

# House Calendar

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Wednesday, March 24, 2010

79th DAY OF ADJOURNED SESSION

House Convenes at 9:30 A.M.

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**ACTION CALENDAR**

**Third Reading**

**Amendment to be offered by Rep. Lippert of Hinesburg to H. 470**

Rep. Lippert moves to amend the bill as follows:

First: By striking Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 4 V.S.A. § 36 is added to read:

§ 36. COMPOSITION OF THE COURT

Unless otherwise specified by law, when in session a superior court shall consist of one superior, probate, or environmental judge sitting alone.

Second: In Sec. 150, 18 V.S.A. § 7106, before the word “unit” by inserting the words “family division of the superior court in the”

Third: By adding Secs. 150a, 150b, and 150c to read as follows:

Sec. 150a. 18 V.S.A. § 7112 is amended to read:

§ 7112. APPEALS

A patient or student may appeal any decision of the board. The appeal shall be to the family division of the superior court of the county wherein the hospital or school is located. The appeal shall be taken in such manner as the supreme court may by rule provide, except that there shall not be any stay of execution of the decision appealed from.

Sec. 150b. 18 V.S.A. § 7903 is amended to read:

§ 7903. TRANSFERS TO FEDERAL FACILITIES

Upon receipt of a certificate from an agency of the United States that accommodations are available for the care of any individual hospitalized under this part of this title, and that the individual is eligible for care or treatment in a hospital or institution of that agency, the commissioner may cause his transfer to that agency for hospitalization. The ~~district~~ judge who ordered the individual to be hospitalized, and the attorney, guardian, if any, spouse, and parent or parents, or if none be known, an interested party, in that order, shall be notified immediately of the transfer by the commissioner. No person may be transferred to an agency of the United States if he or she is confined pursuant to conviction of any felony or misdemeanor, or if he or she has been acquitted of a criminal charge solely on the ground of mental illness, unless

prior to transfer the ~~district~~ judge who originally ordered hospitalization of such person enters an order for the transfer after appropriate motion and hearing. Any person so transferred shall be deemed to be hospitalized by that agency pursuant to the original order of hospitalization.

Sec. 150c. 18 V.S.A. § 8009 is amended to read:

§ 8009. ADMINISTRATIVE DISCHARGE

\* \* \*

(b) The head of the hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of the hospital shall notify the applicant, the certifying physician ~~and~~, the family division of the superior court, and anyone who was notified at the time the patient was hospitalized.

(c) A person responsible for providing treatment other than hospitalization to an individual ordered to undergo a program of alternative treatment, under ~~sections~~ section 7618 or 7621 of this title, may terminate the alternative treatment to the individual if the provider of this alternative treatment considers him clinically suitable for termination of treatment. Upon termination of alternative treatment, the family division of the superior court shall be so notified by the provider of the alternative treatment.

Fourth: In Sec. 151, 18 V.S.A. § 8010(b), before the word “superior” by inserting the words “family division of the”

Fifth: In Sec. 237, by adding a new subsection (f) to read as follows:

(f) Section 17 of this act shall establish probate districts for the February 1, 2011 probate judge election, and for all probate judge elections thereafter. Section 17 shall not be construed to alter or affect the results or districts of the February 1, 2007 probate judge election.

Sixth: In Sec. 239, subsection (a), after the word “subsection” by striking the words “(b) or (c)” and inserting the words “(b), (c), or (d)”

Seventh: In Sec. 239, by adding a new subsection (d) to read as follows:

(d) Sec. 237(f) of this act and this subsection shall take effect on passage.

**Amendment to be offered by Rep. Fisher of Lincoln to H. 470**

Reps. Fisher of Lincoln and Donahue of Northfield move to amend the bill by striking Sec. 28a in its entirety and inserting in lieu thereof a new Sec. 28a to read as follows:

§ 455. TRANSFER OF PROBATE PROCEEDINGS

(a) Any guardianship action filed in the probate division of the superior court pursuant to chapter 111, subchapter 2, article 1 of Title 14 and any adoption action filed in the probate court division pursuant to chapter 9 of Title 15 may be transferred to the family division of the superior court as provided in this section.

(b) A request to transfer a proceeding under this subsection shall be made prior to the hearing on the merits. The family ~~court~~ division shall order the transfer of the proceeding on motion of a party or on its own motion if it finds that:

(1) the identity of the parties, issues, and evidence are so similar in nature to the parties, issues, and evidence in a proceeding pending in the family court division that transfer of the probate action to the family court division would expedite resolution of the issues or would best serve the interests of justice; or

(2) transfer of the proceedings would serve the best interests of the child or would otherwise best serve the interests of justice.

(c) In any contested case involving guardianship or custody of a child, the probate division shall provide notice of the option to file a motion to transfer under subsection (b) of this section to all parties.

(d) A proceeding shall not be transferred pursuant to this section unless the court ordering the transfer has communicated with the receiving court regarding the advisability of the transfer.

**Amendment to be offered by Rep. Kilmartin of Newport City to H. 470**

Rep. Kilmartin of Newport City moves to amend the bill by striking Sec. 32 in its entirety and inserting in lieu thereof a new Sec. 32 to read as follows:

Sec. 32. 4 V.S.A. § 601 is amended to read:

**§ 601. JUDICIAL NOMINATING BOARD CREATED; COMPOSITION**

(a) A judicial nominating board is created for the nomination of supreme court justices, ~~and superior and district judges,~~ magistrates, the chair of the public service board, and members of the public service board.

(b) The board shall consist of ~~eleven~~ ten members who shall be selected as follows:

(1) ~~The governor shall appoint two members who are not attorneys at law.~~

(2) ~~The senate shall elect three~~ five of its members, ~~not all~~ no more than three of whom shall be members of the same party, and only one of whom may

be an attorney at law.

~~(3)~~(2) The house shall elect ~~three~~ five of its members, ~~not all~~ no more than three of whom shall be members of the same party, and only one of whom may be an attorney at law.

~~(4)~~ Attorneys at law admitted to practice before the supreme court of Vermont, and residing in the state, shall elect three of their number as members of the board. The supreme court shall regulate the manner of their nomination and election.

~~(5)~~(3) The members of the board appointed by the governor shall serve for terms of two years and may serve for no more than three terms. The members of the board elected by the house and senate shall serve for terms of two years and may serve for no more than three consecutive terms. ~~The members of the board elected by the attorneys at law shall serve for terms of two years and may serve for no more than three consecutive terms.~~ All appointments or elections shall be between January 1 and February 1 of each odd-numbered year, except to fill a vacancy. Members shall serve until their successors are elected or appointed.

~~(6)~~(4) The members shall elect their own chair who will serve for a term of two years.

\* \* \*

(d) The judicial nominating board shall adopt rules of procedure under chapter 25 of Title 3 ~~which shall establish criteria and standards for the nomination of qualified candidates for judicial appointment including, but not limited to such factors as integrity, legal knowledge and ability, judicial temperament, impartiality, health, experience, diligence, administrative and communicative skills, social consciousness and public service.~~

\* \* \*

**Amendment to be offered by Rep. Kilmartin of Newport City to H. 470**

Rep. Kilmartin of Newport City moves to amend the bill in Sec. 13, 4 V.S.A. § 37, by striking subsection (b) through subdivision (1) and inserting in lieu thereof the following:

(b) Notwithstanding any other provision of law, the supreme court may promulgate venue rules, subject to review by the legislative committee on judicial rules under chapter 1 of Title 12, which are consistent with the following policies:

(1) Proceedings involving a case should be heard in the unit in which the case was brought, subject to the following exceptions:

(A) in criminal cases, where a defendant shows that he or she will likely be prejudiced unless there is a change in venue; or

(B) in civil cases, where the parties have agreed to a change in venue, or where one of the parties shows that he or she will likely be prejudiced unless there is a change in venue.

**Amendment to be offered by Rep. Kilmartin of Newport City to H. 470**

Rep. Kilmartin of Newport City moves to amend the bill as follows:

First: In Sec. 11, 4 V.S.A. § 73(a), after the words “to reduce delays in that unit.” by inserting the words “The court shall publish the judicial rotation schedule in electronic format and distribute it to attorneys licensed in Vermont.”

Second: In Sec. 11, 4 V.S.A. § 73, by striking subsection (c) in its and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Notwithstanding subsection (b) of this section, the administrative judge may, pursuant to section 21a of this title, specially assign a district court judge to family court to hear matters specified in subsection (b). As necessary to ensure the efficient operation of the superior court, the presiding judge of the unit may specially assign a superior judge assigned to a division in the unit, including the presiding judge, to preside over one or more cases in a different division. As the administrative judge determines necessary for the operation of the superior court throughout the state, and with the approval of the supreme court, the administrative judge may, by agreement of the parties, additionally assign for a specified period of time a superior judge to preside over a particular case, or over a particular judicial proceeding, in all or part of the units in the state.

**Amendment to be offered by Rep. Kilmartin of Newport City to H. 470**

Rep. Kilmartin of Newport City moves to amend the bill as follows:

First: By adding Sec. 4a to read as follows:

Sec. 4a. PURPOSE

It is the purpose of Sec. 4 of this act to:

(1) preserve the integrity of the constitutional process of qualifying and appointing judges;

(2) prevent the judicial branch from allowing the bypass of constitutional and statutory requirements of judicial qualifications;

(3) prevent conflicts of interest and the appearance of conflicts of interest in a rural state;

(4) prevent favoritism and the appearance of favoritism by the judiciary to certain members of the bar appointed to serve as judges without the governor's appointment and confirmation by the senate;

(5) prevent the retention process from being compromised;

(6) prevent the diversion of resources appropriated by the general assembly from their intended purpose; and

(7) further the constitutional requirement of the judiciary to fulfill its role and function through personnel qualified and authorized by the constitution and statute to exercise judicial functions.

Second: In Sec. 4, 4 V.S.A. § 22, by striking subsection (b) in its and inserting in lieu thereof a new subsection (b) to read as follows:

(b) The administrative judge may appoint and assign a member of the Vermont bar residing within the state of Vermont to serve temporarily as:

(1) an acting judge in ~~a district, family, environmental, or a small claims matter~~ in superior court; or

(2) ~~an acting magistrate; or~~

~~(3)~~ an acting hearing officer to hear cases in the judicial bureau.

### **Committee Bill for Second Reading**

#### **H. 783**

An act relating to miscellaneous tax provisions.

**(Rep. Ancel of Calais will speak for the Committee on Ways and Means.)**

#### **Favorable with amendment**

#### **H. 527**

An act relating to municipal recovery of costs of fire department response

**Rep. Shand of Weathersfield**, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

#### **Sec. 1. MUNICIPAL COST RECOVERY STUDY COMMITTEE**

(a) There is created the municipal cost recovery study committee to evaluate whether or not, or to what extent, to allow municipalities to recover the costs of fire department response to emergencies and nonemergencies on class 1 and federal highways.

(b) The committee shall be comprised of seven members as follows:



(1) Two members appointed by the Vermont League of Cities and Towns, one representing a large municipality and one representing a small municipality;

(2) The commissioner of banking, insurance, securities, and health care administration or designee;

(3) The commissioner of public safety or designee;

(4) The secretary of transportation or designee;

(5) Two members appointed by the Vermont Coalition of Fire and Rescue Services, one representing volunteer firefighters and one representing career firefighters.

(c) The committee shall study and evaluate, as it relates to the issue of allowing municipalities to recover the costs of fire department response to emergencies and nonemergencies on class 1 and federal highways:

(1) The state's public policy;

(2) The state's responsibility;

(3) The state's fiscal responsibility, including potential funding mechanisms;

(4) Costs to insurance companies;

(5) Inequities between and among municipalities;

(6) Approaches taken in other states.

(d) The department of public safety shall ensure that administrative support is provided to the committee, and the department may do so by arranging for that support to be provided by a willing municipal member of the Vermont League of Cities and Towns.

(e) By January 1, 2011 the committee shall report its recommendations in the form of proposed legislation to the general assembly.

(f) The committee may meet as often as necessary to fulfill its obligations under this section.

**( Committee Vote: 10-0-1)**

## **H. 722**

An act relating to the resale of tickets

**Rep. Lorber of Burlington**, for the Committee on **Commerce and Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. Chapter 117 is added to read:

CHAPTER 117. INTERNET SALES

§ 4190. INTERFERING WITH INTERNET TICKET SALES

(a) A person shall not intentionally use a computer program or other software to interfere with or circumvent on a ticket seller's website a security measure, access control system, or other control or measure used to ensure an equitable ticket buying process for tickets of admission to a sporting event, theatre, musical performance, or place of public entertainment or amusement of any kind.

(b) A person who suffers damages or injury as a result of a violation of this section may sue for:

- (1) appropriate equitable relief;
- (2) reasonable attorney's fees and costs; and
- (3) the greater of:
  - (A) actual damages suffered; or
  - (B) \$25,000 per violation of this section.

Sec. 2. 9 V.S.A. § 2435 is amended to read:

§ 2435. NOTICE OF SECURITY BREACHES

(a) This section shall be known as the Security Breach Notice Act.

(b) Notice of breach.

(1) Except as set forth in subsection (d) of this section, any data collector that owns or licenses computerized personal information that includes personal information concerning a consumer shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible ~~and~~, without unreasonable delay, and within 45 days of discovery of the breach, unless delay is requested by law enforcement pursuant to consistent with the legitimate needs of the law enforcement agency, as provided in subdivision (3)(4) of this subsection; or with necessitated by any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing personal information of a consumer that the business data collector does not own or license or any data collector that acts or conducts business in Vermont that maintains or possesses records or data containing personal

information that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subdivision ~~(3)~~(4) of this subsection.

(3) In the most expedient time possible and within 45 days of discovery of the security breach, unless delay is necessary to determine the scope of the security breach under subdivision (1) of this subsection or is requested by law enforcement pursuant to subdivision (4) of this subsection, a data collector or other entity subject to this subchapter, other than a person or entity licensed or registered with the department of banking, insurance, securities, and health care administration under Title 8 or this title, shall provide the attorney general's office notice of a security breach, notice of the number of Vermont consumers affected if known to the data collector, and a copy of the notice provided to a consumer under subdivision (1) of this subsection.

~~(3)~~(4) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. In the event law enforcement makes the request in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

~~(4)~~(5) The notice to a consumer shall be clear and conspicuous. The notice shall include a description of each of the following, if known to the data collector:

(A) The incident in general terms.

(B) The type of personal information that was subject to the security breach ~~unauthorized access or acquisition~~.

(C) The general acts of the ~~business~~ data collector to protect the personal information from further unauthorized access or acquisition.

(D) A toll-free telephone number that the consumer may call for further information and assistance.

(E) Advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(F) The date or dates of the security breach and the date of the data collector's discovery of the security breach.

### Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

and that the title of the bill be amended to read: "An act relating to notice of security breaches and internet ticket sales"

( **Committee Vote: 10-0-1**)

### H. 769

An act relating to the licensing and inspection of plant and tree nurseries.

**(Rep. Taylor of Barre City will speak for the Committee on Agriculture.)**

**Rep. Zuckerman of Burlington**, for the Committee on **Ways and Means**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following::

Sec. 1. 6 V.S.A. § 4021 is amended to read:

#### § 4021. DEFINITIONS

As used in this chapter:

(1) "Secretary" means the secretary of agriculture, food and markets or his or her designee.

(2) "Agency" means the agency of agriculture, food and markets.

(3) "Nursery" means all lands, premises, and buildings on or in which nursery stock is grown, transported, or offered for sale.

(4) "Nursery dealer" means any person who ~~buys,~~ sells, or distributes nursery stock for commercial gain.

(5) "Nursery grower" means any person engaged in growing, propagating, or production of nursery stock for commercial gain.

(6) "Nursery license" means the license issued to nursery dealers or nursery growers under section 4024 of this title.

(7) "Nursery stock" means all woody or herbaceous shrubs, trees, plants, and vines, including bulbs and rhizomes as well as buds, grafts, scions, and

other parts capable of propagation whether wild, cultivated, or grown under artificial covering. This definition does not include cut flowers or seeds.

Sec. 2. 6 V.S.A. § 4023 is amended to read:

§ 4023. ~~NURSERY INSPECTION; ISSUANCE OF CERTIFICATE FEES~~

~~(a) The secretary shall, at least annually, but not more than three times a year, inspect all nurseries or places within the state where nursery stock is grown, collected or stored. If, upon examination, the nursery stock is found to be healthy and apparently free from pests and diseases, the secretary shall issue a certificate. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the certificate, and may place any restrictions or requirements upon the certificate which he or she deems necessary.~~

~~(b) No person may operate a nursery without a valid certificate.~~

~~(c) The secretary may charge a fee for any inspection conducted under the provisions of this chapter. The amount of the fee shall be determined in a manner to be established by rule, but shall be no greater than is necessary, in the judgment of the secretary, to meet all expenses incurred in making the inspection. The secretary, as he or she deems necessary, may inspect nursery stock in the possession of a nursery grower or nursery dealer licensed under section 4024 of this title or any place within the state where nursery stock is grown, collected, stored, sold, offered for sale, or distributed. After the inspection of a licensed nursery grower or nursery dealer, the secretary may issue an inspection certificate.~~

(b) The secretary shall charge a fee for any inspection of a nursery grower or nursery dealer that is not licensed under section 4024 of this title. The secretary shall charge a fee for an inspection of a nursery dealer or nursery grower licensed under section 4024 of this title, provided that the initial inspection of a licensed nursery grower or nursery dealer in any calendar year shall be at no cost. The amount of the inspection fee shall be the same fee as that charged for a nursery dealer's license as required by section 4024 of this title. The secretary shall not charge an inspection fee when responding to consumer complaints or for technical assistance under section 1036 of this title for the management of plant pests, as that term is defined in section 1030 of this title.

Sec. 3. 6 V.S.A. § 4024 is amended to read:

§ 4024. ~~NURSERY DEALERS; NURSERY LICENSE~~

~~(a) Every nursery dealer purchasing, selling or installing stock in this state shall annually apply for and receive a nursery dealer's license from the~~

~~secretary. The secretary may inspect nursery stock in the possession of licensed dealers as he or she deems necessary. The secretary shall establish by rule the conditions for the issuance, suspension or revocation of the license, and may place any restrictions or requirements upon the license which he or she deems necessary.~~

~~(b) Any person soliciting orders for, selling, delivering or installing nursery stock shall have in his or her possession a copy of the license of the nursery which he or she represents or his or her own license, if required by subsection (a) of this section, which he or she shall show upon demand to prospective buyers or the secretary.~~

~~(c) Any person who has been issued a certificate by the secretary under section 4023 of this title shall automatically be issued a nursery dealer's license. No person shall operate as a nursery grower or nursery dealer in the state without first obtaining a nursery license from the secretary. A nursery grower or nursery dealer shall apply annually for a nursery license on a form provided by the secretary. The secretary shall establish by rule the conditions for the issuance, suspension, or revocation of a nursery license, and may place any restrictions or requirements upon the license which he or she deems necessary.~~

~~(b) A nursery dealer licensed under section 4024 of this title shall pay the following fee for a license:~~

~~(1) \$50.00, if the nursery owns or controls:~~

~~(A) a nursery of one-half acre or more;~~

~~(B) greenhouse space of 25,000 square feet or more; or~~

~~(C) retail space of 25,000 square feet or more.~~

~~(2) \$20.00 for all other nursery dealers.~~

~~(c) Any person soliciting orders for, offering for sale, or distributing nursery stock shall have in his or her possession a copy of the nursery license required under subsection (a) of this section, which he or she shall show upon demand to prospective buyers or the secretary.~~

Sec. 4. 6 V.S.A. § 4025 is amended to read:

§ 4025. SHIPMENTS BY NURSERY DEALERS TO BE ACCOMPANIED  
BY INSPECTION CERTIFICATES

Whenever a nursery dealer or nursery grower licensed under this chapter ships or delivers any nursery stock grown within this state, he or she shall include with each shipment a copy of the inspection certificate issued by the

secretary, or an approved facsimile, stating that the nursery dealer or nursery grower is licensed and has been inspected and approved as required by this chapter and the nursery stock is believed to be free from injurious pests or plant diseases.

Sec. 5. 6 V.S.A. § 4027 is amended to read:

§ 4027. DISEASED OR INFESTED STOCK; STOP-SALE; DESTRUCTION

(a) Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale. Offering for sale stock which is diseased or infested with injurious pests is a violation of this chapter. Whenever the secretary has reason to believe that any nursery, nursery grower, or nursery dealer in the state has produced, introduced, installed, sold, or offered for sale, diseased or infested nursery stock, the secretary shall inspect that nursery. If, upon inspection, the secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be:

- (1) put on stop-sale;
- (2) treated in a particular manner; or
- (3) destroyed according to the secretary's instructions.

(b) Plants ordered destroyed or placed on stop-sale must be clearly separable from noninfested stock. Any order must be confirmed in writing within seven days. The writing shall include the reason for action, a description of the nursery stock affected, and any recommended treatment. Stop-sale tags may not be removed except by written permission of the secretary or upon suitable disposal of the infested plants as determined by the secretary.

\* \* \*

Sec. 6. 6 V.S.A. § 4028 is amended to read:

§ 4028. ACCESS TO RECORDS; NURSERY STOCK

A nursery dealer or nursery grower engaged in the sale, distribution, or installation of nursery stock shall:

- (1) provide access for inspection by the secretary of all nursery stock;
- (2) follow appropriate practices so that an adequate inspection of the nursery can be made; and
- (3) maintain for one year records of plant purchases, acquisitions, sales, or other distributions, and make the records available upon request to the secretary for inspection.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

**(Committee Vote 11-0-0)**

**Action Postponed Until May 28, 2010**

**Governors Veto**

**H. 436**

An act relating to decommissioning funds of nuclear energy generation plants.

Pending Question: Shall the House sustain the Governor's veto?

**NOTICE CALENDAR**

**Committee Bill for Second Reading**

**H. 789**

An act making appropriations for the support of government.

**(Rep. Heath of Westford will speak for the Committee on Appropriations.)**

**Favorable**

**H. 784**

An act relating to the state's transportation program.

**(Rep. Brennan of Colchester will speak for the Committee on Transportation.)**

**Rep. Minter of Waterbury, for the Committee on Appropriations, recommends the bill ought to pass.**

**(Committee Vote: 11-0-0)**

**Amendment to be offered by Rep. Howard of Cambridge to H. 784**

Rep. Howard of Cambridge moves that the bill be amended by striking Sec. 38 in its entirety and inserting in lieu thereof a new Sec. 38 to read:

Sec. 38. ON-PREMISE SIGN ON LIMITED ACCESS FACILITY

Notwithstanding the restriction on on-premise signs located as to be readable primarily from a limited access facility set forth in 10 V.S.A. § 495(b) and the requirement set forth in 10 V.S.A. § 493(1) that on-premise signs be erected no more than 1,500 feet from a main entrance from the highway to the activity or premises advertised, an on-premise sign directing traffic to the



facilities of a postsecondary educational institution may be erected at the intersection of U.S. Route 4 Western Bypass and U.S. Route 7 in the city of Rutland.

## **Senate Proposal of Amendment**

### **H. 456**

An act relating to seasonal fuel assistance

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. § 2601 is amended to read:

#### **§ 2601. POLICY AND PURPOSE**

(a) It is the purpose of this chapter to secure the safety and health of low income Vermont households by providing needy Vermonters with assistance for the purchase of essential home heating fuel. To further this purpose, application acceptance, processing, and eligibility determination should as much as is practical be coordinated with other economic benefit programs administered by the agency of human services.

(b) This chapter establishes a home heating fuel assistance program in the agency of human services with both a seasonal fuel assistance component ~~for very low income households~~ and a crisis component ~~to supply fuel assistance to low income households in crisis situations.~~

Sec. 2. 33 V.S.A. § 2603 is amended to read:

#### **§ 2603. HOME HEATING FUEL ASSISTANCE FUND**

(a) There is created in the state treasury a fund to be known as the home heating fuel assistance fund.

(b) The fund shall consist of the receipts from any taxes dedicated to the fund and such other state funds as may be appropriated to it by the general assembly. ~~Funds from the home heating fuel assistance fund~~ and the federal Low Income Home Energy Assistance Program (LIHEAP). These funds shall be expended by the ~~director~~ secretary of human services or designee in accordance with this chapter, rules adopted pursuant to this chapter, and other relevant federal laws and rules adopted pursuant thereto law.

\* \* \*

(d) The secretary or designee may spend, in anticipation of federal receipts into the home heating fuel assistance fund established under this section, a sum no greater than 75 percent of the federal block grant funds allocated to Vermont for the current federal fiscal year under the Low Income Home

Energy Assistance Program (LIHEAP), for the purpose of permitting preseason purchases of fuel and other cost-effective purchasing practices authorized by subsection 2602(c) of this title, in accordance with rules adopted by the secretary.

Sec. 3. 33 V.S.A. § 2604 is amended to read:

§ 2604. ELIGIBLE BENEFICIARIES; REQUIREMENTS

(a) Household income eligibility requirements. The secretary of human services or designee, by rule, shall establish household income ~~and asset~~ eligibility requirements of beneficiaries in the seasonal fuel assistance program including the income ~~and assets~~ of all residents of the household.

~~(1) The income eligibility requirements shall require that households have a net gross household income no greater than 125 185 percent of the federal poverty level in order to be potentially eligible for benefits. Net income shall be derived by making the following deductions from gross income: 20 percent of household members' gross earned income; 100 percent of federal or state earned income credits received by household members; dependent care expenses that are within an allowable maximum, paid by a household member, and necessary to support a household member's employment or training for employment, according to criteria established by the secretary by rule; child support or alimony payments made by a household member on behalf of a nonhousehold member that meet criteria established by the secretary by rule; \$250.00 for each household member who is 60 years of age or older or disabled according to criteria established by the secretary by rule; any deductions or exclusions required by federal law or regulations; and any other deduction or exclusion established by the secretary by rule. To the extent allowed by federal law, the secretary of human services or designee shall establish by rule a calculation of gross income based on the same rules used in 3SquaresVT, except that the secretary or designee shall include additional deductions or exclusions from income required by LIHEAP.~~

~~(2) In order to be eligible, a household shall have net household assets no greater than \$5,000.00, or \$10,000.00 if one member of the household is 60 years of age or older. The secretary shall establish exclusions from the asset limit by rule.~~

(b) Fuel cost requirements. ~~The secretary shall adopt rules that specify the responsibility of the applicant households and their certified fuel supplier in providing the office of home heating fuel assistance with information that the office will use to establish an applicant household's heating fuel consumption for the previous year. The secretary of human services or designee shall by rule~~ procedure establish a table that contains amounts that will function as a

proxy for applicant households' annual heating fuel cost for the previous year. The seasonal fuel expenditure estimates contained within such table shall closely approximate the actual home heating costs experienced by participants in the home heating fuel assistance program. Such table shall be revised no less frequently than every three years based on data supplied by certified fuel suppliers, the department of public service, and other industry sources to the office of home heating fuel assistance, as required by rule. ~~The secretary shall also establish by rule minimum amounts of annual home heating fuel costs that vary based on the household's size and annual income.~~

(c) In determining heating fuel costs of households:

~~(1)(A) Households that make undesignated payments for energy for home heat in the form of rent and are not participating in a public, subsidized or Section 8 housing program shall be eligible for an annual home heating fuel assistance benefit in an amount equal to 30 percent of the benefit the household would have received if the household were purchasing energy for home heating fuel directly, or in the amount of \$50.00, whichever amount is greater.~~

~~(B) Households that make undesignated payments for energy for home heat in the form of rent and are participating in a public, subsidized or Section 8 housing program shall be eligible for a nominal annual home heating fuel assistance benefit of \$5.00. This benefit amount is effective beginning with the 1999-2000 program year.~~

~~(C) Residents of the dwelling unit who make reasonable compensation in the form of room rent and who are not members of the same household shall be eligible for an annual home heating fuel assistance benefit in the amount of \$50.00.~~

(2) Residents of housing units subsidized by the federal, state, or local government shall be deemed to have incurred no annual home heating fuel costs, except to the extent required by any federal law or regulation if federal funds are utilized for the home heating fuel assistance program, and with the following additional exception. Housing unit residents who participate in Reach Up under chapter 11 of this title, or who receive Supplemental Security Income/Aid to the Aged, Blind, or Disabled (SSI/AABD), emergency assistance, or general assistance benefits that are used in whole or in part to pay for their housing or utility costs and do not receive other federal, state, or local government assistance targeted specifically to their housing or utility needs shall, with the exception of households for which the cost of heat is supplied by the landlord, be assumed to incur annual home heating fuel costs and their eligibility for annual heating fuel assistance shall not be limited by this subsection.

~~(3)~~(2) The annual heating fuel cost for a household unit shall be only for the cost of the primary heating fuel source of the unit, which may be for wood, electricity, or any other fuel source, but annual heating fuel costs shall be only for the cost of heat and not include the cost of the fuel for any other uses of the household.

Sec. 4. 33 V.S.A. § 2605 is amended to read:

§ 2605. BENEFIT AMOUNTS

~~(a) The secretary shall by rule establish a table that specifies for households for which the cost of heat is not supplied by the landlord, maximum annual home heating fuel assistance benefit amounts. The maximum benefit amounts contained within this table shall vary by household size and annual household income. The annual home heating fuel assistance benefit for households that make undesignated payments for energy for home heat in the form of rent, and for households that pay room rent and who are not members of the same household with other residents of the dwelling unit, shall be the amounts established in section 2604(e)(1) of this title.~~

~~(b)~~ The secretary of human services or designee shall by rule establish a table that specifies maximum percentages of applicant households' annual heating fuel costs, based on the proxy table established pursuant to section 2604(b) of this title, that can be authorized for payment as annual home heating fuel assistance benefits for the following year. The maximum percentages contained within this table shall vary by household size and annual household income. In no instance shall the percentage exceed 90 percent.

(b) The maximum percentages of annual heating fuel costs table established in subsection (a) of this section shall provide proportionally higher benefit percentages to households with a gross income of 154 percent of the federal poverty guidelines or less and proportionally lower benefit percentages to households with a gross income of 155 to 185 percent of the federal poverty guideline.

(c) Annually, based on the number of eligible households that have applied and for which the cost of heat is not supplied by the landlord, these households' individual incomes and individual annual heating fuel cost, based on the proxy table established pursuant to subsection 2604(b) of this title, the number of eligible households that have applied and for which the cost of heat is supplied by the landlord, the cost of benefits for these households, and the amount of funds available in the home heating fuel assistance fund for the purpose of providing annual home heating fuel assistance benefits or are projected to apply, and on the eligibility of households in the benefit categories established in this section, the secretary of human services or designee shall,

by procedure, set the payment rate that shall be used to determine the amount of annual home heating fuel assistance for ~~which~~ each eligible household ~~for which the cost of heat is not supplied by the landlord qualifies~~. In no event shall the payment rate be greater than 100 percent of the maximum percentage established by rule as required by subsection ~~(b)~~(a) of this section.

(d) In the case of a household for which the cost of heat is not supplied by the landlord, the household's annual home heating fuel assistance benefit is the household's annual heating fuel cost ~~for the previous year~~ as defined in section 2604(b) of this title, multiplied by the maximum percentage for that household found in the table established by subsection ~~(b)~~(a) of this section, multiplied by the payment rate established in subsection (c) of this section. ~~In no event, however, shall the benefit paid for these households exceed the maximum benefit for a household of its income and size as established by rule as required in subsection (a) of this section. The annual home heating fuel assistance benefit for households that make undesignated payments for energy for home heat in the form of rent, and for households that pay room rent and who are not members of the same household with other residents of the dwelling unit, shall be the amounts established in subdivision 2604(c)(1) of this title.~~

(e) ~~{Repealed.}~~ Households that make undesignated payments for energy for home heat in the form of rent and that are not participating in a public, subsidized, or Section 8 housing program shall be eligible for an annual home heating fuel assistance benefit in an amount equal to 30 percent of the benefit the household would have received if the household were purchasing energy for home heating fuel directly or in the amount of \$50.00, whichever amount is greater.

(f) Households that make undesignated payments for energy for home heat in the form of rent and are participating in a public, subsidized, or Section 8 housing program shall be eligible for a nominal annual home heating fuel assistance benefit of \$5.00.

(g) Residents of the dwelling unit who make reasonable compensation in the form of room rent and who are not members of the same household shall be eligible for an annual home heating fuel assistance benefit in the amount of \$50.00.

(h) Households receiving benefits from 3SquaresVT whose head of household is not otherwise eligible for a fuel benefit under this section shall be eligible for a nominal annual home heating fuel assistance benefit of \$3.00.

Sec. 5. 33 V.S.A. § 2606 is amended to read:

§ 2606. APPLICATION PERIOD; ASSISTANCE

~~(a) In order to make a timely determination of benefit levels, there shall be an application period during which all beneficiaries shall apply for home heating fuel assistance for the ensuing heating season. The application period shall be from July 15 through August 31. The secretary of human services or designee may accept applications on an ongoing basis beginning on April 1, 2010. The secretary or designee may establish by rule the procedure for accepting applications and determining eligibility under this subsection.~~

~~(b) The secretary shall accept applications after the application period has closed, but no later than the last day of February. No qualified applicant shall be penalized through a reduction of benefits for a late-filed application, except that such applicant shall not be entitled to receive benefits for any period prior to the month of application.~~

~~(c) The director of home energy assistance secretary of human services or designee shall supply or contract for staff to carry out application processing process applications and related tasks including assisting households in applying and providing required information, and locating and contacting fuel suppliers certified under section 2607 of this title.~~

~~(d) Notwithstanding subsections (a) and (b) of this section, the secretary may accept applications on an ongoing basis for the 2010-2011 heating season beginning on March 1, 2010 and may establish by rule the procedure for accepting applications and determining eligibility under this subsection. No later than January 15, 2010, the secretary shall provide draft legislation to modify the process for application, eligibility, and calculation and issuance of benefits under the seasonal fuel assistance program using a new eligibility system to the house committee on human services and the senate committee on health and welfare.~~

Sec. 6. 33 V.S.A. § 2607 is amended to read:

#### § 2607. PAYMENTS TO FUEL SUPPLIERS

(a) ~~The director~~ secretary of human services or designee shall certify fuel suppliers, excluding firewood and wood pellet suppliers, to be eligible to participate in the home heating fuel assistance program, ~~and beneficiaries.~~ Beneficiaries may obtain assistance for fuel deliveries use their seasonal fuel assistance benefit to obtain home heating fuel or energy only from a fuel supplier certified by the director, except that beneficiaries who heat with firewood or wood pellets may obtain their firewood or wood pellets from any supplier they choose.

(b) Certified fuel suppliers shall agree to conduct reasonable efforts in order to inform and assist beneficiaries in their service areas, maintain records of amounts and costs of all fuel deliveries, send periodic statements to

customers receiving home heating fuel assistance informing them of their account's credit or debit balance as of the last statement, deliveries or usage since that statement and the charges for such, payments made or applied, indicating their source, since that statement, and the ending credit or debit balance. Certified fuel suppliers shall also agree to provide the ~~director~~ secretary of human services or designee such information deemed necessary for the efficient administration of the program, including information required to pay beneficiary's benefits to the certified supplier after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

(c) Certified fuel suppliers shall not disclose the beneficiary status of recipients of home heating fuel assistance benefits, the names of recipients, or other information pertaining to recipients to anyone, except for purposes directly connected with administration of the home heating fuel assistance program or when required by law.

~~(d) A supplier of wood fuel may be certified by the director only if the supplier is, in the normal course of business, a supplier of wood fuel; maintains a Social Security number or a federal tax identification number for such business; and provides that number to the director.~~

~~(e)~~ Certified fuel suppliers shall also agree to enter into budget agreements with beneficiaries for annualized monthly payments for fuel supplies provided the beneficiary meets accepted industry credit standards, and shall grant program beneficiaries such cash discounts, preseason delivery savings, automatic fuel delivery agreements, and any other discounts granted to any other heating fuel customer or as the secretary of human services or designee may negotiate with certified fuel suppliers.

~~(f)~~(e) The ~~office of home heating fuel assistance~~ secretary of human services or designee shall provide each certified fuel supplier with a list of the households who are its customers and have been found eligible for annual home heating fuel assistance for the current year, the total amount of annual home heating fuel assistance that has been authorized for each household, and how the total amount has been allocated over the heating season. Each authorized amount shall function as a line of credit for each eligible household. The ~~office of home heating fuel assistance~~ secretary or designee shall disburse authorized home heating fuel assistance benefits to certified fuel suppliers on behalf of eligible households in accordance with the allocation schedule after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

~~(g) In the event that on April 30 of any year a credit balance exists in a certified fuel supplier's account for a household that has received annual home~~

~~heating fuel assistance during the previous 12 months, that certified fuel supplier is required to pay the amount of this credit balance to the office of home heating fuel assistance no later than May 31 of the same year.~~

~~(h)~~(f) The ~~director~~ secretary of human services or designee shall negotiate with one or more certified fuel suppliers to obtain the most advantageous pricing and, payment terms, and delivery methods possible for eligible households.

Sec. 7. 33 V.S.A. § 2609 is amended to read:

#### § 2609. CRISIS RESERVES

Annually, the secretary of human services or designee shall determine ~~by rule~~ an appropriate amount of funds in the home heating fuel assistance fund to be set aside for expenditure for the crisis ~~reserve~~ fuel assistance component of the home heating fuel program. The secretary or designee shall also adopt rules to define crisis situations for the expenditure of the home heating fuel crisis ~~reserve~~ funds, and to establish the income and asset eligibility requirements of households for receipt of crisis ~~reserve~~ home heating fuel assistance, provided that no household shall be eligible whose gross household income is greater than ~~150~~ 200 percent of the federal poverty level based on the income of all persons residing in the household. To the extent allowed by federal law, the secretary or designee shall establish by rule a calculation of gross income based on the same rules used in 3SquaresVT, except that the secretary or designee shall include additional deductions or exclusions from income required by LIHEAP.

#### Sec. 8. EXPEDITED RULES

Notwithstanding the provisions of chapter 25 of Title 3, the agency of human services shall adopt rules to implement this act pursuant to the following:

(1) The secretary of human services or designee shall file final proposed rules with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841, after publication in three daily newspapers with the highest average circulation in the state of a notice that lists the rules to be adopted pursuant to this process and a seven-day public comment period following publication.

(2) The secretary of human services or designee shall file final proposed rules with the legislative committee on administrative rules no later than 28 days after the effective date of this act.

(3) The legislative committee on administrative rules shall review, and may approve or object to, the final proposed rules under 3 V.S.A. § 842, except



that its action shall be completed no later than 14 days after the final proposed rules are filed with the committee.

(4) The secretary of human services or designee may adopt a properly filed final proposed rule after the passage of 14 days from the date of filing final proposed rules with the legislative committee on administrative rules or after receiving notice of approval from the committee, provided the secretary or designee:

(A) has not received a notice of objection from the legislative committee on administrative rules; or

(B) after having received a notice of objection from the committee, has responded pursuant to 3 V.S.A. § 842.

(5) Rules adopted under this section shall be effective upon being filed with the secretary of state and shall have the full force and effect of rules adopted pursuant to chapter 25 of Title 3. Rules filed by the secretary of human services or designee with the secretary of state pursuant to this section shall be deemed to be in full compliance with 3 V.S.A. § 843, and shall be accepted by the secretary of state if filed with a certification by the secretary of human services or designee that the rule is required to meet the purposes of this section.

#### Sec. 9. IMPLEMENTATION

No later than September 1, 2011, the secretary of human services or designee shall implement a payment system to pay fuel benefits to certified fuel suppliers after the fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed.

#### Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

And the title shall be amended to read:

“An act relating to fuel assistance.”

(For text see House Journal May 5, 2009 )

### **Senate Proposal of Amendment to House Proposal of Amendment**

#### **S. 117**

An act relating to the date of the primary election

The Senate concurs in the House proposal of amendment with further amendment as follows:

By adding a new Sec. 11 to read:

Sec. 11. EFFECTIVE DATE

This act shall take effect upon passage.

(For text see House Journal 2/18/10 )

**Ordered to Lie**

**H.R. 19**

House resolution urging the agency of natural resources to retain delegated authority to administer the federal Clean Water Act in Vermont.

Pending Question: Shall the House adopt the resolution?

**Information Notice**

**House Appropriations Committee**

**Members' amendments to Fiscal Year 2011**

**Proposed Omnibus Appropriations Bill (H.789)**

The House Appropriations Committee requests all members of the House, who intend to introduce amendments to the proposed FY 2011 omnibus appropriations bill, to meet with the committee on Thursday, March 25, at 8:30 a.m., OR for third reading, Friday, March 26, at 8:45 a.m., in Room 42. If possible, please talk to Theresa Utton-Jerman 828-5767 (Room: 40) or [tutton@leg.state.vt.us](mailto:tutton@leg.state.vt.us) to schedule a time.