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An act relating to miscellaneous changes to education law

Amendment to be offered by Reps. Wright of Burlington, Brennan of Colchester, Condon of Colchester and Scheuermann of Stowe to S. 297

Move that the House proposal of amendment be amended by adding an internal caption and three new sections to be Secs. 21a through 21c to read:

* * * Employment History * * *

Sec. 1. 16 V.S.A. chapter 5, subchapter 4 is redesignated to read:

Subchapter 4. Access to Criminal Records <u>and to Employment History</u>

* * *

Sec. 2. 16 V.S.A. § 255 is redesignated to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS<u>; CRIMINAL RECORDS</u>

* * *

Sec. 3. 16 V.S.A. § 255a is added to read:

§ 255a. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; EMPLOYMENT HISTORY

(a) For any person a superintendent or a headmaster of a recognized or approved independent school is prepared to recommend for any full-time, part-time, or temporary employment, the superintendent or headmaster shall:

(1) require the person to:

(A) provide a list of all employers, as defined in this section; and

(B) sign a written statement, to be developed by the commissioner, that acknowledges the immunity from liability conferred in this section; and

(2) request that the three most recent employers provide all written documentation prepared and maintained by the employer concerning the person's job performance and reasons for separation, including:

(A) evaluations conducted during the person's employment;

(B) notes concerning specific events or an aspect of the person's performance; and

(C) separation agreements and other documents concerning the termination of employment.

(b) An employer shall respond to a request made under this section by providing accurate and complete information about a current or former employee's job performance and reasons for separation.

(c) A prospective employer that, when making hiring or retention decisions, reasonably relies on the information provided to it under this section shall be immune from civil liability in connection with that reliance.

(d) An employer shall be immune from civil liability in connection with the disclosure required by this section, unless it has acted in bad faith. The employer shall be considered to have acted in bad faith only if it is shown by a preponderance of the evidence that the employer disclosed information that it knew was false or that was deliberately misleading.

(e) As used in this section:

(1) "Employer" means all Vermont supervisory unions, school districts, and recognized and independent schools by which a person is or has been employed.

(2) "Job performance" includes a current or former employee's attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary actions.

Amendment to be offered by Rep. McAllister of Highgate to S. 297

Rep. McAllister of Highgate moves to amend the House proposal of amendment by adding a new Sec. 21a to read:

Sec. 21a. DRIVER EDUCATION: CONDITIONAL REPEAL

If the budget bill, H.789, as enacted, does not include appropriations for fiscal year 2011 sufficient to provide 100 percent funding to local school districts for driver education for fiscal year 2011, then 16 V.S.A. §§ 1045, 1046, 1047, 1047a and 1048 shall be repealed as of July 1, 2010.

Favorable with amendment

H. 782

An act relating to a voluntary school district merger incentive program, supervisory union duties, and other education issues

Rep. Peltz of Woodbury, for the Committee on **Education,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTENT

It is the intent of the general assembly:

(1) to ensure that any change to the governance structure of the Vermont educational system will create better opportunities for students, reasonably increase economies of scale, preserve a sense of community, and provide incentives for cost efficiencies available in personnel assignment and the management of resources;

(2) to provide technical assistance, incentives, and statutory changes to encourage voluntary merger of school districts;

(3) to assist schools and education governing units to use meaningful, standardized metrics for evaluating programs, comparing local, national, and international student data, and assessing and identifying system improvements;

(4) to ensure that there are meaningful methods to analyze the costs and benefits of resource allocations;

(5) to make effective use of technology to expand educational opportunities for all students; and

(6) to ensure that voters have opportunities to make local decisions regarding school choice and other enrollment options, in Vermont public schools and in approved independent schools, that are appropriate for their communities.

* * * School District Merger Incentive Program * * *

Sec. 2. SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

(a) Program created. There is created a school district merger incentive program under which the incentives outlined in Sec. 4 of this act shall be available to each new unified union school district, as defined in 16 V.S.A. § 722 or as provided in Sec. 3(b) of this act, created on or before July 1, 2016 by the voluntary merger of existing school districts pursuant to Sec. 3 of this act.

(b) Board discussion. On or before November 1, 2010, the board of every school district in the state shall discuss whether it wishes to explore merger within its supervisory union or with one or more contiguous districts outside its supervisory union, which for the purposes of this act includes supervisory districts, or both under the terms of this act.

(c) Board vote. On or before December 1, 2010, each school district board shall vote whether to work with other boards to perform a more comprehensive analysis of potential merger, and shall report the results of its vote to the commissioner of education and the voters of the district.

Sec. 3. INCENTIVE PROGRAM REQUIREMENTS RELATING TO DISTRICT STRUCTURE

(a) Size and schools. Contiguous school districts, which may include one or more union school districts, may merge to form a unified union school district ("UUSD") pursuant to chapter 11 of Title 16 that, except as provided in subsection (k) of this section, shall have an average daily membership of at least 1,250 or result from the merger of at least five districts, or both.

(b) Elementary and secondary education. A UUSD shall operate one or more approved public schools offering elementary and secondary education as required by 16 V.S.A. § 722; provided, however:

(1) A proposed UUSD shall be deemed to operate grades 9 through 12 as required by 16 V.S.A. § 722 if it will designate, pursuant to the provisions of 16 V.S.A. § 827, either a Vermont public school outside the district or a Vermont approved independent school located inside or outside the district as the sole public high school of the UUSD.

(2) Two or more contiguous schools districts that, when merged, would operate one or more approved schools offering kindergarten through grade 8 and would provide for the education of resident pupils in grades 9 through 12 by paying tuition pursuant to 16 V.S.A. § 824, are eligible for the incentives outlined in Sec. 4 of this act and for purposes of this act shall be considered a UUSD if:

(A) the districts, when merged, will neither operate a school offering grades 9 through 12 nor designate a school pursuant to 16 V.S.A. § 827 that offers those grades;

(B) for at least two fiscal years prior to merger, none of the merging districts operated a school offering grades 9 through 12;

(C) on the day on which the merger takes effect and the new merged district comes into existence, none of the merging districts is a member of a union school district that operates a school offering grades 9 through 12; and

(D) the merging districts and the new, merged district comply with all other provisions of this act, or otherwise in law, that apply to a UUSD formed under the school district merger incentive program created by this act, including the provision in subdivision (d)(2) of this section that the new merged district is a distinct supervisory district and shall not be assigned to be a member of a supervisory union.

(c) Existing union school districts. Pursuant to 16 V.S.A. § 701b(b), if an existing union school district is among the districts merging to form a UUSD, a successful vote to form the UUSD dissolves the existing union district.

(d) Supervisory unions and supervisory districts.

(1) School districts that merge to form a UUSD do not need to be members of the same supervisory union prior to merger.

(2) For purposes of this act, a UUSD is a supervisory district consisting of a single unified union school district, as explicitly contemplated by 16 V.S.A. § 11(a)(24), and shall not be assigned to a supervisory union pursuant to 16 V.S.A. § 706h.

(3) If a UUSD includes all school districts within one or more existing supervisory unions, then a successful vote to form the UUSD dissolves the school districts, the supervisory union or unions, and all related elected boards on the day the new UUSD becomes operative.

(4) If a UUSD forms and does not include all school districts within one or more supervisory unions, then:

(A) the UUSD is an independent entity distinct from the remaining school districts and the supervisory union or unions; and

(B) any school district that is a member of the same supervisory union as one or more of the merging districts and that does not merge to form the UUSD shall maintain its existing governance structure; provided, however, that upon vote of the electorate, the school district may notify the state board of education of its intent to operate as a supervisory district as defined in

16 V.S.A. § 11(24) or may request the state board to assign it to an existing supervisory union pursuant to 16 V.S.A. § 261.

(e) Operation of schools. A UUSD shall not close any school within its boundaries during the first four years of merger or prior to fiscal year 2018, whichever is earlier, unless the electorate of the municipality in which the school is located consents to closure.

(f) Local participation. Because the UUSD shall be governed by one board, the plan for merger presented to the electorate for approval under chapter 11 of Title 16 shall include structures and processes that provide opportunities for local participation in the creation of UUSD policy and budget development.

(g) Enrollment options. The plan for merger presented to the electorate for approval shall include whether and to what extent the voters of the participating districts wish to allow the elementary and secondary students residing within the UUSD to enroll in any school the UUSD operates, provided:

(1) the UUSD shall comply with the regional high school choice provisions of 16 V.S.A. § 1622;

(2) the UUSD shall provide, or provide access to, secondary technical education for students residing within its boundaries; and

(3) if the proposed enrollment plan would provide fewer options to the students in one or more of the districts interested in merger than they have prior to merger, then the plan shall require the UUSD to pay tuition to a school pursuant to the provisions of chapter 21 of Title 16 for any student who resides within the UUSD if that student resided in one of the participating districts prior to merger and as a result of that residency was enrolled in the school at public expense at the time of merger, even if the UUSD's approved merger plan has determined that the school is not otherwise a school to which it will pay tuition.

(h) Special education; local education agency. The UUSD shall be the local education agency for purposes of both 20 U.S.C. §§ 1400–1485 (Individuals with Disabilities Education Act) and 20 U.S.C. §§ 6311–6318 (the Elementary and Secondary Education Act of 1965 and the No Child Left Behind Act of 2001) and their implementing regulations, as amended from time to time. The UUSD shall provide special education services and shall be responsible for developing the individualized education plans for eligible students residing within its boundaries.

(i) Curriculum. The UUSD shall have a UUSD-wide curriculum that meets

the standards adopted pursuant to 16 V.S.A. § 165(a)(3) and that is approved by the UUSD board and fully implemented no later than the sixth year of the UUSD's existence. UUSDs are encouraged to increase opportunities for students through distance learning, dual enrollment, internships, and other programs.

(j) Employment and labor relations. The UUSD, upon assuming operating responsibility on the first day of its existence, shall:

(1) assume the obligations of individual employment contracts between the participating districts and their bargaining unit employees;

(2) assume the collective bargaining agreements between the participating districts and their respective representative organizations, including any provisions that address the transition to the UUSD, until such time as it reaches its own agreement with teachers and administrators under 16 V.S.A. § 2005, and with respect to other employees under 21 V.S.A. § 1725(a); and

(3) otherwise comply with all laws regarding labor relations applicable to school districts and supervisory unions, including chapter 57 of Title 16 and chapter 22 of Title 21.

(k) Waiver. School districts interested in merger may request the state board of education to grant them a waiver from the requirements of subsection (a) of this section, which shall be granted if the districts can demonstrate that for them the requirements of that subsection would not be cost-effective, would decrease educational opportunities, or would diminish student achievement, or any combination of these.

(l) Qualification. No individual entitlement or private right of action is created by Secs. 2 through 8 of this act.

Sec. 4. VOLUNTARY MERGER PROGRAM INCENTIVES

(a) Multiyear budgets.

(1) In addition to the option of proposing a single-year budget on an annual basis pursuant to the provisions of chapter 11 of Title 16 and notwithstanding any other provision of law, a UUSD formed pursuant to Secs. 2 and 3 of this act shall also have the option to propose one or both of the following:

(A) A multiyear budget for the first two fiscal years of its existence, provided the years are prior to fiscal year 2018, that will be included as part of the plan that must be approved by the electorate in order to create the UUSD.

(B) A multiyear budget for the third and fourth fiscal years of its

existence, provided the years are prior to fiscal year 2018, that is presented to the electorate for approval at the UUSD's annual meeting convened in its second fiscal year.

(2) The plan presented to the electorate to authorize creation of the UUSD may contain a provision authorizing the UUSD, beginning in the earlier of the fifth fiscal year of its existence or fiscal year 2018, to present multiyear proposed budgets to the electorate once in every two or three years.

(3) A UUSD that spends less than the budgeted amount prior to fiscal year 2018 shall be entitled to retain the budget surplus to lower its tax rate in fiscal year 2018 or after, or for another purpose approved by the electorate.

(b) Tax rates.

(1) Subject to the provisions of subdivision (3) of this subsection and notwithstanding any other provision of law, for no more than four consecutive years prior to fiscal year 2018:

(A) if the UUSD's approved annual education spending in one fiscal year is less than its education spending in the prior fiscal year, then for purposes of calculating the UUSD's homestead property tax rate for the year, the UUSD's education spending per equalized pupil shall be decreased by $875.00;

(B) if the UUSD's approved annual education spending in one fiscal year is equal to its education spending in the prior fiscal year, then for purposes of calculating the UUSD's homestead property tax rate for the year, the UUSD's education spending per equalized pupil shall be decreased by $750.00;

(C) if the UUSD's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by one percent or less, then for purposes of calculating the UUSD's homestead property tax rate for the year, the UUSD's education spending per equalized pupil shall be decreased by $600.00;

(D) if the UUSD's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by more than one percent but not by more than two percent, then for purposes of calculating the UUSD's homestead property tax rate for the year, the UUSD's education spending per equalized pupil shall be decreased by $400.00; and

(E) if the UUSD's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by more than two percent but not by more than four percent, then for purposes of calculating the UUSD's homestead property tax rate for the year, the UUSD's education

spending per equalized pupil shall be decreased by $200.00.

(2) For purposes of determining the UUSD's homestead property tax rate under this subsection for the first fiscal year of merger, the UUSD's education spending in the first fiscal year of merger shall be compared to the combined education spending of the merging districts from the fiscal year two years prior to the first fiscal year of merger increased by the percentage change in the New England Economic Partnership Cumulative Price Index for state and local government purchases of goods and services between the fiscal year two years prior to the first year of UUSD operation and the fiscal year one year prior to the first year of operation, as of November 15 prior to the first year of operation.

(3) During the years in which a UUSD's homestead property tax rate is calculated pursuant to this subsection, the equalized homestead property tax rate for each municipality within the UUSD shall not increase or decrease by more than five percent in a single year.

(c) Capital debt service. Beginning in fiscal year 2018, and notwithstanding any other provision of law, the commissioner annually shall reimburse from the education fund the amount of interest paid in the prior year by a UUSD to its lender on borrowing in anticipation of any state school construction aid that was owed to a merging member of the UUSD as of the effective date of this act and has not been paid to the UUSD by the state as of July 1, 2016.

(d) Sale of school buildings. Subject to the provisions of Sec. 3(e) of this act:

(1) if a UUSD closes a school building before the earlier of its fifth fiscal year or fiscal year 2018 and sells the school building, or an energy saving measure as contemplated in 16 V.S.A. § 3448f(g), then neither the UUSD nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16; and

(2) if a participating district retains ownership of and closes a school building as part of the electorate-approved plan for merger and the participating district sells the school building or energy saving measure associated with the building, then neither the district nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16.

(e) Merger support grant. If the merging districts of a UUSD included at least one "eligible school district," as defined in 16 V.S.A. § 4015, that had received a small school support grant under section 4015 in the fiscal year two years prior to the first fiscal year of merger, then the UUSD shall be eligible to

receive a merger support grant in each of its first five fiscal years in an amount equal to the small school support grant received by the eligible school district in the fiscal year two years prior to the first fiscal year of merger. If more than one merging district was an eligible school district, then the merger support grant shall be in an amount equal to the total combined small school support grants they received in the fiscal year two years prior to the first fiscal year of merger.

(f) Recent merger. If the Addison Northwest Unified Union School District becomes a body corporate and politic on or before July 1, 2010, then the merged district shall be entitled to receive any of the benefits set forth in subsections (b)–(e) of this section that it elects and is otherwise eligible to receive by notifying the commissioner of its election on or before July 1, 2011.

Sec. 5. TRANSITION

The UUSD merger plan presented to the electorate for approval pursuant to this act shall provide for any transition of employment of staff by member districts to employment by the UUSD by:

(1) providing for the UUSD to assume all contractual obligations of the member districts under each existing collective bargaining agreement or other employment contract until the agreement's or contract's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing for the immediate and voluntary recognition by the UUSD of the recognized representatives of the employees of the member districts as the recognized representatives of the employees of the UUSD;

(3) ensuring that no nonprobationary employee of a member district shall be considered a probationary employee upon the transition to the UUSD; and

(4) containing an agreement with the recognized representatives of the employees of the member districts, which is effective on the date on which the UUSD comes into existence, regarding how the UUSD, prior to reaching its first collective bargaining agreement with its employees, will address issues of seniority, reduction in force, layoff, and recall.

Sec. 6. REPORTS; RECOMMENDATIONS

(a) On or before December 31, 2010, the commissioner of education shall report to the house and senate committees on education regarding the school boards that have voted to consider merger.

(b) On or before March 15, 2011, and in every January thereafter through 2017, the commissioner shall report to the house and senate committees on

education regarding the status of merger discussions and votes.

(c) The James M. Jeffords Center of the University of the Vermont, the department of education, and school districts participating in the voluntary merger process authorized by this act shall collaborate to study:

(1) data and comments from school districts and supervisory unions statewide that are discussing voluntary merger;

(2) the results of local district elections to approve voluntary merger under the provisions of this act; and

(3) in connection with UUSDs that are formed under the provisions of this act:

(A) real dollar efficiencies realized;

(B) operational efficiencies realized;

(C) changes in student learning opportunities; and

(D) changes in student outcomes.

(d) On or before January 15, 2018, the James M. Jeffords Center and the department of education shall present a final report concerning the study required in subsection (c) of this section, including recommendations to the house and senate committees on education regarding what further actions, if any, should be pursued to encourage or require merger by nonparticipating school districts, and shall provide interim reports in each January until that date.

Sec. 7. 16 V.S.A. § 261(e) is added to read:

(e) Notwithstanding subsections (a)–(c) of this section, the state board shall not adjust the boundaries of a supervisory district consisting of one unified union school district unless the municipalities within the district approve the adjustment pursuant to subchapter 4, article 4 of chapter 11 of Title 16 and request the state board to make the adjustment.

Sec. 8. MERGER TEMPLATE

The department of education shall develop a merger template to assist subcommittees formed pursuant to Sec. 5(b) of this act or 16 V.S.A. § 706 to consider the advisability of and prepare a proposal for merger. Among other things, the template shall provide data regarding the enrollment and finances of the participating school districts and demographic statistics regarding Vermont municipalities. It shall also outline common issues considered by districts exploring merger and provide links to related resources. The department shall publish the template on its website on or before December 15, 2010.

* * * Distance Learning; Out-of-State Programs * * *

Sec. 9. 16 V.S.A. § 166(b)(6) is amended to read:

(6) This subdivision applies to an independent school located in Vermont ~~which~~ that offers a distance learning program ~~of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means~~ and ~~which~~ that, because of its structure, does not meet some or all the rules of the state board for approved independent schools. In order to be approved under this subdivision, a school shall meet the standards adopted by rule of the state board for approved independent schools ~~which~~ that can be applied to the applicant school and any other standards or rules adopted by the state board regarding these types of schools. A school approved under this subdivision shall not be eligible to receive tuition payments from public school districts under chapter 21 of this title. ~~However, a school district may enter into a contract or contracts with a school approved under this subdivision for provisions of some education services for its students.~~

Sec. 10. 16 V.S.A. § 563(32) is added to read:

(32) May enter into a contract or contracts with a school offering a distance learning program that is approved by one or more accrediting agencies recognized by the U.S. Department of Education or is approved in Vermont pursuant to subdivision 166(b)(6) of this title.

* * * Duties of Supervisory Unions and Superintendents; Special Education; Class Size; Delayed Effective Dates * * *

Sec. 11. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

The board of each supervisory union shall:

(1) ~~set policy to coordinate curriculum plans among the sending and receiving schools in that supervisory union~~ establish a supervisory union-wide curriculum, by either developing the curriculum or assisting the member districts to develop it jointly, and ensure implementation of the curriculum. The curriculum ~~plans~~ shall meet the requirements adopted by the state board under subdivision 165(a)(3)(B) of this title;

(2) ~~take reasonable steps to~~ assist each school in the supervisory union to follow ~~its respective~~ the curriculum ~~plan~~ as adopted under the requirements of the state board pursuant to subdivision 165(a)(3)(B) of this title;

(3) if students residing in the supervisory union receive their education outside the supervisory union, periodically review the compatibility of the

supervisory union's curriculum ~~plans~~ with those other schools;

(4) in accordance with criteria established by the state board, establish and implement a plan for receiving and disbursing federal and state funds distributed by the department of education, including funds awarded under P.L. 89-10, the Elementary and Secondary Education Act of 1965 as amended;

(5) provide ~~for the establishment of a written policy on professional development of teachers employed in the supervisory union and periodically review that policy. The policy may provide financial assistance outside the negotiated agreements for teachers' professional development activities and may require the superintendent periodically to develop and offer professional development activities within the supervisory union~~ professional development programs or arrange for or enable the provision of them, or both, for teachers, administrators, and staff within the supervisory union, which may include programs offered solely to one school or other component of the entire supervisory union to meet the specific needs or interests of that component;

(6) ~~provide or, if agreed upon by unanimous vote at a supervisory union meeting, coordinate provision of the following educational services on behalf of member districts:~~

~~(A) special education;~~

~~(B) except as provided in section 144b of this title, compensatory and remedial services; and~~

~~(C) other services as directed by the state board and local boards~~ provide special education services to member districts and, except as provided in section 144b of this title, compensatory and remedial services; and provide or coordinate the provision of other educational services as directed by the state board or local boards;

(7) employ a person or persons qualified to ~~manage~~ provide financial and student data management services for the supervisory union ~~accounts~~;

(8) at the option of the supervisory union, provide the following services for the benefit of member districts according to joint agreements under section 267 of this title and in a manner that promotes the efficient use of financial and human resources:

(A) ~~centralized purchasing~~ manage a system to procure and distribute goods and operational services;

(B) ~~construction management~~ manage construction projects;

(C) ~~budgeting, accounting and other financial management~~ provide financial and student data management services, including grant writing and

fundraising as requested;

(D) ~~teacher negotiations~~ negotiate with teachers and administrators, pursuant to chapter 57 of this title, and with other school personnel, pursuant to chapter 22 of Title 21, at the supervisory union level provided that contracts may vary by district;

(E) ~~transportation~~ provide transportation or arrange for the provision of transportation, or both, if it is offered in any districts within the supervisory union; ~~and~~

(F) provide human resources management support; and

(G) provide other appropriate services;

(9) ~~require that the superintendent as executive officer of the supervisory union board be responsible to the commissioner and state board for reporting on all financial transactions within the supervisory union. On or before August 15 of each year, the superintendent, using a format approved by the commissioner, shall forward to the commissioner a report describing the financial operations of the supervisory union for the preceding school year. The state board may withhold any state funds from distribution to a supervisory union until such returns are made;~~ [Repealed.]

(10) submit to the town auditors of each member school district or to the person authorized to perform the duties of an auditor for the school district, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) A breakdown of that figure showing the amount paid by each school district within the supervisory union;

(B) A summary of the services provided by the supervisory union's use of the expended funds;

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory unionwide truancy policies consistent with the model protocols developed by the commissioner.

(13)–(17) [Repealed.]

Sec. 12. 16 V.S.A. § 242 is amended to read:

§ 242. DUTIES OF SUPERINTENDENTS

The superintendent shall be the chief executive officer for the supervisory union board and for each school board ~~in~~ within the supervisory ~~district~~ union, and shall:

(1) carry out the policies adopted by the school ~~board~~ boards relating to the educational or business affairs of the school district or supervisory union, and develop procedures to do so;

(2) ~~identify~~ prepare, for adoption by a local school board, plans to achieve the educational goals and objectives ~~of~~ established by the school district ~~and prepare plans to achieve those goals and objectives for adoption by the school board~~;

(3) ~~recommend that the school board employ or dismiss persons as necessary to carry out the work of the school district~~ (A) nominate a candidate for employment by the school district or supervisory union if the vacant position requires a licensed employee; provided, if the appropriate board declines to hire a candidate, then the superintendent shall nominate a new candidate;

(B) select nonlicensed employees to be employed by the district or supervisory union; and

(C) dismiss licensed and nonlicensed employees of a school district or the supervisory union as necessary, subject to all procedural and other protections provided by contract, collective bargaining agreement, or provision of state and federal law;

(4)(A) ~~furnish the commissioner~~ provide data and information required by the commissioner; ~~and~~

(B) report all financial operations within the supervisory union to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner;

(C) report all financial operations for each member school district to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner; and

(D) prepare for each district an itemized report detailing the portion of the proposed supervisory union budget for which the district would be assessed for the subsequent school year identifying the component costs by category and explaining the method by which the district's share for each cost was calculated; and provide the report to each district at least 14 days before a budget, including the supervisory union assessment, is voted on by the electorate of the district;

(5) work with the school boards of the member districts to develop and implement policies regarding minimum and optimal average class sizes for regular and technical education classes. The policies may be supervisory union-wide, may be course- or grade-specific, and may reflect differences among school districts due to geography or other factors; and

(6) provide for the general supervision of the public schools in the supervisory union or district.

Sec. 13. 16 V.S.A. § 563(11)(C) is amended to read:

(C) At a school district's annual or special meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources, and expenses, including as separate items any assessment for a supervisory union of which it is a member, and any tuition to be paid to a technical center; and including the report required in subdivision 242(4)(D) of this title itemizing the component costs of the supervisory union assessment;

* * *

Sec. 14. REPEAL

16 V.S.A. § 563(13) (duty of school district board to report financial information to the commissioner) is repealed.

Sec. 15. 16 V.S.A. § 1981(8) and (9) are amended to read:

(8) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union to engage in professional negotiations with a teachers' or administrators' organization.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12~~

~~within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(9) "Teachers' organization negotiations council" or "administrators' organization negotiations council" means the body comprising representatives designated by each teachers' organization or administrators' organization within a supervisory district or supervisory union to act as its representative for professional negotiations.

~~(A) Teachers' or administrators' organizations within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the teachers' or administrators' organization, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) A teachers' or administrators' organization, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 16. 21 V.S.A. § 1722(18) and (19) are amended to read:

(18) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union to engage in collective bargaining with their school employees' negotiations council.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(19) "School employees' negotiations council" means the body comprising representatives designated by each exclusive bargaining agent within a supervisory district or supervisory union to engage in collective bargaining with its school board negotiations council.

~~(A) Exclusive bargaining agents within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the exclusive bargaining agent, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) An exclusive bargaining agent, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 17. MINIMUM AND OPTIMAL CLASS SIZE POLICIES

(a) On or before July 1, 2012, the policy required by Sec. 12 of this act, 16 V.S.A. § 242(5), regarding minimum and optimal average class size shall

be:

(1) adopted by each supervisory union board and member district board;

(2) posted on the website maintained by the supervisory union; and

(3) forwarded to the commissioner of education.

(b) On or before August 31, 2010, the commissioner of education shall develop two or more model policies regarding minimum and optimal class size and shall post them on the department's website.

Sec. 18. SPECIAL EDUCATORS; TRANSITION

Each supervisory union shall provide for any transition of employment of special education staff by member districts to employment by the supervisory union, pursuant to Sec. 11 of this act, 16 V.S.A. § 261a(6), by:

(1) providing that the supervisory union assumes all obligations of each existing collective bargaining agreement in effect between the member districts and their special education employees until the agreement's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing, in the absence of an existing recognized representative of its employees, for the immediate and voluntary recognition by the supervisory union of the recognized representatives of the employees of the member districts as the recognized representatives of the employees of the supervisory union;

(3) ensuring that no nonprobationary employee of a member district shall be considered a probationary employee upon transition to the supervisory union; and

(4) containing an agreement with the recognized representatives of the employees of the member districts that is effective on the day the supervisory union assumes obligations of existing agreements regarding how the supervisory union, prior to reaching its first collective bargaining agreement with its special education employees, will address issues of seniority, reduction in force, layoff, and recall.

* * * Small Schools * * *

Sec. 19. RECOMMENDATIONS; SMALL SCHOOLS

On or before January 15, 2011, the commissioner of education shall develop and present to the general assembly a detailed proposal to:

(1) identify annually the school districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 due to geographic necessity, including

the criteria that indicate geographic necessity;

(2) calculate and adjust the level of additional financial support necessary for the districts identified in subdivision (1) of this section to provide an education to resident students in compliance with state education quality standards and other state and federal laws; and

(3) withdraw small school support gradually from districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 as currently enacted but will not be identified as "eligible school districts" pursuant to subdivision (1) of this section.

* * *Statutory Revision; Effective Dates * * *

Sec. 20. LEGISLATIVE COUNCIL; STATUTORY REVISION

(a) Pursuant to the statutory revision authority provided in 2 V.S.A. § 424, the legislative council shall make technical amendments to the Vermont Statutes Annotated that are necessary to effect the intent of this act.

(b) On or before January 1, 2011, the legislative council shall prepare a draft bill and provide it to the house and senate committees on education that proposes statutory changes necessary to effect the intent of this act.

Sec. 21. EFFECTIVE DATES

(a) Secs 11–14 of this act shall take effect on July 1, 2012.

(b) This section and all other sections of this act shall take effect on passage, subject to the provisions of existing contracts.

(Committee Vote: 7-4-0)

Rep. Ancel of Calais, for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Education.**

(Committee Vote: 8-1-2)

Amendment to be offered by Rep. Peltz of Woodbury to H. 782

Moves to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) the voluntary merger of Vermont's education governing units will support opportunities for students, increased economies of scale, and enhanced cost efficiencies available in personnel assignment and the management of

resources, particularly at a time when many districts are experiencing declining enrollment;

(2) providing incentives, technical assistance, and statutory changes to encourage voluntary merger of school districts will allow governance changes to occur while preserving the authority of voters to make local decisions that are appropriate for their communities; and

(3) the voluntary merger of Vermont's education governing units will assist schools and education governing units to obtain meaningful, standardized metrics for evaluating programs; comparing local, national, and international student data; assessing and identifying system improvements; and analyzing the costs and benefits of resource allocations.

Sec. 2. SCHOOL DISTRICT MERGER INCENTIVE PROGRAM

(a) Program created. There is created a school district merger incentive program under which the incentives outlined in Sec. 4 of this act shall be available to each new unified union school district created pursuant to Sec. 3 of this act and to each new district created under that section by the merger of districts that provide secondary education by paying tuition; provided that the effective date of merger shall be on or before July 1, 2016.

(b) Board discussion. On or before November 1, 2010, the board of every school district in the state shall discuss whether it wishes to explore merger within its supervisory union or with one or more districts outside its supervisory union, which for the purposes of this act includes supervisory districts, or both under the terms of this act.

(c) Board vote. On or before December 1, 2010, each school district board shall vote whether to work with other boards to perform a more comprehensive analysis of potential merger, and shall report the results of its vote to the commissioner of education and the voters of the district.

Sec. 3. INCENTIVE PROGRAM REQUIREMENTS RELATING TO DISTRICT STRUCTURE

(a) Size and contiguity.

(1) Contiguous school districts, which may include one or more union school districts, may merge to form a unified union school district ("Merged District") pursuant to chapter 11 of Title 16 that shall have an average daily membership of at least 1,250 or result from the merger of at least five districts, or both.

(2) School districts interested in merger may request the state board of education to grant them a waiver from one or more of the requirements of subdivision (1) of this subsection (contiguity; average daily membership;

number of districts), which shall be granted if the state board determines that merger is not allowed under that subdivision without a waiver and that granting a waiver would enable a merger that is supportive of one or more of the following:

(A) Increased cost-efficiencies.

(B) Increased educational opportunities.

(C) Enhanced student achievement.

(b) Elementary and secondary education.

(1) A Merged District formed under this act shall provide for the education of its resident students by operating one or more public schools offering elementary and secondary education.

(2) If they comply with all other provisions of this act, then notwithstanding subdivision (1) of this subsection, school districts that do not operate secondary schools may merge to form a Merged District, operate as a K-12 district, receive the incentives as provided in Sec. 4 of this act, and be considered a unified union school district if the proposed Merged District implements either of the following options:

(A) The Merged District designates either a Vermont public school outside the district or a Vermont-approved independent school located inside or outside the district as the sole public secondary school of the Merged District pursuant to the provisions of 16 V.S.A. § 827.

(B) The Merged District operates one or more schools offering at least kindergarten through grade 8 for the resident students in those grades and provides for the education of students in all other grades by paying tuition pursuant to 16 V.S.A. § 824, provided that:

(i) The Merged District will neither operate a school offering the grades for which it pays tuition nor designate a school that offers those grades; and

(ii) For at least two fiscal years prior to the effective date of merger, none of the merging districts shall have operated a school offering the grades for which the Merged District will pay tuition.

(c) Supervisory unions and supervisory districts.

(1) School districts that merge to form a Merged District do not need to be members of the same supervisory union prior to merger.

(2) A Merged District created under this act is a supervisory district consisting of a single unified union school district and shall not be assigned to

a supervisory union pursuant to 16 V.S.A. § 706h.

(3) If a Merged District forms and does not include all school districts within one or more supervisory unions, then any school district that is a member of the same supervisory union as one or more of the merging districts and that does not merge to form the Merged District shall maintain its existing governance structure; provided, however, that upon vote of the electorate, the school district may notify the state board of education of its intent to operate as a supervisory district as defined in 16 V.S.A. § 11(24) or may request the state board to assign it to an existing supervisory union pursuant to 16 V.S.A. § 261.

(d) Operation of schools. A Merged District shall not close any school within its boundaries during the first four years after the effective date of merger or prior to fiscal year 2018, whichever is earlier, unless the electorate of the town in which the school is located consents to closure.

(e) Local participation. Because the Merged District shall be governed by one board, the plan for merger presented to the electorate for approval under chapter 11 of Title 16 shall include structures and processes that provide opportunities for local participation in the creation of Merged District policy and budget development.

(f) Enrollment options. The plan for merger presented to the electorate for approval shall include whether and to what extent elementary and secondary students residing within the Merged District may enroll in any school the Merged District operates, provided:

(1) a Merged District that operates or designates a secondary school shall comply with the regional high school choice provisions of 16 V.S.A. § 1622;

(2) each Merged District shall provide or shall provide access to secondary technical education for students residing within its boundaries; and

(3) if the approved merger plan provides fewer options to the students in one or more of the merging districts than they have prior to merger, then the Merged District shall pay tuition to a school pursuant to the provisions of 16 V.S.A. §§ 823 and 824 for any resident student who resided in one of those districts and was enrolled in the school at public expense at the time of merger, even if the approved merger plan does not otherwise require the Merged District to pay tuition to that school.

(g) Curriculum. The Merged District shall have a Merged District-wide curriculum that meets the standards adopted pursuant to 16 V.S.A. § 165(a)(3) and that is approved by the Merged District board and is fully implemented no later than in the sixth year of the Merged District's existence. Merged Districts

are encouraged to increase opportunities for students through prekindergarten programs, distance learning, dual enrollment, internships, and other programs.

(h) Employment and labor relations. On the first day of its existence, the Merged District shall:

(1) assume the obligations of individual employment contracts between the participating districts and their bargaining unit employees;

(2) assume the collective bargaining agreements between the participating districts and their respective representative organizations, including any provisions that address the transition to the Merged District, until such time as the Merged District reaches its own agreement with teachers and administrators under 16 V.S.A. § 2005 and with other employees under 21 V.S.A. § 1725(a);

(3) recognize the representatives of the employees of the former member districts as the recognized representatives of the employees of the Merged District;

(4) ensure that an employee of a former member district who is not a probationary employee shall not be considered a probationary employee of the Merged District; and

(5) have reached an agreement with the recognized representatives of the employees, effective on the first day of the Merged District's existence, regarding how to address issues of seniority, reduction in force, layoff, and recall prior to reaching its first collective bargaining agreement with its employees.

Sec. 4. VOLUNTARY MERGER PROGRAM INCENTIVES

(a) Multiyear budgets.

(1) In addition to the option of proposing a single-year budget on an annual basis pursuant to the provisions of chapter 11 of Title 16 and notwithstanding any other provision of law, a Merged District formed pursuant to Secs. 2 and 3 of this act shall also have the option to propose one or both of the following:

(A) A multiyear budget for the first two fiscal years of its existence, provided the years are prior to fiscal year 2018, that will be included as part of the plan that must be approved by the electorate in order to create the Merged District.

(B) A multiyear budget for the third and fourth fiscal years of its existence, provided the years are prior to fiscal year 2018, that is presented to the electorate for approval at the Merged District's annual meeting convened in

its second fiscal year.

(2) The plan presented to the electorate to authorize creation of the Merged District may contain a provision authorizing the Merged District, beginning in the earlier of the fifth fiscal year of its existence or fiscal year 2018, to present multiyear proposed budgets to the electorate once in every two or three years.

(3) A Merged District that spends less than the budgeted amount prior to fiscal year 2018 shall be entitled to retain the budget surplus to lower its tax rate in fiscal year 2018 or after, or for another purpose approved by the electorate.

(b) Tax rates.

(1) Subject to the provisions of subdivision (3) of this subsection and notwithstanding any other provision of law, for no more than four consecutive years prior to fiscal year 2018:

(A) if the Merged District's approved annual education spending in one fiscal year is less than its education spending in the prior fiscal year, then for purposes of calculating the Merged District's district spending adjustment for the year, the Merged District's education spending per equalized pupil shall be decreased by $875.00;

(B) if the Merged District's approved annual education spending in one fiscal year is equal to its education spending in the prior fiscal year, then for purposes of calculating the Merged District's district spending adjustment for the year, the Merged District's education spending per equalized pupil shall be decreased by $750.00;

(C) if the Merged District's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by one percent or less, then for purposes of calculating the Merged District's district spending adjustment for the year, the Merged District's education spending per equalized pupil shall be decreased by $600.00;

(D) if the Merged District's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by more than one percent but not by more than two percent, then for purposes of calculating the Merged District's district spending adjustment for the year, the Merged District's education spending per equalized pupil shall be decreased by $400.00; and

(E) if the Merged District's approved annual education spending in one fiscal year is greater than its education spending in the prior fiscal year by more than two percent but not by more than four percent, then for purposes of

calculating the Merged District's district spending adjustment for the year, the Merged District's education spending per equalized pupil shall be decreased by $200.00.

(2) For purposes of determining the Merged District's district spending adjustment under this subsection for the first fiscal year of merger, the Merged District's education spending in the first fiscal year of merger shall be compared to the combined education spending of the merging districts from the fiscal year two years prior to the first fiscal year of merger increased by the percentage change in the New England Economic Partnership Cumulative Price Index for state and local government purchases of goods and services between the fiscal year two years prior to the first year of the Merged District's operation and the fiscal year one year prior to the first year of operation, as of November 15 prior to the first year of operation.

(3) During the years in which a Merged District's district spending adjustment is calculated pursuant to this subsection, the equalized property tax rate for each municipality within the Merged District shall not increase or decrease by more than five percent in a single year, nor shall the household income percentage increase or decrease by more than five percent in a single year.

(4) On and after the effective date of merger, the common level of appraisal shall be calculated independently for each town within the Merged District for purposes of determining the homestead property tax rate for each town.

(c) Capital debt service. Beginning in fiscal year 2018, and notwithstanding any other provision of law, the commissioner annually shall reimburse from the education fund the amount of interest paid in the prior year by a Merged District to its lender on borrowing in anticipation of any state school construction aid that was owed to a merging member of the Merged District as of the effective date of this act and has not been paid to the Merged District by the state as of July 1, 2016.

(d) Sale of school buildings. Subject to the provisions of Sec. 3(e) of this act:

(1) if a Merged District closes a school building before the earlier of its fifth fiscal year or fiscal year 2018 and sells the school building, or an energy saving measure as contemplated in 16 V.S.A. § 3448f(g), then neither the Merged District nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16; and

(2) if a participating district retains ownership of and closes a school building as part of the electorate-approved plan for merger and the

participating district sells the school building or energy saving measure associated with the building, then neither the district nor any other entity shall be required to refund a percentage of the sale price to the state pursuant to chapter 123 of Title 16.

(e) Merger support grant. If the merging districts of a Merged District included at least one "eligible school district," as defined in 16 V.S.A. § 4015, that had received a small school support grant under section 4015 in the fiscal year two years prior to the first fiscal year of merger, then the Merged District shall be eligible to receive a merger support grant in each of its first five fiscal years in an amount equal to the small school support grant received by the eligible school district in the fiscal year two years prior to the first fiscal year of merger. If more than one merging district was an eligible school district, then the merger support grant shall be in an amount equal to the total combined small school support grants they received in the fiscal year two years prior to the first fiscal year of merger.

(f) Recent merger. If the Addison Northwest Unified Union School District becomes a body corporate and politic on or before July 1, 2010, then the district shall be entitled to receive any of the benefits set forth in this section that it elects and is otherwise eligible to receive by notifying the commissioner of its election on or before July 1, 2011.

Sec. 5. [Deleted.]

Sec. 6. REPORTS; RECOMMENDATIONS

(a) On or before December 31, 2010, the commissioner of education shall report to the house and senate committees on education regarding the school boards that have voted to consider merger.

(b) On or before March 15, 2011, and in every January thereafter through 2017, the commissioner shall report to the house and senate committees on education regarding the status of merger discussions and votes.

(c) The James M. Jeffords Center of the University of the Vermont, the department of education, and school districts participating in the voluntary merger process authorized by this act shall collaborate to study:

(1) data and comments from school districts and supervisory unions statewide that are discussing voluntary merger;

(2) the results of local district elections to approve voluntary merger under the provisions of this act; and

(3) in connection with Merged Districts that are formed under the provisions of this act:

(A) real dollar efficiencies realized;

(B) operational efficiencies realized;

(C) changes in student learning opportunities; and

(D) changes in student outcomes.

(d) On or before January 15, 2018, the James M. Jeffords Center and the department of education shall present a final report concerning the study required in subsection (c) of this section, including recommendations to the house and senate committees on education regarding what further actions, if any, should be pursued to encourage or require merger by nonparticipating school districts, and shall provide interim reports in each January until that date.

Sec. 7. 16 V.S.A. § 261(e) is added to read:

(e) Notwithstanding subsections (a)–(c) of this section, the state board shall not adjust the boundaries of a supervisory district consisting of one unified union school district unless the municipalities within the district approve the adjustment pursuant to subchapter 4, article 4 of chapter 11 of Title 16 and request the state board to make the adjustment.

Sec. 8. MERGER TEMPLATE

The department of education shall develop a merger template to assist subcommittees formed pursuant to 16 V.S.A. § 706 to consider the advisability of and prepare a proposal for merger. Among other things, the template shall provide data regarding the enrollment and finances of the participating school districts and demographic statistics regarding Vermont municipalities. It shall also outline common issues considered by districts exploring merger and provide links to related resources. The department shall publish the template on its website on or before December 15, 2010.

* * * Distance Learning; Out-of-State Programs * * *

Sec. 9. 16 V.S.A. § 166(b)(6) is amended to read:

(6) This subdivision applies to an independent school located in Vermont ~~which~~ that offers a distance learning program ~~of elementary or secondary education through correspondence, electronic mail, satellite communication, or other means~~ and ~~which~~ that, because of its structure, does not meet some or all the rules of the state board for approved independent schools. In order to be approved under this subdivision, a school shall meet the standards adopted by rule of the state board for approved independent schools ~~which~~ that can be applied to the applicant school and any other standards or rules adopted by the state board regarding these types of schools.

A school approved under this subdivision shall not be eligible to receive tuition payments from public school districts under chapter 21 of this title. ~~However, a school district may enter into a contract or contracts with a school approved under this subdivision for provisions of some education services for its students.~~

Sec. 10. 16 V.S.A. § 563(32) is added to read:

(32) May enter into a contract or contracts with a school offering a distance learning program that is approved by one or more accrediting agencies recognized by the U.S. Department of Education or is approved in Vermont pursuant to subdivision 166(b)(6) of this title.

* * * Duties of Supervisory Unions and Superintendents; Special Education; Class Size; Delayed Effective Dates * * *

Sec. 11. 16 V.S.A. § 261a is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

The board of each supervisory union shall:

(1) ~~set policy to coordinate curriculum plans among the sending and receiving schools in that supervisory union~~ establish a supervisory union-wide curriculum, by either developing the curriculum or assisting the member districts to develop it jointly, and ensure implementation of the curriculum. The curriculum ~~plans~~ shall meet the requirements adopted by the state board under subdivision 165(a)(3)(B) of this title;

(2) ~~take reasonable steps to~~ assist each school in the supervisory union to follow ~~its respective~~ the curriculum ~~plan~~ as adopted under the requirements of the state board pursuant to subdivision 165(a)(3)(B) of this title;

(3) if students residing in the supervisory union receive their education outside the supervisory union, periodically review the compatibility of the supervisory union's curriculum ~~plans~~ with those other schools;

(4) in accordance with criteria established by the state board, establish and implement a plan for receiving and disbursing federal and state funds distributed by the department of education, including funds awarded under P.L. 89-10, the Elementary and Secondary Education Act of 1965 as amended;

(5) provide ~~for the establishment of a written policy on professional development of teachers employed in the supervisory union and periodically review that policy. The policy may provide financial assistance outside the negotiated agreements for teachers' professional development activities and may require the superintendent periodically to develop and offer professional development activities within the supervisory union~~ professional development

programs or arrange for or enable the provision of them, or both, for teachers, administrators, and staff within the supervisory union, which may include programs offered solely to one school or other component of the entire supervisory union to meet the specific needs or interests of that component;

(6) ~~provide or, if agreed upon by unanimous vote at a supervisory union meeting, coordinate provision of the following educational services on behalf of member districts:~~

~~(A) special education;~~

~~(B) except as provided in section 144b of this title, compensatory and remedial services; and~~

~~(C) other services as directed by the state board and local boards~~ provide special education services to member districts and, except as provided in section 144b of this title, compensatory and remedial services; and provide or coordinate the provision of other educational services as directed by the state board or local boards;

(7) employ a person or persons qualified to ~~manage~~ provide financial and student data management services for the supervisory union ~~accounts~~;

(8) at the option of the supervisory union, provide the following services for the benefit of member districts according to joint agreements under section 267 of this title and in a manner that promotes the efficient use of financial and human resources:

(A) ~~centralized purchasing~~ manage a system to procure and distribute goods and operational services;

(B) ~~construction management~~ manage construction projects;

(C) ~~budgeting, accounting and other financial management~~ provide financial and student data management services, including grant writing and fundraising as requested;

(D) ~~teacher negotiations~~ negotiate with teachers and administrators, pursuant to chapter 57 of this title, and with other school personnel, pursuant to chapter 22 of Title 21, at the supervisory union level provided that contracts may vary by district;

(E) ~~transportation~~ provide transportation or arrange for the provision of transportation, or both, if it is offered in any districts within the supervisory union; ~~and~~

(F) provide human resources management support; and

(G) provide other appropriate services;

(9) ~~require that the superintendent as executive officer of the supervisory union board be responsible to the commissioner and state board for reporting on all financial transactions within the supervisory union. On or before August 15 of each year, the superintendent, using a format approved by the commissioner, shall forward to the commissioner a report describing the financial operations of the supervisory union for the preceding school year. The state board may withhold any state funds from distribution to a supervisory union until such returns are made;~~ [Repealed.]

(10) submit to the town auditors of each member school district or to the person authorized to perform the duties of an auditor for the school district, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) A breakdown of that figure showing the amount paid by each school district within the supervisory union;

(B) A summary of the services provided by the supervisory union's use of the expended funds;

(11) on or before June 30 of each year, adopt a budget for the ensuing school year; and

(12) adopt supervisory unionwide truancy policies consistent with the model protocols developed by the commissioner.

(13)–(17) [Repealed.]

Sec. 12. 16 V.S.A. § 242 is amended to read:

§ 242. DUTIES OF SUPERINTENDENTS

The superintendent shall be the chief executive officer for the supervisory union board and for each school board ~~in~~ within the supervisory ~~district~~ union, and shall:

(1) carry out the policies adopted by the school ~~board~~ boards relating to the educational or business affairs of the school district or supervisory union, and develop procedures to do so;

(2) ~~identify~~ prepare, for adoption by a local school board, plans to achieve the educational goals and objectives ~~of~~ established by the school district ~~and prepare plans to achieve those goals and objectives for adoption by the school board~~;

(3) ~~recommend that the school board employ or dismiss persons as necessary to carry out the work of the school district~~ (A) nominate a candidate for employment by the school district or supervisory union if the vacant position requires a licensed employee; provided, if the appropriate board declines to hire a candidate, then the superintendent shall nominate a new candidate;

(B) select nonlicensed employees to be employed by the district or supervisory union; and

(C) dismiss licensed and nonlicensed employees of a school district or the supervisory union as necessary, subject to all procedural and other protections provided by contract, collective bargaining agreement, or provision of state and federal law;

(4)(A) ~~furnish the commissioner~~ provide data and information required by the commissioner; ~~and~~

(B) report all financial operations within the supervisory union to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner;

(C) report all financial operations for each member school district to the commissioner and state board for the preceding school year on or before August 15 of each year, using a format approved by the commissioner; and

(D) prepare for each district an itemized report detailing the portion of the proposed supervisory union budget for which the district would be assessed for the subsequent school year identifying the component costs by category and explaining the method by which the district's share for each cost was calculated; and provide the report to each district at least 14 days before a

budget, including the supervisory union assessment, is voted on by the electorate of the district;

(5) work with the school boards of the member districts to develop and implement policies regarding minimum and optimal average class sizes for regular and technical education classes. The policies may be supervisory union-wide, may be course- or grade-specific, and may reflect differences among school districts due to geography or other factors; and

(6) provide for the general supervision of the public schools in the supervisory union or district.

Sec. 13. 16 V.S.A. § 563(11)(C) is amended to read:

(C) At a school district's annual or special meeting, the electorate may vote to provide notice of availability of the school budget required by this subdivision to the electorate in lieu of distributing the budget. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual meeting. The proposed budget shall be prepared and distributed at least ten days before a sum of money is voted on by the electorate. Any proposed budget shall show the following information in a format prescribed by the commissioner of education:

(i) all revenues from all sources, and expenses, including as separate items any assessment for a supervisory union of which it is a member, and any tuition to be paid to a technical center; and including the report required in subdivision 242(4)(D) of this title itemizing the component costs of the supervisory union assessment;

* * *

Sec. 14. REPEAL

16 V.S.A. § 563(13) (duty of school district board to report financial information to the commissioner) is repealed.

Sec. 15. 16 V.S.A. § 1981(8) and (9) are amended to read:

(8) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within the supervisory union to engage in professional negotiations with a teachers' or administrators' organization.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils,~~

~~each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(9) "Teachers' organization negotiations council" or "administrators' organization negotiations council" means the body comprising representatives designated by each teachers' organization or administrators' organization within a supervisory district or supervisory union to act as its representative for professional negotiations.

~~(A) Teachers' or administrators' organizations within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the teachers' or administrators' organization, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) A teachers' or administrators' organization, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades 9 through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 16. 21 V.S.A. § 1722(18) and (19) are amended to read:

(18) "School board negotiations council" means, for a supervisory district, its school board, and, for school districts within a supervisory union, the body comprising representatives designated by each school board within

the supervisory union to engage in collective bargaining with their school employees' negotiations council.

~~(A) School districts within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives, as appropriate, designated by:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) The school board for a high school within the supervisory union and the board of each elementary school, if any, that sends its students to the high school.~~

~~(B) A school district, however, may form a separate negotiations council if it:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

(19) "School employees' negotiations council" means the body comprising representatives designated by each exclusive bargaining agent within a supervisory district or supervisory union to engage in collective bargaining with its school board negotiations council.

~~(A) Exclusive bargaining agents within a supervisory union that has more than one public high school, however, may form separate negotiations councils, each consisting of representatives designated by the exclusive bargaining agent, as appropriate, of:~~

~~(i) Each school district providing kindergarten through grade 12 within the supervisory union; or~~

~~(ii) A high school within the supervisory union and of each elementary school, if any, that sends its students to the high school.~~

~~(B) An exclusive bargaining agent, however, may form a separate negotiations council if it is within a school district that:~~

~~(i) Maintains a school but does not offer grades nine through 12;~~

~~(ii) Is not a member of a union high school district; and~~

~~(iii) Is in a supervisory union that includes a district providing kindergarten through grade 12.~~

Sec. 17. MINIMUM AND OPTIMAL CLASS SIZE POLICIES

(a) On or before July 1, 2012, the policy required by Sec. 12 of this act, 16 V.S.A. § 242(5), regarding minimum and optimal average class size shall be:

(1) adopted by each supervisory union board and member district board;

(2) posted on the website maintained by the supervisory union; and

(3) forwarded to the commissioner of education.

(b) On or before August 31, 2010, the commissioner of education shall develop two or more model policies regarding minimum and optimal class size and shall post them on the department's website.

Sec. 18. SPECIAL EDUCATORS; TRANSITION

Each supervisory union shall provide for any transition of employment of special education staff by member districts to employment by the supervisory union, pursuant to Sec. 11 of this act, 16 V.S.A. § 261a(6), by:

(1) providing that the supervisory union assumes all obligations of each existing collective bargaining agreement in effect between the member districts and their special education employees until the agreement's expiration, subject to employee compliance with performance standards and any lawful reduction in force, layoff, nonrenewal, or dismissal;

(2) providing, in the absence of an existing recognized representative of its employees, for the immediate and voluntary recognition by the supervisory union of the recognized representatives of the employees of the member districts as the recognized representatives of the employees of the supervisory union;

(3) ensuring that no nonprobationary employee of a member district shall be considered a probationary employee upon transition to the supervisory union; and

(4) containing an agreement with the recognized representatives of the employees of the member districts that is effective on the day the supervisory union assumes obligations of existing agreements regarding how the supervisory union, prior to reaching its first collective bargaining agreement with its special education employees, will address issues of seniority, reduction in force, layoff, and recall.

* * * Small Schools * * *

Sec. 19. RECOMMENDATIONS; SMALL SCHOOLS

On or before January 15, 2011, the commissioner of education shall develop and present to the general assembly a detailed proposal to:

(1) identify annually the school districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 due to geographic necessity, including the criteria that indicate geographic necessity;

(2) calculate and adjust the level of additional financial support necessary for the districts identified in subdivision (1) of this section to provide an education to resident students in compliance with state education quality standards and other state and federal laws; and

(3) withdraw small school support gradually from districts that are "eligible school districts" pursuant to 16 V.S.A. § 4015 as currently enacted but will not be identified as "eligible school districts" pursuant to subdivision (1) of this section.

* * *Statutory Revision; Effective Dates * * *

Sec. 20. LEGISLATIVE COUNCIL; STATUTORY REVISION

(a) Pursuant to the statutory revision authority provided in 2 V.S.A. § 424, the legislative council shall make technical amendments to the Vermont Statutes Annotated that are necessary to effect the intent of this act.

(b) On or before January 1, 2011, the legislative council shall prepare a draft bill and provide it to the house and senate committees on education that proposes statutory changes necessary to effect the intent of this act.

Sec. 21. EFFECTIVE DATES

(a) Secs 11–14 of this act shall take effect on July 1, 2012.

(b) This section and all other sections of this act shall take effect on passage, subject to the provisions of existing contracts.

S. 207

An act relating to handling of milk samples

Rep. Ainsworth of Royalton, for the Committee on Agriculture**,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. MEETING CONCERNING PRELIMINARY INCUBATION COUNTS

(a) The secretary of agriculture, food and markets or the secretary's designee shall convene a meeting of persons with knowledge of Vermont's dairy industry by July 1, 2010 for the purpose of developing consensus findings and recommendations regarding the use of the preliminary incubation (PI) count of raw milk as a quality indicator.

(b) Participants invited shall include organic and conventional dairy producers and handlers, representatives from farm organizations, laboratory researchers, dairy haulers, employees of the agency of agriculture, food and markets, and representatives from Vermont colleges and universities.

(c) Participants shall discuss, at a minimum, proper milk sample handling protocol, buyer and producer responsibilities in addressing PI count problems, and the availability to producers of technical assistance, information, procedures, and access to laboratory results.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

(Committee vote: 11-0-0)

(For text see Senate Journal 3/16 - 3/17/10)

Favorable

S. 247

An act relating to bisphenol A

Rep. Pugh of South Burlington, for the Committee on **Human Services**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 8-3-0)

(For text see Senate Journal 3/30 - 4/6/10)

Senate Proposal of Amendment

H. 229

An act relating to mausoleums and columbaria

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. 18 V.S.A. § 5577 is amended to read:

§ 5577. MAUSOLEUM BECOMING UNTENABLE

If, in the opinion of the ~~state board~~ commissioner of health, a mausoleum, vault, crypt, or structure containing one or more deceased human bodies becomes a ~~menace to~~ public health hazard, and the owner or owners ~~thereof~~ of the structure fail to remedy or remove the ~~same~~ hazard to the satisfaction of the ~~state board~~ commissioner of health, the commissioner or a court of competent jurisdiction may order the ~~person, firm or corporation owning such~~ owner of the structure to abate the public health hazard or to remove the body or bodies for interment in some suitable cemetery at the expense of the ~~person, firm or~~

~~corporation owning such~~ owner of the mausoleum, vault, or crypt. When ~~such person, firm or corporation can not~~ the owner cannot be found ~~in the county where such mausoleum, vault or crypt is located, then such~~ , removal and interment shall be at the expense of the cemetery or cemetery association~~, city or town where such~~ or the municipality in which the mausoleum, vault, or crypt is situated.

Sec. 2. REPEAL

18 V.S.A. §§ 5073, relating to construction requirements for mausoleums, columbaria, crypts, and niches, and 5074, relating to inspection of mausoleums and columbaria, are repealed.

(For text see House Journal 2/12 - 2/16/10)

H. 243

An act relating to the creation of a mentored hunting license

The Senate proposes to the House to amend the bill as follows:

By adding Secs. 5 and 6 to read as follows:

Sec. 5. DEPARTMENT OF FISH AND WILDLIFE REPORT ON MENTORED HUNTING

On or before January 15 annually, the commissioner of fish and wildlife shall report to the senate committee on natural resources and energy and the house committee on fish, wildlife and water resources regarding implementation of the mentored hunting license program under 10 V.S.A. § 4256. The report shall include:

(1) The number of mentored hunting licenses issued in the previous calendar year;

(2) The number of deer or other game taken by a mentored hunter in the previous calendar year, if discernible;

(3) A summary of each hunter safety incident or personal injury related to an individual hunting under a mentored license that occurred in the previous calendar year; and

(4) Any recommendation by the commissioner to improve or address implementation of the mentored hunting program, including whether 10 V.S.A. § 4256 should be amended or repealed.

Sec. 6. EFFECTIVE DATE

This act shall take effect January 1, 2011.

(For text see House Journal 3/17/2010 & 3/18/2010)

H. 622

An act relating to solicitation by prescreened trigger lead information

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. 8 V.S.A. § 10206 is added to read:

§ 10206. TRIGGER LEAD SOLICITATIONS FOR MORTGAGE LOANS

(a) In this section:

(1) "Consumer" means a natural person residing in this state.

(2) "Trigger lead" means information about a consumer, including the consumer's name, address, telephone number, and an identification of the amount, terms, or conditions of credit for which the consumer has applied, that is:

(A) a consumer report obtained pursuant to section 604(c)(1)(B) of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681b, where the issuance of the report is triggered by an inquiry made with a consumer reporting agency in response to an application for a mortgage loan; and

(B) furnished by the consumer-reporting agency to a third party that is not affiliated with the financial institution or the credit-reporting agency. A trigger lead does not include information about a consumer obtained by a lender that holds or services the existing mortgage indebtedness of the consumer who is the subject of the information.

(3) "Trigger lead solicitation" means a written or verbal offer or attempt to sell any property, rights, or services to a consumer based on a trigger lead.

(b) A person conducting a trigger lead solicitation shall disclose to a consumer in the initial phase of the solicitation that:

(1) the person is not affiliated with the financial institution to which the consumer has submitted an application for credit;

(2) the financial institution to which the consumer has submitted an application for credit has not supplied the person with any personal or financial information; and

(3) the name of the person who paid for the trigger lead solicitation.

(c) A financial institution which has had its name, trade name, or trademark misrepresented in a trigger lead solicitation in violation of this section may, in addition to any other remedy provided by law, bring an action in superior court in the county of its primary place of business, or if its primary place of

business is located outside Vermont, in Washington superior court. The court shall award damages for each violation in the amount of actual damages demonstrated by the financial institution or $5,000.00, whichever is greater. In any successful action for injunctive relief or for damages, the court shall award the financial institution reasonable attorney's fees and costs, including court costs.

Sec. 2. EFFECTIVE DATE

This act shall take July 1, 2010.

(For text see House Journal 2/19 - 2/23/10)

H. 767

An act relating to the livestock care standards advisory council

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. 6 V.S.A. chapter 64 is added to read:

CHAPTER 64. LIVESTOCK CARE STANDARDS

ADVISORY COUNCIL

§ 791. DEFINITIONS

As used in this chapter:

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

(2) "Council" means the livestock care standards advisory council.

(3) "Livestock" means cattle, calves, sheep, swine, horses, mules, goats, fallow deer, American bison, poultry, and any other animal that can or may be used in and for the preparation of meat, fiber, or poultry products.

(4) "Secretary" means the secretary of agriculture, food and markets.

§ 792. ESTABLISHMENT OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

(a) There is established a livestock care standards advisory council for the purposes of evaluating the laws of the state and of providing policy recommendations regarding the care, handling, and well-being of livestock in the state. The livestock care standards advisory council shall be composed of the following members, all of whom shall be residents of Vermont:

(1) The secretary of agriculture, food and markets or his or her designee, who shall serve as the chair of the council.

(2) The state veterinarian.

(3) The following four members appointed by the governor:

(A) A person with knowledge of food safety and food safety regulation in the state who is a representative of an agricultural department of a Vermont college or university.

(B) A representative of the Vermont slaughter industry.

(C) A representative of the Vermont livestock dealer, hauler, or auction industry.

(D) A representative of a local humane society or organization registered with the agency and organized under state law.

(4) The following two members appointed by the committee on committees:

(A) A Vermont resident with experience or expertise in equine husbandry practices or equine management.

(B) A Vermont licensed livestock or poultry veterinarian.

(5) The following two members appointed by the speaker of the house:

(A) An enforcement officer, as defined in 23 V.S.A. § 4, or an animal control officer elected, appointed, or employed by a municipality, provided that the enforcement officer or animal control officer has experience or expertise in investigations regarding livestock care and well-being and provided that no animal control officer receiving compensation from a national humane society or organization may be appointed under this subdivision.

(B) An operator of a Vermont dairy farm.

(b) Members of the board shall be appointed for staggered terms of three years. Except for the chair and the state veterinarian, no member of the council may serve for more than six consecutive years.

(c) With the concurrence of the chair, the council may use the services and staff of the agency in the performance of its duties.

§ 793. POWERS AND DUTIES OF LIVESTOCK CARE STANDARDS ADVISORY COUNCIL

(a) The council shall:

(1) Review and evaluate the laws and rules of the state applicable to the care and handling of livestock. In conducting the evaluation required by this section, the council shall consider the following:

(A) agricultural best management practices;

(B) biosecurity and disease prevention;

(C) animal morbidity and mortality data;

(D) food safety practices;

(E) the protection of local and affordable food supplies for consumers;

(F) the overall health and welfare of livestock species; and

(G) humane transport and slaughter practices.

(2) Submit policy recommendations to the secretary on any of the subject matter set forth under subdivision (1) of this subsection. A copy of the policy recommendations submitted to the secretary shall be provided to the house and senate committees on agriculture. Recommendations may be in the form of proposed legislation.

(3) Meet at least annually and at such other times as the chair determines to be necessary.

(b) The council may engage in education and outreach activities related to the laws and regulations for the care and handling of livestock. The council may accept funds from public or private sources in compliance with 32 V.S.A. § 5.

Sec. 1a. TRAINING OF SLAUGHTERHOUSE EMPLOYEES; APPROPRIATIONS

In addition to any other funds appropriated to the agency of agriculture, food and markets in fiscal year 2011, there is transferred to the agency of agriculture, food and markets up to $50,000.00 from the funds appropriated to the agency of commerce and community development's Vermont training program for use by the agency of agriculture, food and markets for training employees of Vermont-licensed slaughterhouses regarding the humane treatment of animals that is required under state and federal law.

Sec. 2. 6 V.S.A. § 3134 is amended to read:

§ 3134. PENALTY

(a) A person who violates this chapter shall be fined not more than ~~$100.00 nor less than $50.00~~ $5,000.00 for the first violation, not more than $10,000.00 for the second violation, and not more than $25,000.00 for the third violation, or imprisoned not more than ~~90 days~~ two years, or both. In addition to the penalty provided above, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 of this title, by application to the superior court for

the county in which such slaughterer, packer or stockyard operator resides, or where such violations occur. The secretary may also take any action authorized under chapter 1 of this title.

(b) The secretary shall permanently revoke the commercial operating license of any person who is found to be in violation of this chapter more than two times, and the secretary shall not relicense any business which includes as any director or owner of the business any director or owner of a business whose license has been permanently revoked.

(c) In addition to the penalties set forth in subsection (a) of this section, the secretary shall require a person who violates this chapter to install video monitoring equipment in all areas in which livestock is handled. The video equipment shall record continuously while live livestock are handled. As an alternative to video monitoring, a live video stream accessible by the secretary may be provided with prior approval of the secretary. The video tapes or recording files of the video monitoring required by this subsection shall be retained by the facility for 90 days and shall be readily retrievable and available for inspection by the secretary. After the retention period of 90 days has expired, the video tapes or recording files of the live video stream shall be submitted to the secretary by the 15th of the following month, on a monthly basis.

(d) The secretary shall refer a violation of this chapter to the attorney general or the state's attorney for prosecution.

Sec. 3. SUNSET

Sec. 1 of this act shall sunset on January 15, 2013, by which date any final recommendations to the general assembly and the secretary of agriculture, food and markets shall be submitted by the advisory council.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

(For text see House Journal 2/26/2010)

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

Favorable with Amendment

S. 64

An act relating to growth center designations and appeals of such designations

Rep. Jerman of Essex, for the Committee on Natural Resources and Energy**,** recommends that the House propose to the Senate that the bill be amended as follows:

By striking Secs. 2 (creation of growth center board), 3 (changes to growth center designation process), 4 (enterprise zone study committee), and 5 (effective dates; transition; application) in their entirety and inserting in lieu thereof new Secs. 2, 3, 4, 5, and 6 to read as follows:

Sec. 2. 24 V.S.A. § 2792 is amended to read:

§ 2792. VERMONT DOWNTOWN DEVELOPMENT BOARD

(a) A "Vermont downtown development board," also referred to as the "state board," is created to administer the provisions of this chapter. The state board shall be composed of the following members~~,~~ or their designees:

(1) ~~The~~ the secretary of commerce and community development;

(2) ~~The~~ the secretary of transportation;

(3) ~~The~~ the secretary of natural resources;

(4) the commissioner of public safety;

(5) the state historic preservation officer;

(6) a person appointed by the governor from a list of three names submitted by the Vermont Natural Resources Council, the Preservation Trust of Vermont, and Smart Growth Vermont;

(7) a person appointed by the governor from a list of three names submitted by the Association of Chamber Executives; ~~and~~

(8) three public members representative of local government, one of whom shall be designated by the Vermont ~~league of cities and towns~~ League of Cities and Towns, and two shall be appointed by the governor;

(9) a member of the Vermont planners association (VPA) designated by the association;

(10) the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and

(11) a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one of which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.

(b) In addition to the permanent members appointed pursuant to subsection (a) of this section, there shall also be two regional members from each region of the state on the downtown development board; one shall be designated by the regional development corporation of the region and one shall be designated by the regional planning commission of the region. Regional members shall be nonvoting members and shall serve during consideration by the board of applications from their respective regions. Regional members designated to serve on the downtown development board under this section, may also serve as regional members of the Vermont economic progress council established under 32 V.S.A. § 5930a.

(c) The state board shall elect its chair from among its membership.

(d) The department of economic, housing, and community ~~affairs~~ development shall provide staff and administrative support to the state board.

(e) On or before January 1, 1999, the state board shall report to the general assembly on the progress of the downtown development program.

(f) ~~In situations in which the state board is considering applications for designation as a growth center, in addition to the permanent members of the state board, membership shall include as a full voting member a member of the Vermont planners association (VPA) designated by the association; the chair of the natural resources board or a representative of the land use panel of the natural resources board designated by the chair; and a representative of a regional planning commission designated by the Vermont association of regional planning and development agencies (VAPDA) and an alternate representative designated by VAPDA to enable all applications to be considered by a representative from a regional planning commission other than the one to which the applicant municipality is a member. The alternate designated by VAPDA may vote only when the designated representative does not vote.~~

Sec. 3. 24 V.S.A. § 2793c is amended to read:

§ 2793c. DESIGNATION OF GROWTH CENTERS

* * *

(b) Growth center designation application assistance.

(1) ~~By October 1, 2006, the chair of the land use panel of the natural resources board and the commissioner of housing and community affairs jointly shall constitute a planning coordination group which shall develop a coordinated process to:~~ A subcommittee of the state board, to be known as the growth center subcommittee, shall develop and maintain a coordinated preapplication review process in accordance with this subdivision (1). The members of the growth center subcommittee shall be the members of the state board described under subdivisions 2792(1), (6), (7), (9), and (10) of this title and the member designated by the Vermont League of Cities and Towns under subdivision 2792(8) of this title. The growth center subcommittee shall elect a chair from among its members. In carrying out its duties, the growth center subcommittee shall have the support of the staff of the department of economic, housing, and community development and of the natural resources board.

(A) The purpose of the growth center subcommittee is to:

(i) ensure consistency between regions and municipalities regarding growth centers designation and related planning;

~~(B)~~(ii) provide municipalities with a preapplication review process ~~within the planning coordination group~~ early in the local planning process;

~~(C)~~(iii) ~~coordinate~~ encourage coordination of state agency review on matters of agency interest; and

~~(D)~~(iv) provide the state board with ongoing, coordinated ~~staff~~ support and expertise in land use, community planning, and natural resources protection.

(B) Under the preapplication review process, a municipality shall submit a preliminary application to the growth center subcommittee, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates it will enact prior to submission of an application under subsection (d) of this section in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. This preapplication review process shall be required prior to filing of an application under subsection (d) of this section. The growth center subcommittee shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center's boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth center's boundary, revisions to

planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.

(2) ~~This program shall include the following:~~

~~(A) The preparation of~~ After consultation with the growth center subcommittee and the land use panel of the natural resources board, the commissioner of economic, housing and community development or designee shall prepare a "municipal growth centers planning manual and implementation checklist" to assist municipalities and regional planning commissions to plan for growth center designation. The implementation manual shall identify state resources available to assist municipalities and shall include a checklist indicating the issues that should be addressed by the municipality in planning for growth center designation. The manual shall address other relevant topics in appropriate detail, such as: methodologies for conducting growth projections and build-out analyses; defining appropriate boundaries that are not unduly expansive; enacting plan policies and implementation bylaws that accommodate reasonable densities, compact settlement patterns, and an appropriate mix of uses within growth centers; planning for infrastructure, transportation facilities, and open space; avoiding or mitigating impacts to important natural resources and historic resources; and strategies for maintaining the rural character and working landscape outside growth center boundaries.

~~(B) A preapplication review process that allows municipalities to submit a preliminary application to the planning coordination group, consisting of a draft growth center map and a brief explanation of planning and implementation policies that the municipality anticipates enacting in order to guide development inside the growth center and maintain the rural character of the surrounding area, to the extent that it exists. Department and land use panel staff shall solicit comments from state agencies regarding areas of respective agency interest; evaluate the preliminary application for conformance with the requirements of this section; identify potential issues related to the growth center boundary and implementation tools; and provide recommendations for addressing those issues through adjustment to the growth centers boundary, revisions to planned implementation tools, or consideration of alternative implementation tools. Preliminary review shall be available to municipalities while they are engaged in the municipal planning process so that recommendations may be considered prior to the adoption of the municipal plan and associated implementation measures.~~

~~(C) Ongoing~~ (3) In consultation with the growth center subcommittee, the commissioner of economic, housing and community development or designee shall provide ongoing assistance to the state board to review applications for growth center designation, including coordinating review by state agencies on matters of agency interest and evaluating applications and associated plan policies and implementation measures for conformance with the definition under subdivision 2791(12) of this title and any designation requirements established under subsection (e) of this section.

~~(D)~~(4) The Vermont municipal planning grant program shall make funding for activities associated with growth centers planning a priority funding activity, and the Vermont community development program shall make funding for activities associated with growth centers planning a priority funding activity under the planning grant program.

* * *

(d) Application and designation requirements. Any application for designation as a growth center shall be to the state board and shall include a specific demonstration that the proposed growth center meets each provision of subdivisions (e)(1)(A) through (J) of this section. In addition to those provisions, each of the following shall apply:

(1) ~~a demonstration that the growth center proposal meets the definition of a growth center established in subdivision 2791(12) of this title;~~ In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the application shall contain an explanation of the unique circumstances that prevent the growth center from possessing that characteristic and why, in the absence of that characteristic, the proposed growth center will comply with the purposes of this chapter and all other requirements of this section.

(2) Any demonstration that an application complies with subdivision (e)(1)(C) of this section shall include an analysis, with respect to each existing designated downtown or village or new town center located within the applicant municipality, of current vacancy rates, opportunities to develop or redevelop existing undeveloped or underdeveloped properties and whether such opportunities are economically viable, and opportunities to revise zoning or other applicable bylaws in a manner that would permit future development that is at a higher density than existing development.

~~(2) a~~ (3) A map and a conceptual plan for the growth center~~;~~.

~~(3) identification of important natural resources and historic resources within the proposed growth center, the anticipated impacts on those resources, and any proposed mitigation;~~

~~(4) when the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, the applicant shall demonstrate that the approved municipal plan and the regional plan both have been updated during any five year plan readoption that has taken place since the date the secretary of agriculture, food and markets developed those guidelines, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible;~~

~~(5) a demonstration:~~

~~(A) that the applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;~~

~~(B) that the approved plan contains provisions that are appropriate to implement the designated growth center proposal;~~

~~(C) that the applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain to the designated growth center;~~

~~(D) that the approved plan and the implementing bylaws further the goal of retaining a more rural character in the area surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center;~~

~~(6) a capital budget and program adopted in accordance with section 4426 of this title, together with a demonstration that existing and planned infrastructure is adequate to implement the growth center;~~

~~(7) a~~ (4) A build-out analysis and needs study that demonstrates that the growth center~~:~~

~~(A) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title; and~~

~~(B) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development, or result in a scattered or low-density pattern of development at the conclusion of the 20 year planning period;~~

~~(8) a demonstration:~~

~~(A) that the growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated~~

~~residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that is consistent with the anticipated demand for those uses within the municipality and region;~~

~~(B) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality~~ meets the provisions of subdivision (e)(1)(J) of this section.

(5) An explanation of all measures the applicant has undertaken to encourage a majority of growth in the municipality to take place within areas designated under this chapter. In the case of a growth center that is associated with a designated downtown or village center, the applicant shall also explain the manner in which the applicant's bylaws and policies will encourage growth to take place first in its designated downtown or village center and second in its proposed growth center.

(e) Designation decision.

(1) Within 90 days of the receipt of a completed application, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard, the state board formally shall designate a growth center if the state board finds, in a written decision, that the growth center proposal meets each of the following:

(A) ~~that the~~ The growth center ~~proposal~~ meets the definition of a growth center established in subdivision 2791(12) of this title~~;~~, including planned land uses, densities, settlement patterns, infrastructure, and transportation within the center and transportation relationships to areas outside the center. In the event that a proposed growth center lacks one or a portion of one of the characteristics listed in subdivision 2791(12)(B) of this title, the state board shall not approve the growth center proposal unless it finds that the absence of that characteristic will not prevent the proposed growth center from complying with the purposes of this chapter and all other requirements of this section. This subdivision (A) does not confer authority to approve a growth center that lacks more than one characteristic listed in subdivision 2791(12)(B) of this title.

(B) The growth center will support and reinforce any existing designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses that are consistent with the anticipated demand for those uses within the municipality and region.

(C) The growth that is proposed to occur in the growth center cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.

(D) In the case of a growth center that is associated with a designated new town center, the applicable municipal bylaws provide that areas within the growth center that will be zoned predominantly for retail and office development will be located within the new town center.

(E) In the case of a growth center that is associated with a designated downtown or village center:

(i) the applicant has taken all reasonable measures to ensure that growth is encouraged to take place first in the designated downtown or village center and second in the proposed growth center; and

(ii) the applicable municipal bylaws provide that, with respect to those areas within the growth center that will be located outside the designated downtown or village center and will be zoned predominantly for retail and office development:

(I) such areas will serve as a logical expansion of the designated downtown or village center through such means as sharing of infrastructure and facilities and shared pedestrian accessibility; and

(II) such areas will be subject to enacted land use and development standards that will establish a development pattern that is compact, oriented to pedestrians, and consistent with smart growth principles.

~~(B) that the~~ (F) The applicant has identified important natural resources and historic resources within the proposed growth center and the anticipated impacts on those resources, and has proposed mitigation~~;~~.

~~(C) that the~~ (G) The approved municipal plan and the regional plan both have been updated during any five-year plan readoption that has taken place since the date the secretary of agriculture, food and markets has developed guidelines in compliance with 6 V.S.A. § 8, have been used to identify areas proposed for agriculture, and have been designed so as to avoid the conversion of primary agricultural soils, wherever possible~~;~~.

~~(D)~~(H)(i) ~~that the~~ The applicant has a regionally confirmed planning process and an approved municipal plan, pursuant to section 4350 of this title;

(ii) ~~that the~~ The approved plan contains provisions that are appropriate to implement the designated growth center proposal;

(iii) ~~that the~~ The applicant has adopted bylaws in conformance with the municipal plan that implement the provisions in the plan that pertain

to the designated growth center~~;~~, including:

(I) bylaw provisions that ensure that land development and use in the growth center will comply with smart growth principles; and

(II) with respect to residential development in the growth center, bylaw provisions that allow a residential development density that is:

(aa) at least four dwelling units per acre; and

(bb) a higher development density if necessary to conform with the historic densities and settlement patterns in residential neighborhoods located in close proximity to a designated downtown or village center which the growth center is within or to which the growth center is adjacent under subdivision 2791(12)(A)(i) or (ii) of this title; and

(iv) ~~that the~~ The approved plan and the implementing bylaws further the goal of retaining a more rural character in the areas surrounding the growth center, to the extent that a more rural character exists, and provide reasonable protection for important natural resources and historic resources located outside the proposed growth center~~;~~.

~~(E) that the~~ (I) The applicant has adopted a capital budget and program in accordance with section 4426 of this title, and that existing and planned infrastructure is adequate to implement the growth center~~;~~.

~~(F) that the~~ (J) The growth center:

(i) is of an appropriate size sufficient to accommodate a majority of the projected population and development over a 20-year planning period in a manner that is consistent with the definition under subdivision 2791(12) of this title~~, and that the growth center~~;

(ii) does not encompass an excessive area of land that would involve the unnecessary extension of infrastructure to service low-density development or result in a scattered or low-density pattern of development at the conclusion of the 20-year planning period; and

(iii) using a 20-year planning period commencing with the year of the application, is sized to accommodate each of the following:

(I) an amount of residential development that is no more than 150 percent of the projected residential growth in the municipality; and

(II) an amount of commercial or industrial development, or both, that does not exceed 100 percent of the projected commercial and industrial growth in the municipality.

~~(G)(i) that the growth center will support and reinforce any existing~~

~~designated downtown, village center, or new town center located in the municipality or adjacent municipality by accommodating concentrated residential neighborhoods and a mix and scale of commercial, civic, and industrial uses consistent with the anticipated demand for those uses within the municipality and region;~~

~~(ii) that the proposed growth center growth cannot reasonably be achieved within an existing designated downtown, village center, or new town center located within the applicant municipality.~~

* * *

(3) Within 21 days of a growth center designation under subdivision (1) of this subsection, a person or entity that submitted written or oral comments to the state board during its consideration of the application for the designated growth center may request that the state board reconsider the designation. Any such request for reconsideration shall identify each specific finding of the state board for which reconsideration is requested and state the reasons why each such finding should be reconsidered. The filing of such a request shall stay the effectiveness of the designation until the state board renders its decision on the request. On receipt of such a request, the state board shall promptly notify the applicant municipality of the request if that municipality is not the requestor. The state board shall convene at the earliest feasible date to consider the request and shall render its decision on the request within 90 days of the date on which the request was filed.

(4) Except as otherwise provided in this section, growth center designation shall extend for a period of 20 years. The state board shall review a growth center designation no less frequently than every five years, after providing notice as required in the case of a proposed municipal plan or amendment under subsection 4384(e) of this title, and after providing an opportunity for the public to be heard. For each applicant, the state board may adjust the schedule of review under this subsection so as to coincide with the review of the related and underlying designation of a downtown, village center, or new town center. If, at the time of the review, the state board determines that the growth center no longer meets the standards for designation ~~established in this section~~ in effect at the time the growth center initially was designated, it may take any of the following actions:

* * *

~~(4)~~(5) At any time a municipality shall be able to apply to the state board for amendment of a designated growth center or any related conditions or other matters, according to the procedures that apply in the case of an original application.

* * *

Sec. 4. 24 V.S.A. § 2793d is amended to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) A municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center, or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources, is authorized to apply for designation of a Vermont neighborhood. A municipal decision to apply for designation shall be made by the municipal legislative body after at least one duly warned public hearing. Designation is possible in two different situations:

* * *

(2) Designation by ~~expanded~~ downtown board in towns without growth centers. If an application is submitted in compliance with this subsection by a municipality that does not have a designated growth center and proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the ~~expanded~~ downtown board shall consider the application. This application may be for approval of one or more Vermont neighborhoods that are outside but contiguous to a designated downtown district, village center, or new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and verification that the municipality has notified the regional planning commission and the regional development corporation of its application for this designation.

(b) Designation Process. Within 45 days of receipt of a completed application, the ~~expanded~~ downtown board, after opportunity for public comment, shall designate a Vermont neighborhood if the board determines the applicant has met the requirements of subsections (a) and (c) of this section. When designating a Vermont neighborhood, the board may change the boundaries that were contained in the application by reducing the size of the area proposed to be included in the designated neighborhood, but may not include in the designation land that was not included in the application for designation. A Vermont neighborhood decision made by the ~~expanded~~ board is not subject to appeal. Any Vermont neighborhood designation shall

terminate when the underlying downtown, village center, new town center, or growth center designation terminates.

* * *

(e) Length of Designation. Initial designation of a Vermont neighborhood shall be for a period of five years, after which, the ~~expanded~~ state board shall review a Vermont neighborhood concurrently with the next periodic review conducted of the underlying designated downtown, village center, new town center or growth center, even if the underlying designated entity was originally designated by the downtown board and not by the ~~expanded~~ state board. However, the ~~expanded~~ board, on its motion, may review compliance with the designation requirements at more frequent intervals. If at any time the ~~expanded~~ state board determines that the designated Vermont neighborhood no longer meets the standards for designation established in this section, it may take any of the following actions:

* * *

Sec. 5. PAYMENT FOR UTILITY BURIAL; DESIGNATED AREAS; WORKSHOP; REPORT

(a) On or before November 1, 2010, the public service board shall conduct a workshop and, following the workshop and no later December 15, 2010, the department of public service shall submit a report containing recommendations on the question of paying for the burial of utility facilities and apparatus that are located in a designated downtown development district, designated village center, designated new town center development district, designated growth center, or designated Vermont neighborhood under chapter 76A of Title 24. The workshop and report shall address, evaluate, and include recommendations on at least each of the following possibilities for payment for the burial of such facilities and apparatus:

(1) Payment by the utility.

(2) Payment by the customers of the utility located within the boundary of the municipality containing the designated area, through a surcharge on rates.

(3) Payment by the customers of the utility located within the boundary of the designated area, through a surcharge on rates.

(4) Shared payment by the utility and the municipality.

(5) Payment by the municipality.

(6) Other sources of and arrangements for payment.

(b) The department shall apply 24 V.S.A. § 2790 (historic downtown development; legislative policy and purpose) and 30 V.S.A. § 202a (state energy policy) in performing the evaluations and making the recommendations contained in the report.

(c) The board shall give at least 12 days' prior notice of the workshop to the Vermont downtown development board under 24 V.S.A. § 2792; the agencies of commerce and community development, of natural resources, and of transportation; the department of public service; the natural resources board; the state historic preservation officer; the Vermont Natural Resources Council; the Preservation Trust of Vermont; Smart Growth Vermont; the Association of Chamber Executives; the Vermont League of Cities and Towns; the Vermont Planners Association; the Vermont Association of Regional Planning and Development Agencies; the utilities that provide electric transmission or distribution, cable television, or local telephone exchange service in Vermont; and such other entities as have requested prior notice or whom the board determines should receive notice. A representative of the department of public service shall attend and participate in the workshop.

(d) The report shall be submitted to the house and senate committees on natural resource and energy.

(e) For the purpose of this section, "utility" means a person or entity producing, transmitting, or distributing communications, cable television, electricity, or other similar commodity that directly or indirectly serves the public.

Sec. 6. EFFECTIVE DATES; DESIGNATIONS; APPLICATION

(a) This section and Sec. 5 of this act shall take effect on passage.

(b) No later than July 1, 2010, the Vermont planners association and the Vermont association of regional planning and development shall designate the members of the Vermont downtown development board described in Sec. 2 of this act, 24 V.S.A. § 2792(a)(9) and (11), that those provisions authorize them respectively to designate.

(c) Secs. 1 through 4 of this act shall take effect on July 1, 2010, and shall apply to applications for designation under 24 V.S.A § 2793c that are filed and to reviews of designations under 24 V.S.A § 2793c(e)(4) that are commenced on or after July 1, 2010.

And that when so amended the bill ought to pass.

(Committee vote: 11-0-0)

(For text see Senate Journal 3/17 - 3/19/10)

Senate Proposal of Amendment

H. 281

An act relating to the removal of bodily remains

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. 18 V.S.A. § 5212b is amended to read:

§ 5212b. UNMARKED BURIAL SITES SPECIAL FUND; REPORTING OF UNMARKED BURIAL SITES

(a) The unmarked burial sites special fund is established in the state treasury for the purpose of protecting, preserving, moving or reinterring human remains discovered in unmarked burial sites.

(b) The fund shall be comprised of any monies appropriated to the fund by the general assembly or received from any other source, private or public. Interest earned on the fund, and any balance remaining in the fund at the end of a fiscal year, shall be retained in the fund. This fund shall be maintained by the state treasurer, and shall be managed in accordance with subchapter 5 of chapter 7 of Title 32.

(c) The commissioner of economic, housing and community ~~affairs~~ development may authorize disbursements from the fund for use in any municipality in which human remains are discovered in unmarked burial sites in accordance with a process approved by the commissioner. The commissioner ~~shall~~ may approve any process developed through consensus or agreement of the interested parties, including the municipality, ~~the governor's advisory commission on Native American affairs~~ a Native American group historically based in Vermont with a connection to the remains, ~~and private property~~ owners of private property on which there are known or likely to be unmarked burial sites, and any other appropriate interested parties, provided the commissioner determines that the process is likely to be effective, and includes all the following:

(1) Methods for determining the presence of unmarked burial sites, including archaeological surveys and assessments and other nonintrusive techniques.

(2) Methods for handling development and excavation on property on which it is known that there is or is likely to be one or more unmarked burial sites.

(3) Options for owners of property on which human remains in unmarked burial sites are discovered or determined to be located.

(4) Procedures for protecting, preserving or moving unmarked burial sites and human remains, subject, where applicable, to the permit requirement and penalties of this chapter.

(5) Procedures for resolving disputes.

(d) If unmarked burial sites and human remains are removed, consistent with the process set forth in this section and any permit required by this chapter, there shall be no criminal liability under 13 V.S.A. § 3761.

(e) The funds shall be used for the following purposes relating to unmarked burial sites:

(1) To monitor excavations.

(2) To protect, preserve, move, or reinter unmarked burial sites and human remains.

(3) To perform archaeological assessments and archaeological site or field investigations, including radar scanning and any other nonintrusive technology or technique designed to determine the presence of human remains.

(4) To provide mediation and other appropriate dispute resolution services.

(5) To acquire property or development rights, provided the commissioner of economic, housing and community ~~affairs~~ development determines that disbursements for this purpose will not unduly burden the fund, and further provided the commissioner shall expend funds for this purpose only with the concurrence of the secretary of commerce and community development and after consultation with the legislative bodies of any affected municipality or municipalities.

(6) Any other appropriate purpose determined by the commissioner to be consistent with the purposes of this fund.

(f) ~~The commissioner may adopt rules to carry out the intent and purpose of this section.~~ When an unmarked burial site is first discovered, the discovery shall be reported immediately to a law enforcement agency. If, after completion of an investigation pursuant to section 5205 of this title, a law enforcement agency determines that the burial site does not constitute evidence of a crime, the law enforcement agency shall immediately notify the state archeologist who may authorize appropriate action regarding the unmarked burial site.

Sec. 2. UNMARKED BURIAL SITE TREATMENT PLAN COMMITTEE

(a) The unmarked burial site treatment plan committee is created to develop procedures for addressing issues relating to known or discovered unmarked

burial sites of human remains, including developing treatment plans to be used when an unmarked burial site is discovered on private property. The committee shall be composed of the following nine members:

(1) The commissioner of economic, housing and community development or the commissioner's designee.

(2) The state archeologist or designee.

(3) A representative from the Vermont League of Cities and Towns.

(4) A representative from a Native American group based in Vermont who has experience in handling unmarked burial sites, appointed by the commissioner of economic, housing and community development.

(5) A federal archeologist from the Natural Resources Conservation Service of the U.S. Department of Agriculture.

(6) The U.S. Forest Service, Green Mountain National Forest archeologist.

(7) The director of the University of Vermont consulting archeology program.

(8) A representative from the Vermont Bankers Association Inc.

(9) A representative from the Home Builders and Remodelers Association of Vermont.

(b) The committee shall:

(1) Develop procedures for responding to reports of a discovery of an unmarked burial site. For the purposes of this section "an unmarked burial site" means the location of any interment of human remains, evidence of human remains, including the presence of red ochre, associated funerary objects, or a documented concentration of burial sites, but does not include a cemetery, mausoleum, or columbarium or any other site that is clearly marked as a site containing human remains.

(2) Develop various treatment plans for addressing issues that attend the discovery of an unmarked burial site on private property. A treatment plan is an outline of the process for providing appropriate and respectful treatment of the burial site while considering the rights of the landowner. Each treatment plan shall include one or all of the following:

(A) Methods for determining the presence of an unmarked burial site, including archeological surveys and assessments and other nonintrusive techniques.

(B) Methods for handling development and excavation on property

on which there is a known burial site or there is likely to be one.

(C) Options for owners of property on which human remains are discovered or known to be located.

(D) Procedures for protecting, preserving, or moving the burial site and the human remains.

(E) Time frames for implementation of the treatment plan.

(F) Procedures for resolving disputes among stakeholders.

(3) The committee shall issue a written report outlining the procedures and treatment plans to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs on or before January 15, 2011.

Sec. 3. 18 V.S.A. § 5212 is amended to read:

§ 5212. PERMIT TO REMOVE DEAD BODIES

(a) A person desirous of disinterring or removing the body of a human being from one cemetery to another cemetery or to another part of the same cemetery or from a tomb or receiving vault elsewhere shall apply to the ~~town~~ clerk of the ~~town where such~~ municipality in which the dead body is interred or entombed for a removal permit.

(b) An applicant for a removal permit shall publish notice of his or her intent to remove the remains. This notice shall be published for two successive weeks in a newspaper of general circulation in the ~~town~~ municipality in which the body is interred or entombed. The notice shall include a statement that the spouse, child, parent ~~or~~, sibling, or descendant of the deceased, or that the cemetery commissioner or other municipal authority responsible for cemeteries in the municipality may object to the proposed removal by filing a complaint in the probate court of the district in which the body is located as provided in section 5212a of this title.

(c) The ~~town~~ municipal clerk shall issue a removal permit 45 days after the date on which notice was last published pursuant to subsection (b) of this section or, if an objection is made pursuant to section 5212a, upon order of the court.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, a removal permit shall be issued upon application:

(1) when removal is necessary because of temporary entombment; or

(2) to a federal, state, county, or municipal official acting pursuant to official duties; or

(3) if the applicant has written permission to remove the remains from all persons entitled to object under section 5212a of this title.

(e) This section does not apply to:

(1) Unmarked burial sites that are subject to the provisions of subchapter 7 of this chapter.

(2) The removal of "historic remains," which has the same meaning as in subdivision 5217(a)(1) of this title.

Sec. 4. 18 V.S.A. § 5217 is added to read:

§ 5217. REMOVAL OF MARKED HISTORIC REMAINS

(a) As used in this section:

(1) "Historic remains" means remains of a human being who has been deceased for 100 years or more, and the remains are marked and located in a publicly known or marked burial ground or cemetery.

(2) "Public good" means actions that will benefit the municipality and the property where the remains are located.

(3) "Remains" means cremated human remains that are in a container or the bodily remains of a human being.

(4) "Removal" means to transport human remains from one location to another premises.

(b) A person may apply for a removal permit to disinter or remove historic remains by filing an application with the clerk for the municipality in which the historic remains are located. The application shall include all the following:

(1) Identification of the specific location and marking of the remains.

(2) Identification of the specific location in which the remains will be reburied.

(3) The reasons for removal of the remains, including a statement of the public good that will result from the removal.

(c) An applicant for a removal permit shall send notice by first-class mail to all the following:

(1) The cemetery commissioner or other municipal authority responsible for cemeteries in the municipality in which the historic remains are located.

(2) All historical societies located within the municipality in which the historic remains are located.

(3) Any decedent known to the applicant. The applicant shall contact the Vermont Historical Society, the Vermont Old Cemetery Association, the Vermont Cemetery Association, and any veterans' organization operating within the county in which the historic remains are located in order to ascertain the whereabouts of any known descendants.

(d) An objection to the proposed removal of historic remains may be filed by one of the individuals listed in subsection (c) of this section. The objection shall be filed with the probate court for the district in which the historic remains are located and the clerk for the municipality in which the historic remains are located within 30 days after the date the notice was mailed.

(e) If no objection is received within 30 days after the date the notice was last published as required by subsection (c) of this section, the municipal clerk shall issue a removal permit.

(f) If the probate court receives an objection within the 30-day period, the court shall notify the clerk for the municipality in which the historic remains are located and schedule a hearing on whether to allow removal as described in the application.

(g) The probate court, after hearing, shall order the municipal clerk to grant or deny a permit for removal of the historic remains. The court shall consider the impact of the removal on the public good.

(h) The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed . All costs associated with the removal shall be paid by the applicant.

Sec. 5. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

(a)(1) When a person dies in this state, or a resident of this state dies within the state or elsewhere, and the decedent was a recipient of assistance under Title IV or XVI of the Social Security Act, or nursing home care under Title XIX of the Social Security Act, or assistance under state aid to the aged, blind or disabled, or an honorably discharged veteran of any branch of the U.S. military forces to the extent funds are available and to the extent authorized by department ~~regulations~~ rules, the decedent's burial shall be arranged and paid for by the department if the decedent was without sufficient known assets to pay for burial. The department shall pay burial expenses ~~when arrangements are made other than by the department to the maximum permitted by its regulations~~ for individuals who meet the requirements of this section in an amount not to exceed a maximum established by rule and shall establish by rule a process for reducing the maximum payment amount by the

amount of other assets available to pay for the burial. ~~In any case where other contributions are made, these payments shall be deducted from the amount otherwise paid by the department but in no case is the department responsible for any payment when the person arranging the burial selects a funeral the price of which exceeds the department's maximum.~~ The maximum payment by the department does not preclude the next-of-kin's paying for or receiving contributions to pay for additional disposition expenses.

(2) The department shall notify the directors of all funeral homes within the state and within close proximity to the state's borders of its ~~regulations~~ rules with respect to those services for which it ~~shall make payment~~ pays and the amount of payment authorized for ~~such~~ those services. All payments shall be made directly to the appropriate funeral director. In order to receive payment under this section, the funeral director shall provide the department and the party making the funeral arrangements with an itemized invoice for the specific services that are to be provided at public expense.

(3) As a condition of payment when arrangements are made other than by the department, ~~funeral directors shall be required to do the following:~~

~~(A)~~ the funeral director shall determine from the person making the arrangements if the decedent was a recipient of assistance or an eligible veteran as specified in subdivision (a)(1) of this section~~;~~

~~(B) If~~, and if the decedent was such a recipient, give notice to the ~~party~~ person making the arrangements of the department's ~~regulations~~ rules.

(4) If the funeral home director does not advise the person making the arrangements of the department's ~~regulations~~ rules then that person shall not be liable for expenses incurred.

* * *

~~(c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to $250.00 for expenses incurred.~~

~~(d)~~(c) In all other cases the department shall arrange for and pay up to the maximum amount established by rule for the burial of eligible persons who die in this state or residents of this state who die within the state or elsewhere when ~~such~~ the persons are without sufficient known assets to pay for their burial.

~~(e) [Omitted.]~~

~~(f) In all cases where the department is responsible for funeral and/or or burial expenses under this chapter, the department shall provide, by rule, the~~

~~specific services that are to be provided at public expense, and on an itemized basis the maximum price to be paid by the department for each such service.~~

~~(g)~~(d) For the purpose of this chapter, "burial" means the ~~act of~~ final disposition of human remains including interring ~~the human dead~~ or cremating a decedent and the ceremonies directly related to that cremation or interment at the gravesite; and "funeral" means the ceremonies prior to burial ~~of the body~~ by interment, cremation, or other method.

Sec. 6. 20 V.S.A. §§ 1581, 1582, and 1583 are amended to read:

§ 1581. VERMONT VETERANS' MEMORIAL CEMETERY ~~ADVISORY~~ BOARD

(a) The Vermont veterans' memorial cemetery ~~advisory~~ board is created to ~~advise the adjutant general on~~ determine all matters relating to the establishment and operation of a Vermont veterans' memorial cemetery to be known as the Vermont Veterans' Memorial Cemetery. The board shall consist of:

(1) The ~~commissioner of the department of buildings and general services,~~ adjutant general or designee, who shall serve as chair of the board.

(2) The commissioner of the department of buildings and general services or designee.

(3) One member of the senate ~~who shall be~~ appointed by the senate committee on committees.

~~(3)~~(4) One member of the house ~~who shall be~~ appointed by the house speaker.

~~(4)~~(5) Four individuals who represent veterans or are members of a veterans' organization, ~~to be~~ appointed by the governor for staggered terms of six years.

~~(5)~~(6) One individual who represents the Vermont granite, Vermont slate, or Vermont marble industry selected by the governor for a six-year term.

(b) The office of the adjutant general shall provide administrative support to the board.

(c) For each meeting, legislative members ~~shall be~~ are entitled to receive compensation and reimbursement for expenses as provided under subsection 406(a) of Title 2~~. The~~ , and members representing veterans or from veterans' organizations ~~shall be~~ are entitled to per diem as provided in section 1010 of Title 32 and their necessary and actual expenses.

§ 1582. RULES; DAILY OPERATIONS

(a) At the request of and in consultation with the Vermont veterans' memorial cemetery ~~advisory~~ board ~~may~~, the department of buildings and general services shall adopt rules ~~under the provisions of chapter 25 of Title 3~~ relating to acquisition of land, design of the cemetery, its buildings and grave markers, eligibility for burial, and any other matters necessary to establish and maintain the Vermont veterans' memorial cemetery.

(b) Daily operations shall be overseen by the adjutant general.

§ 1583. ADJUTANT GENERAL; POWERS AND DUTIES

(a) The adjutant general, subject to available funds and with the advice and consent of the Vermont veterans' memorial cemetery ~~advisory committee~~ board, shall administer the creation, establishment, operation, and maintenance of the Vermont veterans' memorial cemetery.

* * *

Sec. 7. 18 V.S.A. § 5201 is amended to read:

§ 5201. PERMITS; REMOVAL OF BODIES; CREMATION; WAITING PERIOD; INVESTIGATION INTO CIRCUMSTANCES OF DEATH

(a) Burial transfer permit. A dead body ~~of a person~~ shall not be buried, entombed, or removed ~~from a town~~, or otherwise disposed of~~, except as hereinafter provided,~~ without a burial-transit permit issued and signed by ~~the town~~ a municipal clerk, ~~his or her~~ a county clerk, or a deputy clerk for the municipality or unorganized town or gore in which the dead body is located; a funeral director licensed in Vermont; an owner or designated manager of a crematorium licensed in Vermont who is registered to perform removals; or a law enforcement officer.

(1) The ~~town~~ clerk of the ~~town or city~~ municipality shall provide for ~~registering deaths that occur in the town and for~~ issuing burial-transit permits ~~at a time~~ when ~~town~~ the clerks' offices are closed. The ~~town~~ municipal clerk shall appoint ~~annually, within five days after the clerk's election or appointment,~~ one or more ~~deputy registrars~~ deputies for this purpose~~,~~ and record the name of the deputy or deputies appointed in the ~~town~~ municipal records and notify the commissioner of health of the names and residences of the deputy or deputies appointed.

(2) The county clerk of a county ~~wherein is situated~~ in which an unorganized town or gore is located shall perform the same duties and be subject to the same penalties as a ~~town~~ municipal clerk in respect to issuing burial-transit permits and registering deaths that occur in an unorganized town or gore within the county.

(3) A funeral director licensed in Vermont or an owner or designated

manager of a crematory licensed in Vermont who is registered to perform removals may issue a burial-transit permit for any municipality or unorganized town or gore at any time, including during the normal business hours of a municipal clerk.

(4) After a ~~deputy or law enforcement officer issues a~~ burial-transit permit is issued, the ~~deputy or officer~~ person who issued the permit shall forward the death certificate or preliminary report and the record of the burial-transit permit ~~issued~~ to the clerk of the ~~town or city~~ municipality, or the clerk of the county, in the case of an unorganized town or gore, where death occurred on the first official working day thereafter.

(5) In cases of death by certain communicable diseases as defined by the ~~board~~ commissioner, the ~~town~~ municipal or county clerk, ~~his or her~~ a deputy registrar, a funeral director, a crematory owner or manager, or a law enforcement officer shall not issue a burial-transit permit except in accordance with instructions issued by the ~~local health officer or the board, which instructions shall be kept on file by the town clerk. A licensed embalmer, funeral director or a funeral director's designee may transfer the body of a deceased person to another town for preparation for burial or cremation but the remains shall be returned to the town in which death occurred within forty-eight hours after such removal, unless a permit for permanent removal has been secured within such period. Such licensed embalmer, funeral director or designee shall leave, in writing, upon forms supplied by the commissioner, the name, address, license number of the embalmer or funeral director and the date and hour such body was delivered, with the institution from which or the person from whom any such body is received~~ commissioner.

(6) A body for which a burial-transit permit has been secured, except one for the body of any person whose death occurred as a result of a communicable disease, as defined by the ~~board~~ commissioner, may be taken through or into another ~~town~~ municipality or unorganized town or gore for funeral services without additional permits from the local health officer or ~~board~~ the commissioner.

(b) No operator of a crematory facility shall cremate or allow the cremation of a dead body until the passage of at least 24 hours following the death of the decedent, as indicated on the death certificate, unless, if the decedent died from a virulent, communicable disease, a department of health rule or order requires the cremation to occur prior to the end of that period. If the attorney general or a state's attorney requests the delay of a cremation based upon a reasonable belief that the cause of death might have been due to other than accidental or natural causes, the cremation of a dead human body shall be delayed, based upon such request, a sufficient time to permit a civil or criminal investigation

into the circumstances that caused or contributed to the death.

(c) The person in charge of the body shall not release for cremation the body of a person who died in Vermont until the person in charge has received a certificate from the chief, regional, or assistant medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that no further examination or judicial inquiry concerning it is necessary. Upon request of a funeral director, the person in charge of the body or crematory operator, the chief medical examiner shall issue a cremation certificate after the medical examiner has completed an autopsy. The certificate shall be retained by the crematory for a period of three years. ~~For the certificate, the medical examiner is entitled to~~ The person requesting cremation shall pay the department a fee of $25.00 ~~payable by the person requesting cremation~~.

(d)(1) For all cremations requested for the body of a person who died outside Vermont, the crematory operator ~~must~~ shall do the following before conducting the cremation:

(A) obtain a permit for transit or cremation;

(B) ~~follow the guidelines of the medical examiner or comparable office for the jurisdiction~~ comply with the laws of the state in which the person died, including~~, to the extent that such waiting period is longer than that imposed by the provisions of subsection (b) of this section, postponing the cremation until the passage of any waiting period imposed by that state; and~~

~~(C) if the state in which the person died issues a medical examiner's permit, obtain a copy of that permit~~ obtaining a copy of a medical examiner's permit if one is required.

(2) No additional approval from the Vermont medical examiner's office ~~shall be~~ is required if compliance with the ~~guidelines~~ laws of the state in which the person died is achieved.

Sec. 8. 18 V.S.A. § 5202 is amended to read:

§ 5202. DEATH CERTIFICATE; DUTIES OF PHYSICIAN AND AUTHORIZED LICENSED HEALTH CARE PROFESSIONAL

(a) The ~~physician~~ licensed health care professional who is last in attendance upon a deceased person ~~during his last illness~~ shall immediately fill out a certificate of death on a form prescribed by the commissioner. For the purposes of this section, a licensed health care professional means a physician, a physician assistant, or an advance practice registered nurse. If ~~he~~ the licensed health care professional who attended the death is unable to state the cause of death, he or she shall immediately notify the physician, if any, who

was in charge of the patient's care~~, who shall~~ to fill out the certificate. If ~~neither physician is able~~ the physician is unable to state the cause of death, the provisions of section 5205 of this title ~~shall~~ apply. The ~~physician~~ licensed health care professional may, with the consent of the funeral director, delegate to ~~said~~ the funeral director the responsibility of gathering data for and filling out all items except the medical certification of cause of death. All entries, except signatures, on the certificate shall be typed or printed~~. Such forms~~ and shall contain answers to the following questions:

(1) Was the deceased a veteran of any war?

(2) If so, of what war?

(b) When death occurs ~~to an admitted patient~~ in a hospital and it is impossible to obtain a death certificate from an attending ~~physician~~ licensed health care professional before burial or transportation, any ~~physician~~ licensed health care professional who has access to the facts and can certify that death is not subject to the provisions of section 5205~~,~~ of this title may complete and sign a preliminary report of death on a form supplied by the commissioner ~~of health~~. The ~~town~~ municipal or county clerk or ~~his~~ a deputy shall accept this report and issue a burial-transit permit. This preliminary report of death may be destroyed six months after a death certificate has been filed. This does not relieve the attending ~~physician~~ licensed health care professional from the responsibility of completing a death certificate and delivering it to the funeral director within twenty-four hours after death.

~~(c) If a dead body must be removed immediately and a death certificate or preliminary report cannot be obtained, the town clerk, deputy or law enforcement officer may issue a temporary burial-transit permit which shall expire forty-eight hours after issuance. This does not relieve the attending physician from the responsibility of completing a death certificate and delivering it to the funeral director within twenty-four hours after death. Upon receipt of the death certificate, the funeral director shall apply for and the issuing authority shall issue a burial-transit permit to replace the temporary permit.~~

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 8 shall take effect on January 1, 2012.

and that after passage, the title of the bill be amended to read:

An act relating to cremation, the treatment of unmarked burial sites, the treatment of marked historic burial sites, the operation of the Vermont Veterans' Memorial Cemetery, death certificates, issuance of burial permits

and payment for burial of indigent persons.
(For text see House Journal 2/17 - 2/18/10)

H. 562

An act relating to the regulation of professions and occupations

The Senate proposes to the House to amend the bill as follows:

First: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read:

Sec. 4. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

~~If the prescriber does not wish substitution to take place, he or she shall write "brand necessary" or "no substitution" in his or her own handwriting on the prescription blank, together with a written statement that the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient. In the case of an unwritten prescription, there shall be no substitution if the prescriber expressly indicates to the pharmacist that the brand name drug is necessary and substitution is not allowed because the generic equivalent has not been effective, or with reasonable certainty is not expected to be effective, in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient.~~

If the prescriber has determined that the generic equivalent of a drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank and the pharmacist shall not substitute the generic equivalent. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent.

Second: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read:

Sec. 5. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: "Vermont law requires pharmacists in some cases to select a less expensive generic equivalent for the drug prescribed unless you or your physician direct otherwise. ~~Substitution will be noted on your prescription label by an "S" in the lower left corner.~~ Ask your pharmacist."

* * *

~~(c) If a generically equivalent substitution has been made, an "S" will be noted in the lower left corner of the prescription label.~~

Third: By adding a Sec. 8a to read:

Sec. 8a. 26 V.S.A. § 805(b) is amended to read:

(b) Notwithstanding the provisions of subsection (a) of this section and any other provision of law, a dentist or dental hygienist who holds an unrestricted license in all jurisdictions in which the dentist or dental hygienist is currently licensed, who certifies to the Vermont board of dental examiners that he or she will limit his or her practice in Vermont to providing pro bono services at a free or reduced fee clinic in Vermont and who meets the criteria of the board, shall be licensed by the board within 60 days of the licensee's certification without further examination, interview, fee or any other requirement for board licensure. The dentist or dental hygienist shall file with the board, on forms provided by the board and based on criteria developed by the board, information on dental qualifications, professional discipline, criminal record, malpractice claims or any other such information as the board may require. A license granted under this subsection shall authorize the licensee to practice dentistry or dental hygiene on a voluntary basis in Vermont.

Fourth: By adding a Sec. 8b to read:

Sec. 8b. 26 V.S.A. § 761 is amended to read:

§ 761. STATE BOARD OF DENTAL EXAMINERS; CREATION;QUALIFICATIONS

The state board of dental examiners is created and shall consist of ~~five~~ six dental practitioners of good standing, who have practiced in this state for a period of five years or more, are in active practice, and are legal residents of the state of Vermont, two registered dental hygienists certified pursuant to subchapter 4 of this chapter, who have practiced in the state of Vermont for a period of three years immediately preceding the appointment, are in active practice and are legal residents of the state of Vermont, one dental assistant registered pursuant to section 863 of this title who has practiced in the state of

Vermont for a period of three years immediately preceding the appointment, is in active practice, and is a legal resident of the state of Vermont, and two members of the public not associated with the practice of dentistry. Board members shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3. No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental or dental hygienist organization nor shall any member of the board be on the faculty of a school of dentistry or dental hygiene.

Fifth: By striking out Sec. 31 in its entirety and inserting in lieu thereof a new Sec. 31 to read:

Sec. 31. 26 V.S.A. § 3175 is amended to read:

§ 3175a. FIREARMS ~~AND GUARD DOG TRAINING;~~ INSTRUCTOR LICENSURE; PROGRAM OF INSTRUCTION

(a) ~~An applicant for a private detective or security guard license to provide armed services shall demonstrate to the board competence in the safe use of firearms in a firearms training program approved by the board and taught by an instructor currently licensed under this section. Firearms training may include evidence of law enforcement or military training in firearms. An applicant for a license to provide guard dog services shall demonstrate to the board competence in the handling of guard dogs in a guard dog training program approved by the board and taught by an instructor currently licensed under this section.~~

~~(b)~~ The board shall license firearms training course instructors of ~~such training courses~~ private investigators and security guards licensed under this chapter and shall adopt rules governing the licensure of instructors and the approval of firearms and guard dog training programs.

~~(c)~~(b) The board shall not issue a license as a firearms training program instructor without first obtaining and approving all of the following:

* * *

~~(d) The board shall not issue a license as a guard dog training program instructor without first obtaining and approving the following:~~

~~(1) The application filed in the proper form.~~

~~(2) The application fee established in subdivision 3178a(5)(A) of this title.~~

~~(3) Evidence that the applicant has obtained the age of majority.~~

~~(4) A copy of the applicant's training program.~~

~~(5) Proof of certification as an instructor from an instructor's course~~

~~approved by the board.~~

~~(6) A federal background check.~~

~~(e)~~(c) Instructors licensed under this section are subject to the same renewal requirements as others licensed under this chapter, and prior to renewal are required to show proof of current instructor licensure and pay the renewal fee established in subdivision 3178a(5)(B) of this title.

~~(f) Hunter safety instructors shall be exempt from the licensure requirements of this section for the purpose of hunter safety instruction.~~

Sixth: In Sec. 48, 26 V.S.A. § 3323(b)(4), at the end of the subdivision, by adding the following: This subdivision shall not affect a licensee's or a registrant's professional liability to consumers or to other licensees or registrants.

Seventh: By adding Secs. 19a, 19b, 19c, 19d, 19e, and 55 to read:

Sec. 19a. 26 V.S.A. chapter 52 is added to read:

CHAPTER 52. RADIOLOGIST ASSISTANTS

§ 2851. DEFINITIONS

As used in this chapter:

(1) "ARRT" means the American Registry of Radiologic Technologists or its successor, as recognized by the board.

(2) "Board" means the state board of medical practice established under chapter 23 of this title.

(3) "Contract" means a legally binding written agreement containing the terms of employment of a radiologist assistant.

(4) "Disciplinary action" means any action taken by the board against a certified radiologist assistant or an applicant or an appeal of that action when that action suspends, revokes, limits, or conditions certification in any way or when it results in a reprimand of the person.

(5) "Protocol" means a detailed description of the duties and scope of practice delegated by a radiologist to a radiologist assistant.

(6) "Radiologist" means a person licensed to practice medicine or osteopathy under chapter 23 or 33 of this title and who is certified by or eligible for certification by the American Board of Radiology or the American Osteopathic Board of Radiology or their predecessors or successors or who is credentialed by a hospital to practice radiology and engages in the practice of radiology at that hospital full-time.

(7) "Radiologist assistant" means a person certified by the state of Vermont under this chapter who is qualified by education, training, experience, and personal character to provide medical services under the direction and supervision of a radiologist.

(8) "Supervision" means the direction and review by a supervising radiologist, as determined to be appropriate by the board, of the medical services provided by the radiologist assistant. At a minimum, supervision shall mean that a radiologist is readily available for consultation and intervention. A radiologist assistant may provide services under the direction and review of more than one supervising radiologist during the course of his or her employment, subject to the limitations on his or her scope of practice as set forth in this chapter and the protocol filed under subsection 2853(b) of this title.

§ 2852. CERTIFICATION AND RULEMAKING

The board shall certify radiologist assistants, and the commissioner of health shall adopt rules regarding the training, practice, supervision, qualification, scope of practice, places of practice, and protocols for radiologist assistants and regarding patient notification and consent.

§ 2853. APPLICATION

(a) An application for certification shall be accompanied by an application by the proposed primary supervising radiologist that shall contain a statement that the radiologist shall be responsible for all professional activities of the radiologist assistant.

(b) An application for certification shall be accompanied by a protocol signed by one proposed supervising radiologist and proof of employment of the radiologist assistant by that radiologist or by the hospital at which the radiologist practices. The supervising radiologist who signs the protocol shall be deemed the primary supervisor of the radiologist assistant for the purposes of this chapter.

(c) The applicant shall submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

§ 2854. ELIGIBILITY

To be eligible for certification as a radiologist assistant, an applicant shall:

(1) have obtained a degree from a radiologist assistant educational program that is recognized by the ARRT under its "Recognition Criteria for Radiologist Assistant Educational Programs" adopted on July 1, 2005, as periodically revised and updated;

(2) have satisfactorily completed the radiologist assistant certification examination given by the ARRT and be currently certified by the ARRT;

(3) be certified as a radiologic technologist in radiography by the ARRT; and

(4) be licensed as a radiologic technologist in radiography in this state under chapter 51 of this title.

§ 2855. TEMPORARY CERTIFICATION

(a) The board may issue a temporary certification to a person who applies for certification for the first time in this state and meets the educational requirements under subsection 2854 of this title.

(b) Temporary certification may be issued only for the purpose of allowing an otherwise qualified applicant to practice as a radiologist assistant until the applicant takes and passes the next ARRT certification examination and a determination is made that he or she is qualified to practice in this state.

(c) Temporary certification shall be issued upon payment of the specified fee for a fixed period of time to be determined by the board and shall only be renewed by the board if the applicant demonstrates proof of an exceptional cause.

§ 2856. RENEWAL OF CERTIFICATION

(a) Certifications shall be renewable every two years upon payment of the required fee and submission of proof of current, active ARRT certification, including compliance with continuing education requirements.

(b) A certification that has lapsed may be reinstated on payment of a renewal fee and a late renewal fee. The applicant shall not be required to pay back renewal fees for the periods when certification was lapsed. However, if certification remains lapsed for a period of three years, the board may, after notice and an opportunity for hearing, require reexamination as a condition of renewal.

§ 2857. SUPERVISION AND SCOPE OF PRACTICE

(a) The number of radiologist assistants permitted to practice under the direction and supervision of a radiologist shall be determined by the board after review of the system of care delivery in which the supervising radiologist and radiologist assistants propose to practice. Scope of practice and levels of supervision shall be consistent with guidelines adopted by the American College of Radiology, the American Society of Radiologic Technologists, and the ARRT. The authority of a radiologist assistant to practice shall terminate immediately upon termination of the radiologist assistant's employment, and

the primary supervising radiologist shall immediately notify the board and the commissioner of the department of health of the termination. The radiologist assistant's authority to practice shall not resume until he or she provides proof of other employment and a protocol as required under this chapter.

(b) Subject to the limitations set forth in subsection (a) of this section , the radiologist assistant's scope of practice shall be limited to that delegated to the radiologist assistant by the primary supervising radiologist and for which the radiologist assistant is qualified by education, training, and experience. At no time shall the practice of the radiologist assistant exceed the normal scope of the supervising radiologist's practice. A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

§ 2858. UNPROFESSIONAL CONDUCT

(a) The following conduct by a certified radiologist assistant constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of certification:

(1) fraudulent procuring or use of certification;

(2) occupational advertising that is intended or has a tendency to deceive the public;

(3) exercising undue influence on or taking improper advantage of a person using the radiologist assistant's services or promoting the sale of professional goods or services in a manner that exploits a person for the financial gain of the radiologist assistant or of a third party;

(4) failing to comply with provisions of federal or state law governing the profession;

(5) conviction of a crime related to the profession or conviction of a felony, whether or not related to the practice of the profession;

(6) conduct that evidences unfitness to practice in the profession;

(7) making or filing false professional reports or records, impeding or obstructing the proper making or filing of professional reports or records, or failing to file the proper professional report or record;

(8) practicing the profession when mentally or physically unfit to do so;

(9) professional negligence;

(10) accepting and performing responsibilities that the person knows or has reason to know that he or she is not competent to perform;

(11) making any material misrepresentation in the practice of the

profession, whether by commission or omission;

(12) holding one's self out as or permitting one's self to be represented as a licensed physician;

(13) performing otherwise than at the direction and under the supervision of a radiologist licensed by the board;

(14) accepting the delegation of or performing or offering to perform a task or tasks beyond the person's scope of practice as defined by the board;

(15) administering, dispensing, or prescribing any controlled substance other than as authorized by law;

(16) failing to comply with an order of the board or violating any term or condition of a certification restricted by the board;

(17) delegating professional responsibilities to a person whom the certified professional knows or has reason to know is not qualified by training, experience, education, or licensing credentials to perform;

(18) in the course of practice, gross failure to use and exercise on a particular occasion or the failure to use and exercise on repeated occasions that degree of care, skill, and proficiency that is commonly exercised by the ordinary skillful, careful, and prudent professional engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred; or

(19) revocation of certification to practice as a radiologist assistant in another jurisdiction on one or more of the grounds specified in subdivisions (1)–(18) of this subsection.

(b) A person aggrieved by a final order of the board may, within 30 days of the order, appeal that order to the Vermont supreme court on the basis of the record created before the board.

§ 2859. DISPOSITION OF COMPLAINTS

(a) Complaints and allegations of unprofessional conduct shall be processed in accordance with the rules of procedure of the board.

(b) The board shall accept complaints from a member of the public, a physician, a hospital, a radiologist assistant, a state or federal agency, or the attorney general. The board shall initiate an investigation of a radiologist assistant when a complaint is received or may act on its own initiative without having received a complaint.

(c) If the board determines that the action of a radiologist assistant that is the subject of a complaint falls entirely within the scope of practice of a

radiologic technologist in radiography, the board shall refer the complaint to the board of radiologic technology for review under chapter 51 of this title.

(d) After giving opportunity for hearing, the board shall take disciplinary action against a radiologist assistant or applicant found guilty of unprofessional conduct.

(e) The board may approve a negotiated agreement between the parties when it is in the best interest of the public health, safety, or welfare to do so. That agreement may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:

(1) a requirement that the person submit to care or counseling;

(2) a restriction that the person practice only under supervision of a named person or a person with specified credentials;

(3) a requirement that the person participate in continuing education in order to overcome specified practical deficiencies;

(4) a requirement that the scope of practice permitted be restricted to a specified extent.

(f) Upon application, the board may modify the terms of an order under this section and, if certification has been revoked or suspended, order reinstatement on terms and conditions it deems proper.

§ 2860. USE OF TITLE

Any person who is certified to practice as a radiologist assistant in this state shall have the right to use the title "radiologist assistant" or "registered radiologist assistant" and the abbreviation "R.A." or "R.R.A." No other person may assume that title or use that abbreviation or any other words, letters, signs, or devices to indicate that the person using them is a radiologist assistant. A radiologist assistant shall not so represent himself or herself unless there is currently in existence a valid employment arrangement between the radiologist assistant and his or her employer or primary supervising radiologist and unless the protocol under which the radiologist assistant's duties are delegated is on file with and has been approved by the board.

§ 2861. LEGAL LIABILITY

(a) The primary supervising radiologist delegating activities to a radiologist assistant shall be legally liable for the activities of the radiologist assistant, and the radiologist assistant shall in this relationship be the radiologist's agent.

(b) Nothing contained in this chapter shall be construed to apply to nurses acting pursuant to chapter 28 of this title.

§ 2862. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

(1)(A)(i) Original application for certification $115.00;

(ii) Each additional application $50.00;

(B) The board shall use at least $10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network which will monitor recovering chemically dependent licensees for the protection of the public.

(2)(A)(i) Biennial renewal $115.00;

(ii) Each additional renewal $50.00;

(B) The board shall use at least $10.00 of these fees to support the costs of the creation and maintenance of a Vermont practitioner recovery network that will monitor recovering chemically dependent licensees for the protection of the public. In addition to the fee, an applicant for certification renewal shall submit evidence in a manner acceptable to the board that he or she continues to meet the certification requirements of the ARRT and is licensed as a radiologic technologist under chapter 51 of this title.

(3) Transfer of certification $15.00.

§ 2863. NOTICE OF USE OF RADIOLOGIST ASSISTANTS

A radiologist who uses the services of a radiologist assistant shall post a notice to that effect in an appropriate place and include language in the patient consent form that the radiologist uses a radiologist assistant.

§ 2864. PENALTY

(a) A person who, not being certified, holds himself or herself out to the public as being certified under this chapter shall be liable for a fine of not more than $1,000.00.

(b) In addition to the penalty provided in subsection (a) of this section, the attorney general or a state's attorney may bring a civil action to restrain continuing violations of this section.

Sec. 19b. 26 V.S.A. § 1842(b)(12) is added to read:

(12) Use of the services of a radiologist assistant in a manner that is inconsistent with the provisions of chapter 52 of this title.

Sec. 19c. 26 V.S.A. § 1354(a) is amended to read:

(a) The board shall find that any one of the following, or any combination of the following, whether or not the conduct at issue was committed within or outside the state, constitutes unprofessional conduct:

* * *

(31) use of the services of an anesthesiologist assistant by an anesthesiologist in a manner that is inconsistent with the provisions of chapter 29 of this title;

(32) use of the services of a radiologist assistant by a radiologist in a manner that is inconsistent with the provisions of chapter 52 of this title.

Sec. 19d. 26 V.S.A. § 1351(e) is amended to read:

(e) The commissioner of health shall adopt, amend, and repeal rules of the board which the commissioner determines necessary to carry out the provisions of this chapter and chapters 7, 29, ~~and~~ 31, and 52 of this title.

Sec. 19e. 26 V.S.A. § 1352(a) is amended to read:

(a) The commissioner of health shall issue annually a report to the secretary of human services and the secretary of the Vermont medical society which shall contain:

(1) a separate record of the name, residence, college, and date of graduation of each individual licensed or certified by the board;

(2) a list of all physicians, physician's assistants, podiatrists, radiologist assistants, and anesthesiologist assistants practicing in the state;

(3) a summary of all disciplinary actions undertaken by the board during the year of the report; and

(4) an accounting of all fees and fines received by the board and all expenditures and costs of the board for such year. A sufficient number of copies shall be printed to supply the needs of the board and the state library.

Sec. 55. EFFECTIVE DATE

This section and Secs. 19a, 19b, 19c, 19d, and 19e of this act shall take effect upon passage.

Eighth: By adding a Sec. 54 to read:

Sec. 54. DEPARTMENT OF HEALTH

The department of health shall evaluate its procedures for application for licensure for under 18 V.S.A. § 1395(c). On or before March 15, 2011 the department shall report to the house and senate committees on government operations its findings regarding facilitating the granting of licenses to qualified physicians who will limit their practice in Vermont to providing pro

bono services at a free or reduced fee health care clinic in Vermont while assuring that these physicians meet all the standards required of physicians fully licensed to practice in Vermont.

(For text see House Journal 2/16/10)

H. 578

An act relating to requiring all state law enforcement officers to serve under the direction and control of the commissioner of public safety

The Senate proposes to the House to amend the bill by adding a Sec. 2a, and Sec. 2b to read as follows:

Sec. 2a. COMMISSIONER OF PUBLIC SAFETY; REPORT

The commissioner of public safety shall file a report with the house and senate committees on government operations by January 15, 2011. The report shall explain the commissioner's efforts to develop criteria to measure the reduction of redundancies and the increase in communication as set forth in Sec. 1 of this act. The report shall also recommend improvements in the command and coordination of Vermont law enforcement agencies.

Sec. 2b. CERTIFICATION OF LAW ENFORCEMENT OFFICERS

(a) The general assembly finds that because the Vermont police academy requires candidates for certification as a full-time law enforcement officer to undergo 16 weeks of extensive physical training in addition to meeting academic requirements, older individuals or individuals with minor physical disabilities who are otherwise exceptionally qualified to discharge law enforcement duties are precluded from obtaining full-time certification and thus full-time employment as a law enforcement officer. While other states and jurisdictions have left physical training requirements to the hiring law enforcement agencies, the Vermont criminal justice training council has continued the physical training requirements, extending the cost and length of the basic training program, even though the hiring law enforcement agency already has selected and employed the candidates who seek full-time certification.

(b) The executive director of the Vermont criminal justice training council, the attorney general or designee, a designee of the department of sheriffs and state's attorneys who does not serve on the Vermont criminal justice training council, the defender general or designee, the executive director of the human rights commission or designee, and a Vermont constable selected by the chair of the trustees of the Vermont league of cities and towns shall make recommendations regarding:

(1) the advisability of granting full-time certification to law enforcement

officers who have been certified as part-time officers for at least the past ten years and who have been employed a total of at least 8,000 hours as an officer discharging law enforcement duties during that period due to the fact that those officers have been unable to obtain full-time certification for failure to meet the physical fitness standards of the Vermont criminal justice training council;

(2) whether full-time law enforcement officers should be required to fulfill physical fitness standards on a periodic basis.

(c) The chair of the committee shall be the attorney general or his or her designee. The committee shall report its findings and recommendations to the house and senate committees on government operations and the house and senate judiciary committees no later than January 15, 2011.

(For text see House Journal 3/9/10)

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?

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 342

House concurrent resolution congratulating the Vermont Youth Conservation Corps on its 25th anniversary

H.C.R. 343

House concurrent resolution honoring Sally and Don Goodrich on the occasion of The Goodrich Dragonfly Celebration

H.C.R. 344

House concurrent resolution congratulating the Mount Anthony Union High School Interact Club on winning a 2010 Governor's Award for Outstanding Community Service

H.C.R. 345

House concurrent resolution honoring Tom Howard of East Montpelier for his career accomplishments in youth services

H.C.R. 346

House concurrent resolution in memory of University of Vermont history professor emeritus and former senator Robert V. Daniels of Burlington

H.C.R. 347

House concurrent resolution in memory of the American military personnel who have died in the service of their nation in Iraq or Afghanistan from January 1, 2010 to April 10, 2010

H.C.R. 348

House concurrent resolution honoring retiring Bennington Police Chief Richard B. Gauthier

H.C.R. 349

House concurrent resolution in memory of Junior Harwood of Shaftsbury

H.C.R. 350

House concurrent resolution honoring the outstanding educators who are retiring from the Southwest Vermont Supervisory Union

H.C.R. 351

House concurrent resolution in memory of Stevenson H. Waltien, Jr., of Shelburne

H.C.R. 352

House concurrent resolution congratulating Gabriella Pacht of Thetford and Katie Ann Dutcher of Bennington on earning the Girl Scout Gold Award

H.C.R. 353

House concurrent resolution congratulating GW Plastics on being named *Plastic News* magazine's 2010 Plastics Processor of the Year

H.C.R. 354

House concurrent resolution congratulating the Rutland Regional Medical Center on its receipt of the American Nurses Credentialing Center's Magnet designation and the Vermont Council on Quality's 2009 Governor's Award for Performance Excellence

H.C.R. 355

House concurrent resolution honoring the municipal public service of St. Johnsbury town manager Michael A. Welch

S.C.R. 50

Senate concurrent resolution recognizing the efforts of the Vermont Fallen Families in building Vermont's Global War on Terror Memorial at the Vermont Veterans Memorial Cemetery in Randolph Center, Vermont

S.C.R. 51

Senate concurrent resolution congratulating Central Vermont Public Service Corporation on its designation as one of Forbes' 100 Most Trustworthy Companies