will not be guaranteed year after year. According to the Agency of Education, the majority of this surplus was generated as the result of the consolidation of special education administration to the supervisory district level, from the local level, in 2010 through Act 153. Overbudgeting for this expense created a surplus in the Education Fund over the past several years. However, in H.518, the anticipated special education expenditures were budgeted to more accurately reflect actual costs and it is unlikely the surplus, if any, will be realized to the extent it has in the past, for use in future fiscal years. Achieving savings through the transition to the new VEHI health insurance benefits is critically important to filling the gap that will inevitably occur in Fiscal Year 2019 when this surplus is no longer generated.

This anticipated shortfall coupled with the decision to use \$9.2 million of one-time money from the Education Fund stabilization reserves creates a steep cliff for taxpayers to make up in Fiscal Year 2019. These decisions, without a sustainable plan in place to fill the shortfall, expose taxpayers unnecessarily to the risk of an increase in property tax rates, could be of concern to the rating agencies, and are difficult to understand in a political climate where federal funding for school districts could be drastically reduced. This issue alone is sufficient to justify a veto. The use of the stabilization reserve coupled with the continued reliance on one-time funds predicated on prior year reversions that may not materialize in future fiscal years ensures the likelihood of future property tax increases. I cannot support a budget that makes expenditure choices that knowingly result in higher property tax rates in future years.

Moreover, the Legislature in H.509, Section 3, passed an additional one percent transfer of sales and use tax to the Education Fund which creates a General Fund shortfall in Fiscal Year 2019 and beyond. In H.518, Section D.101.1(a), the Legislature budgets a one-time Fiscal Year 2018 fund transfer of \$3.3 million. Year after year the Legislature must reconcile a growing gap between what we want to provide Vermonters and what we can afford based on our incoming revenues. Taking steps today that do not account for known future shortfalls puts the Legislature on a trajectory to increase the tax and fee burden on Vermonters. We should be taking steps to curb education spending

instead of continuing to increase non-property tax sources in the Education Fund, which in Fiscal Year 2018 total \$525.1 million. Section 5 of H.509 creates a Health Benefits Commission that I believe is set up to ensure impasse. Vermont's school boards have clearly articulated over the past several months their need for a simplified process for negotiating the increasingly complex health insurance system.

Additionally, thus far the VT-NEA has shown great resistance to any change in the bargaining dynamic and to sending savings back to taxpayers. I agree it would be advantageous for these groups to be able to work through this issue without legislative interference. However, by including five representatives from labor organizations and five representatives from school boards and superintendents' organizations, it is unlikely that these conversations will be fruitful. Additionally, the State will likely have a hand in administering a statewide health benefit if legislation is introduced, and has no representation on the Commission.

While I appreciate the Legislature's willingness in H.509 to revisit this issue in the future, such as receiving findings from the Health Benefits Commission this November, and reopening contracts in September 2019, Vermont faces an immediate and growing crisis of affordability, and recapturing the available savings – without asking school employees to pay more or cutting programs for kids – can only happen during the unique set of circumstances at this moment. The reopening of contracts in September 2019 will not allow the Legislature to revisit this issue comprehensively, as contracts that settle prior to July 1, 2017 will be exempt. As we have seen from settlements to date, there is a wide range of healthcare coverage, and contracts range in length from 1 to 3 years. Therefore, this is setting up an unfair scenario for those negotiating parties that are currently at impasse, and an incentive for those who are still at the table to settle quickly. Without more explicit expectations set by the State, many agreements will likely include premium cost-sharing and out of pocket costs that eat away the available savings and, therefore, our ability to lower property tax rates.

It is essential to remember the alternatives which I have proposed, and which could have been taken up by the Legislature, to put Vermont on a new and more sustainable economic footing. Beginning with my recommended budget in January, I encouraged legislators to look for savings in the Education Fund, specifically in health care costs for school employees, to keep property tax rates for all payer groups level. During the 2015-2016 Biennium, in the context of Act 46, we heard it was nearly impossible to control education spending, despite declining student enrollments, due to the uncontrollable rising cost of health care for educators. This resulted in legislative action to remove allowable spending growth thresholds originally applied in Act 46.

Acknowledging healthcare costs are a driver in education spending, in my proposed budget I included an 80/20 premium split to achieve savings in school employees' healthcare costs and introduce equity among public sector employees. This is not only the same premium split that our State employees and eligible retired teachers pay, but would bring parity across the system for all active educators and other school employees.

My original mechanisms, level funding school budgets coupled with the premium split, to achieve savings in the Education Fund and level property tax rates, were met with much resistance, as well as opposition from stakeholder groups including the Vermont School Boards Association (VSBA) and the Vermont Superintendents Association (VSA). At the same time, my Administration began to learn more about a unique opportunity to save money in the Education Fund through changes in the VEHI healthcare plans. It is important to note that VEHI is an intermunicipal trust made up of State municipalities, including school districts, and administers a standard offering of healthcare benefits to over 90 percent of Vermont schools. Vermont school employees constitute a single statewide risk pool insured through the VEHI offerings. VEHI healthcare plans offered to school employees for Fiscal Year 2018 have been restructured to cost substantially less than the old plans to avoid the Affordable Care Act's "Cadillac Tax." Discussions in the State House outlining plan changes, and the opportunity for savings, began in the 2015-2016 Biennium with representatives from VEHI testifying in the Senate Finance and House Education Committees.

After the introduction of my recommended budget, legislators began asking my Administration for an alternative, and I began pointing to the opportunity for savings from these VEHI plan changes. Unfortunately, it became clear that neither the House nor Senate Appropriations Committees were planning to take advantage of this once-in-a-lifetime opportunity to rebase school budgets and save Vermonters millions on an ongoing basis. Therefore, to propel this conversation forward, I introduced a policy proposal – through collaboration with the VSBA and the VSA – that ensures there is a mechanism to recapture up to \$75 million in available savings. In my proposal, I recommend reinvesting nearly \$50 million back into school employees to make sure they don't pay more for out of pocket expenses, and returning the remaining \$26 million to all classes of property taxpayers to keep all property tax rates the same as Fiscal Year 2017. I also suggested investing in other education priority areas, such as early care and learning, higher education, and shoring up the Vermont State Teachers Retirement Health Insurance Program.

My proposal calls for the State to negotiate with the school employees' unions for the VEHI health benefit. Other states, like Massachusetts which has an opt-in state health plan, have started moving in this direction. My proposal

does three things: First, it maintains the right of school employees to bargain this valuable benefit through a joint body representing all school employees with a single voice and an opportunity to maximize benefits for all school employees equally. Second, my proposal assumes sharing the cost savings with school employees through the creation of a health savings or health retirement accounts (HSA or HRA) funded with a majority of the VEHI plan savings. Third, it creates a mechanism for recapturing the VEHI cost savings built into the existing school budgets and returning those savings to Vermont property taxpayers. This makes particular sense because school employees participate in a statewide insurance risk pool now.

While my goal is not a statewide teachers' contract, elevating benefits to the State level has been floated numerous times in the Legislature, as recently as 2014, when it was included in a December 12, 2014, report from then-Speaker Shap Smith's Education Finance Working Group, which included current Speaker Mitzi Johnson and House Education Chair David Sharpe (see pg. 3, number 8: "*Have the Agency produce a model teachers' contract that districts could use during labor negotiations. Explore the idea that districts could opt-in to a statewide contract*").

Under my proposal, local school boards would still bargain with school employees over all other compensation and benefits. Healthcare benefits would be bargained one time, instead of more than 60 times, which would give the maximum potential to realize up to \$75 million in savings (noting that contracts which have been ratified to date will not be reopened).

Despite our differences, I remain fully committed to working with the Legislature on a solution in H.509 and H.518 that meets the following core principles:

1. *Maximize Savings* – Any alternative must maximize the savings opportunity of the transition to these new healthcare plans;
2. *Keep Teachers Whole & Provide Parity* – Any alternative must hold educators harmless and provide parity and uniformity across the system; and
3. *Simplify Negotiations for School Boards* – Any alternative must reduce the burden currently on school boards negotiating these new, more complex insurance plans.

I am encouraged there is agreement between the Administration and the Legislature that the transition to the new VEHI plans provides an opportunity to save millions of dollars. While I first and foremost prefer a negotiated statewide health benefit, I am willing to consider negotiations remaining at the local level. However, it will require a policy mechanism in H.509 that

mandates the parameters of the benefit plan, or provides a strong and equitable financial incentive for both school boards and unions to reach settlements that are within the constructs of the Gold CDHP VEHI model. That model includes an 80/20 premium split with at least the first \$400 out of pocket cost borne by the employee through an HSA or HRA.

As noted earlier, I am also willing to return 100 percent of savings to all classes of property taxpayers to further bring down property tax rates, which is a primary advantage of seizing this opportunity, rather than reinvesting equal portions into early childhood and higher education and shoring up the Vermont State Teachers Retirement Health Insurance Program, in addition to tax relief, as was originally proposed. It is worth noting that at adjournment on May 18, 2017, an agreement with House and Senate leadership was within reach.

Again, H.509 and H.518 are fundamentally tied. The appropriations made from the Education Fund in H.518 are contingent upon the revenue provided by H.509. If the funding raised through H.509 changes, the allocation of funding in H.518 needs to be updated to reflect a change in the amount of available funds. For reference, the specific line item in H.518 is B.505, Education – adjusted education payment. It would also eliminate the need for the transfer from the Education Fund's stabilization reserves, as discussed above.

Given the opportunity I have outlined to save taxpayers millions of dollars through the new VEHI healthcare plans, the education payments in the budget should be adjusted by the amount of savings expected from transitioning to the new VEHI healthcare plans.

I promised Vermonters I would listen to any idea to make Vermont more affordable, and that is what I'm doing. We have been losing, on average, six workers from our workforce, and three students from our schools every day. We literally cannot pass up this opportunity to put a dent in property tax growth. My education savings proposal allows us to bring down property tax rates while not requiring education employees to pay more or cuts to programs for kids.

Under my proposal teachers will not be exposed to higher out of pocket costs and will still enjoy robust healthcare plans with higher than average actuarial values. Neither H.509 nor H.518, as presented for my approval, takes any steps to provide a mechanism to recapture the available savings for the Fiscal Year 2018 budget, which could be as much as \$13 million, or alleviate the property tax burden on all rate payer groups.

As noted, based on the outstanding objections outlined above I cannot support H.509 or H.518 and must return both bills without my signature pursuant to Chapter II, §11 of the Vermont Constitution. If the veto is

sustained, I know we can come to an agreement, and when we do, H.509, H.518, and Vermonters will be better for it.

Sincerely,

/s/Philip B. Scott

Philip B. Scott
Governor

PBS/kp

FOR INFORMATION

In the event that the House overrides the governor's veto and messages the bill to the Senate, upon the suspension of the Senate Rules the bill may be taken up.

The question to be decided by call of the roll is: Shall the bill pass, notwithstanding the refusal of the Governor to approve the bill? (Two-thirds of the members present required to override the Governor's veto.)

H. 518.

An Act Relating to Making Appropriations for the Support of Government.

Text of Communication from Governor

The text of the communication from His Excellency, the Governor, whereby he *vetoed* and returned unsigned **House Bill No. H. 518**, is as follows:

June 6, 2017

The Honorable William M. MaGill
Clerk of the Vermont House of Representatives
State House
Montpelier, VT 05633

Dear Mr. MaGill:

Pursuant to Chapter II, Section 11 of the Vermont Constitution, I am returning H.518, *An Act Relating to Making Appropriations for the Support of Government* without my signature because of my objections described herein.

Please note, the following also addresses objections to H.509, *An Act Relating to Calculating Statewide Education Tax Rates* as the two bills are inextricably linked and their relationship factors heavily into my decision to return both bills. H.509 will be returned to you in a separate message containing the same objections.

At the beginning of the session, I challenged the Legislature to give residents and businesses a break from new or higher taxes and fees in all bills passed this year. I also urged the Legislature to join me in the work of making Vermont more affordable in every way we can. H.509 and H.518 fail to achieve these goals and, as a result, I cannot support them as written. We must not be afraid to think, and legislate, differently in order to reverse our challenging demographic trends, grow the economy, and make Vermont more affordable. I have made a number of proposals to generate savings in the Education Fund, beginning with my first budget presentation. To date, the Legislature has rejected all such proposals and instead has passed H.509, which, together with and intrinsically linked to H.518, only worsens the unsustainable trajectory towards higher property taxes to support an education system with declining enrollment and extremely high per pupil costs. Instead, we have an opportunity to moderate those rates by rebasing school budgets through the transition to new plans in the Vermont Education Health Initiative (VEHI); and without asking school employees to pay more for healthcare.

Although H.509 appears to provide property tax relief for residential tax payers, it does so through an unequal allocation of the tax burden to other Vermont property taxpayers and the unsustainable, irresponsible allocation of one-time revenue sources. More specifically, H.509 increases the nonresidential property tax rate from \$1.535 per \$100 of assessed value, to \$1.555. Property taxes are not only an impediment to living in Vermont, but also a barrier to creating jobs in our state. Most of the “nonresidential” tax actually falls on Vermonters, like employers, renters and camp owners. In fact, the Department of Taxes reports that about 60 percent of the property that is classified as “non-residential” has a Vermont owner. Small and medium sized businesses are the backbone of our economy, and we must make Vermont a more affordable and attractive place to do business to increase opportunities for all Vermonters. I remain determined to achieving level property tax rates for all payer groups.

Also concerning is that buying down the average residential rate from \$1.527 to \$1.505 in H.509 is achieved in H.518 through two sources of one-time money. First, H.509 reduced the Education Fund's stabilization reserves by \$9.2 million to the Fund's statutory minimum. Second, \$26.1 million in the unallocated and unreserved balance in the Education Fund was applied as it has been over the past few years.

Although the unallocated/unreserved balance in the Education Fund has been used in previous sessions to buy down tax rates, it has been done so under the assumption that the balance will not be guaranteed year after year. According to the Agency of Education, the majority of this surplus was generated as the result of the consolidation of special education administration

to the supervisory district level, from the local level, in 2010 through Act 153. Overbudgeting for this expense created a surplus in the Education Fund over the past several years. However, in H.518, the anticipated special education expenditures were budgeted to more accurately reflect actual costs and it is unlikely the surplus, if any, will be realized to the extent it has in the past, for use in future fiscal years. Achieving savings through the transition to the new VEHI health insurance benefits is critically important to filling the gap that will inevitably occur in Fiscal Year 2019 when this surplus is no longer generated.

This anticipated shortfall coupled with the decision to use \$9.2 million of one-time money from the Education Fund stabilization reserves creates a steep cliff for taxpayers to make up in Fiscal Year 2019. These decisions, without a sustainable plan in place to fill the shortfall, expose taxpayers unnecessarily to the risk of an increase in property tax rates, could be of concern to the rating agencies, and are difficult to understand in a political climate where federal funding for school districts could be drastically reduced. This issue alone is sufficient to justify a veto. The use of the stabilization reserve coupled with the continued reliance on one-time funds predicated on prior year reversions that may not materialize in future fiscal years ensures the likelihood of future property tax increases. I cannot support a budget that makes expenditure choices that knowingly result in higher property tax rates in future years.

Moreover, the Legislature in H.509, Section 3, passed an additional one percent transfer of sales and use tax to the Education Fund which creates a General Fund shortfall in Fiscal Year 2019 and beyond. In H.518, Section D.101.1(a), the Legislature budgets a one-time Fiscal Year 2018 fund transfer of \$3.3 million. Year after year the Legislature must reconcile a growing gap between what we want to provide Vermonters and what we can afford based on our incoming revenues. Taking steps today that do not account for known future shortfalls puts the Legislature on a trajectory to increase the tax and fee burden on Vermonters. We should be taking steps to curb education spending instead of continuing to increase non-property tax sources in the Education Fund, which in Fiscal Year 2018 total \$525.1 million.

Section 5 of H.509 creates a Health Benefits Commission that I believe is set up to ensure impasse. Vermont's school boards have clearly articulated over the past several months their need for a simplified process for negotiating the increasingly complex health insurance system.

Additionally, thus far the VT-NEA has shown great resistance to any change in the bargaining dynamic and to sending savings back to taxpayers. I agree it would be advantageous for these groups to be able to work through this issue without legislative interference. However, by including five representatives from labor organizations and five representatives from school

boards and superintendents' organizations, it is unlikely that these conversations will be fruitful. Additionally, the State will likely have a hand in administering a statewide health benefit if legislation is introduced, and has no representation on the Commission.

While I appreciate the Legislature's willingness in H.509 to revisit this issue in the future, such as receiving findings from the Health Benefits Commission this November, and reopening contracts in September 2019, Vermont faces an immediate and growing crisis of affordability, and recapturing the available savings – without asking school employees to pay more or cutting programs for kids – can only happen during the unique set of circumstances at this moment. The reopening of contracts in September 2019 will not allow the Legislature to revisit this issue comprehensively, as contracts that settle prior to July 1, 2017 will be exempt. As we have seen from settlements to date, there is a wide range of healthcare coverage, and contracts range in length from 1 to 3 years. Therefore, this is setting up an unfair scenario for those negotiating parties that are currently at impasse, and an incentive for those who are still at the table to settle quickly. Without more explicit expectations set by the State, many agreements will likely include premium cost-sharing and out of pocket costs that eat away the available savings and, therefore, our ability to lower property tax rates.

It is essential to remember the alternatives which I have proposed, and which could have been taken up by the Legislature, to put Vermont on a new and more sustainable economic footing. Beginning with my recommended budget in January, I encouraged legislators to look for savings in the Education Fund, specifically in health care costs for school employees, to keep property tax rates for all payer groups level. During the 2015-2016 Biennium, in the context of Act 46, we heard it was nearly impossible to control education spending, despite declining student enrollments, due to the uncontrollable rising cost of health care for educators. This resulted in legislative action to remove allowable spending growth thresholds originally applied in Act 46. Acknowledging healthcare costs are a driver in education spending, in my proposed budget I included an 80/20 premium split to achieve savings in school employees' healthcare costs and introduce equity among public sector employees. This is not only the same premium split that our State employees and eligible retired teachers pay, but would bring parity across the system for all active educators and other school employees.

My original mechanisms, level funding school budgets coupled with the premium split, to achieve savings in the Education Fund and level property tax rates, were met with much resistance, as well as opposition from stakeholder groups including the Vermont School Boards Association (VSBA) and the Vermont Superintendents Association (VSA). At the same time, my

Administration began to learn more about a unique opportunity to save money in the Education

Fund through changes in the VEHI healthcare plans. It is important to note that VEHI is an intermunicipal trust made up of State municipalities, including school districts, and administers a standard offering of healthcare benefits to over 90 percent of Vermont schools. Vermont school employees constitute a single statewide risk pool insured through the VEHI offerings. VEHI healthcare plans offered to school employees for Fiscal Year 2018 have been restructured to cost substantially less than the old plans to avoid the Affordable Care Act's "Cadillac Tax." Discussions in the State House outlining plan changes, and the opportunity for savings, began in the 2015-2016 Biennium with representatives from VEHI testifying in the Senate Finance and House Education Committees.

After the introduction of my recommended budget, legislators began asking my Administration for an alternative, and I began pointing to the opportunity for savings from these VEHI plan changes. Unfortunately, it became clear that neither the House nor Senate Appropriations Committees were planning to take advantage of this once-in-a-lifetime opportunity to rebase school budgets and save Vermonters millions on an ongoing basis. Therefore, to propel this conversation forward, I introduced a policy proposal – through collaboration with the VSBA and the VSA – that ensures there is a mechanism to recapture up to \$75 million in available savings. In my proposal, I recommend reinvesting nearly \$50 million back into school employees to make sure they don't pay more for out of pocket expenses, and returning the remaining \$26 million to all classes of property taxpayers to keep all property tax rates the same as Fiscal Year 2017. I also suggested investing in other education priority areas, such as early care and learning, higher education, and shoring up the Vermont State Teachers Retirement Health Insurance Program.

My proposal calls for the State to negotiate with the school employees' unions for the VEHI health benefit. Other states, like Massachusetts which has an opt-in state health plan, have started moving in this direction. My proposal does three things: First, it maintains the right of school employees to bargain this valuable benefit through a joint body representing all school employees with a single voice and an opportunity to maximize benefits for all school employees equally. Second, my proposal assumes sharing the cost savings with school employees through the creation of a health savings or health retirement accounts (HSA or HRA) funded with a majority of the VEHI plan savings. Third, it creates a mechanism for recapturing the VEHI cost savings built into the existing school budgets and returning those savings to Vermont property taxpayers. This makes particular sense because school employees participate in a statewide insurance risk pool now.

While my goal is not a statewide teachers' contract, elevating benefits to the State level has been floated numerous times in the Legislature, as recently as 2014, when it was included in a December 12, 2014, report from then-Speaker Shap Smith's Education Finance Working Group, which included current Speaker Mitzi Johnson and House Education Chair David Sharpe (see pg. 3, number 8: "*Have the Agency produce a model teachers' contract that districts could use during labor negotiations. Explore the idea that districts could opt-in to a statewide contract*").

Under my proposal, local school boards would still bargain with school employees over all other compensation and benefits. Healthcare benefits would be bargained one time, instead of more than 60 times, which would give the maximum potential to realize up to \$75 million in savings (noting that contracts which have been ratified to date will not be reopened).

Despite our differences, I remain fully committed to working with the Legislature on a solution in H.509 and H.518 that meets the following core principles:

1. *Maximize Savings* – Any alternative must maximize the savings opportunity of the transition to these new healthcare plans;
2. *Keep Teachers Whole & Provide Parity* – Any alternative must hold educators harmless and provide parity and uniformity across the system; and
3. *Simplify Negotiations for School Boards* – Any alternative must reduce the burden currently on school boards negotiating these new, more complex insurance plans.

I am encouraged there is agreement between the Administration and the Legislature that the transition to the new VEHI plans provides an opportunity to save millions of dollars. While I first and foremost prefer a negotiated statewide health benefit, I am willing to consider negotiations remaining at the local level. However, it will require a policy mechanism in H.509 that mandates the parameters of the benefit plan, or provides a strong and equitable financial incentive for both school boards and unions to reach settlements that are within the constructs of the Gold CDHP VEHI model. That model includes an 80/20 premium split with at least the first \$400 out of pocket cost borne by the employee through an HSA or HRA.

As noted earlier, I am also willing to return 100 percent of savings to all classes of property taxpayers to further bring down property tax rates, which is a primary advantage of seizing this opportunity, rather than reinvesting equal portions into early childhood and higher education and shoring up the Vermont State Teachers Retirement Health Insurance Program, in addition to tax relief,

as was originally proposed. It is worth noting that at adjournment on May 18, 2017, an agreement with House and Senate leadership was within reach.

Again, H.509 and H.518 are fundamentally tied. The appropriations made from the Education Fund in H.518 are contingent upon the revenue provided by H.509. If the funding raised through H.509 changes, the allocation of funding in H.518 needs to be updated to reflect a change in the amount of available funds. For reference, the specific line item in H.518 is B.505, Education – adjusted education payment. It would also eliminate the need for the transfer from the Education Fund's stabilization reserves, as discussed above.

Given the opportunity I have outlined to save taxpayers millions of dollars through the new VEHI healthcare plans, the education payments in the budget should be adjusted by the amount of savings expected from transitioning to the new VEHI healthcare plans.

I promised Vermonters I would listen to any idea to make Vermont more affordable, and that is what I'm doing. We have been losing, on average, six workers from our workforce, and three students from our schools every day. We literally cannot pass up this opportunity to put a dent in property tax growth. My education savings proposal allows us to bring down property tax rates while not requiring education employees to pay more or cuts to programs for kids.

Under my proposal teachers will not be exposed to higher out of pocket costs and will still enjoy robust healthcare plans with higher than average actuarial values. Neither H.509 nor H.518, as presented for my approval, takes any steps to provide a mechanism to recapture the available savings for the Fiscal Year 2018 budget, which could be as much as \$13 million, or alleviate the property tax burden on all rate payer groups.

As noted, based on the outstanding objections outlined above I cannot support H.509 or H.518 and must return both bills without my signature pursuant to Chapter II, §11 of the Vermont Constitution. If the veto is sustained, I know we can come to an agreement, and when we do, H.509, H.518, and Vermonters will be better for it.

Sincerely,

/s/Philip B. Scott

Philip B. Scott

Governor

PBS/kp