

# Journal of the House

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Monday, May 3, 2010

At ten o'clock in the forenoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by Rep. William Aswad of Burlington, Vt.

## Joint Resolution Referred to Committee

### J.R.S. 64

By the Committee on Agriculture,

**J.R.S. 64.** Joint resolution relating to the future of the international port of entry at Morses Line and the proposed federal acquisition of land belonging to the Rainville family farm.

*Whereas*, Clement and Elizabeth Rainville own a dairy farm in the town of Franklin astride the United States–Canadian border at Morses Line, and

*Whereas*, the Rainville farm consists of 130 acres of cropland and a dairy operation with 75 milkers and approximately the same number of heifers, and

*Whereas*, every one of those 130 acres is integral to this Vermont farm's economic viability, and

*Whereas*, the Rainville farm is exactly the type of dairy farm that is all too rapidly vanishing and that the state of Vermont is making every effort to preserve as an ongoing agricultural enterprise, and

*Whereas*, the state of Vermont, through the Vermont Housing and Conservation Trust Fund, has spent millions of dollars to preserve farmland for future generations, and the current use program was established to encourage the conduct of agricultural activities on Vermont land, and

*Whereas*, Vermont's farmland attracts tourists who travel to the state to view the state's picturesque open spaces, and

*Whereas*, according to the Vermont Agency of Agriculture, Food and Markets (VAAF), the total number of dairy farms in January stood at 11,206 in 1947, 9,512 in 1957, 4,729 in 1967, 3,531 in 1977, 2,771 in 1987, 1,908 in 1997, 1,168 in 2007, and 1,055 in 2010, and

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*Whereas*, the VAAF<sup>2</sup>M has projected that Vermont may lose up to 200 farms in 2010, lowering the number to below 1,000 for the first time since the state of Vermont has conducted a farm count survey, and

*Whereas*, from an economic perspective, the Sustainable Agriculture Council has estimated that Vermont's agricultural worth has now grown to nearly \$3.7 billion, and

*Whereas*, the United States Department of Homeland Security (the Department) and United States Customs and Border Protection (CBP), which is under the Department's jurisdiction, have announced their intention to acquire land—by means of eminent domain proceedings if necessary—from the Rainville farm for use in the construction of a new international border port-of-entry facility at Morses Line, and

*Whereas*, the Department and CBP are justifying this project on grounds of both national security and economic stimulation, and

*Whereas*, the Rainville family has stated that were it to lose any of its land used for cultivating hay, this small farm's self-sufficiency would be lost, and

*Whereas*, a loss in the available hay would force the Rainvilles to purchase commercial feed for their herd, adding an expense they do not currently incur, and

*Whereas*, in the federal Farmland Protection Policy Act of 1981 (Pub. L. 97-89) (the act), Congress found that "the Nation's farmland is a unique natural resource and provides food and fiber necessary for the continued welfare of the people of the United States" and further stated that the law's purpose was "to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses," and

*Whereas*, this proposed land acquisition is clearly contrary to Congress's express intent as stated in the act, and

*Whereas*, the Rainville farm is listed on the National Register of Historic Places, which is further evidence of the importance that has been attached to the farm's continuity and integrity, and

*Whereas*, although the department's proposed new border-crossing facility has been reduced in size, there remains concern that it may be larger than needed for the amount of traffic that crosses at Morses Line, and

*Whereas*, there have been suggestions that federal funds would be better directed at further improvements to the heavily used port of entry at nearby Highgate, and

*Whereas*, the Vermont congressional delegation has been closely involved with the issues related to the proposed new facility at the Morses Line port of entry and the impact it will have on the Rainville Farm, and

*Whereas*, on Tuesday, April 27, 2010, while testifying before the United States Senate Judiciary Committee, Homeland Security Secretary Janet Napolitano, in response to a request of Senator Leahy, committed herself to the convening of a public meeting near Morses Line before proceeding, and

*Whereas*, this meeting will be extremely timely, as in the past few days, the Rainville family received notice from the federal government that the condemnation process will be commenced in 60 days if the family does not agree to sell the requested land, and

*Whereas*, reducing the economic viability of a small Vermont dairy farm should not be equated with economic stimulation, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly strongly urges the United States Department of Homeland Security to assess carefully the comments offered at the forthcoming public meeting on the future of the port of entry facility at Morses Line and to re-evaluate the need to condemn any land belonging to the Rainville farm in the town of Franklin, *and be it further*

***Resolved:*** That the Secretary of State be directed to send a copy of this resolution to Secretary of Homeland Security Janet Napolitano, United States Customs and Border Protection Commissioner Alan Bersin, the Vermont congressional delegation, Vermont Secretary of Agriculture, Food and Markets Roger Allbee, and the Rainville family in Franklin.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the Committee on General, Housing and Military Affairs.

**Action on Bill Postponed**

**H. 767**

House bill, entitled

An act relating to the livestock care standards advisory council

Was taken up and pending the question, Shall the House concur in the Senate proposal of amendmetn? on motion of **Rep. Conquest of Newbury**, action on the bill was postponed until the next legislative day.

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**Proposal of Amendment Agreed to; Third Reading Ordered****S. 64**

**Rep. Jerman of Essex**, for the committee on Natural Resources and Energy, to which had been referred Senate bill, entitled

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

Reported in favor of its passage in concurrence with proposal of amendment 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)~~ 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

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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~~ 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~~ 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.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on Natural Resources and Energy? **Rep. Nease of Johnson** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on Natural Resources and Energy? was decided in the affirmative. Yeas, 125. Nays, 1.

Those who voted in the affirmative are:

Acinapura of Brandon	Dickinson of St. Albans	Jerman of Essex
Adams of Hartland	Town	Jewett of Ripton
Ainsworth of Royalton	Donaghy of Poultney	Johnson of South Hero
Ancel of Calais	Donahue of Northfield	Keenan of St. Albans City
Andrews of Rutland City	Donovan of Burlington	Kilmartin of Newport City
Aswad of Burlington	Edwards of Brattleboro	Kitzmiller of Montpelier
Atkins of Winooski	Emmons of Springfield	Klein of East Montpelier
Bissonnette of Winooski	Evans of Essex	Koch of Barre Town
Botzow of Pownal	Fagan of Rutland City	Komline of Dorset
Branagan of Georgia	Fisher of Lincoln	Krawczyk of Bennington
Bray of New Haven	Frank of Underhill	Krebs of South Hero
Brennan of Colchester	French of Shrewsbury	Larocque of Barnet
Burke of Brattleboro	French of Randolph	Larson of Burlington
Canfield of Fair Haven	Geier of South Burlington	Lawrence of Lyndon
Cheney of Norwich	Gilbert of Fairfax	Lenes of Shelburne
Clark of Vergennes	Grad of Moretown	Leriche of Hardwick
Clarkson of Woodstock	Greshin of Warren	Lewis of Derby
Clerkin of Hartford	Haas of Rochester	Lippert of Hinesburg
Condon of Colchester	Head of South Burlington	Macaig of Williston
Conquest of Newbury	Heath of Westford	Maier of Middlebury
Consejo of Sheldon	Helm of Castleton	Malcolm of Pawlet
Corcoran of Bennington	Higley of Lowell	Marcotte of Coventry
Courcelle of Rutland City	Hooper of Montpelier	Marek of Newfane
Crawford of Burke	Howard of Cambridge	Martin of Springfield
Davis of Washington	Howard of Rutland City	Martin of Wolcott
Deen of Westminster	Howrigan of Fairfield	Masland of Thetford

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McDonald of Berlin	Pearce of Richford	South of St. Johnsbury
McFaun of Barre Town	Peaslee of Guildhall	Stevens of Waterbury
McNeil of Rutland Town	Pellett of Chester	Stevens of Shoreham
Miller of Shaftsbury	Peltz of Woodbury	Sweaney of Windsor
Minter of Waterbury	Perley of Enosburg	Till of Jericho
Mitchell of Barnard	Poirier of Barre City	Toll of Danville
Mook of Bennington	Potter of Clarendon	Townsend of Randolph
Moran of Wardsboro	Pugh of South Burlington	Waite-Simpson of Essex
Morrissey of Bennington	Ram of Burlington	Weston of Burlington
Mrowicki of Putney	Reis of St. Johnsbury	Wheeler of Derby
Myers of Essex	Rodgers of Glover	Wilson of Manchester
Nease of Johnson	Savage of Swanton	Winters of Williamstown
Nuovo of Middlebury	Scheuermann of Stowe	Wizowaty of Burlington
O'Brien of Richmond	Sharpe of Bristol	Wright of Burlington
Obuchowski of Rockingham	Shaw of Pittsford	Young of St. Albans City
Olsen of Jamaica	Smith of Mendon	Zenie of Colchester

Those who voted in the negative are:

Manwaring of Wilmington

Those members absent with leave of the House and not voting are:

Audette of South Burlington	Lorber of Burlington	Shand of Weathersfield
Baker of West Rutland	McAllister of Highgate	Smith of Morristown
Bohi of Hartford	McCullough of Williston	Spengler of Colchester
Browning of Arlington	Milkey of Brattleboro	Taylor of Barre City
Devereux of Mount Holly	Morley of Barton	Turner of Milton
Hubert of Milton	O'Donnell of Vernon	Webb of Shelburne
Johnson of Canaan	Orr of Charlotte	Zuckerman of Burlington
Lanpher of Vergennes	Partridge of Windham	

### Senate Proposal of Amendment Concurred in

#### H. 562

The Senate proposed to the House to amend House bill, entitled

An act relating to the regulation of professions and occupations

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.~~

~~(c)(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.

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§ 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;

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(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.

Which proposal of amendment was considered and concurred in.

**Senate Proposal of Amendment Concurred in**

**H. 578**

The Senate proposed to the House to amend House bill, entitled

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

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.

Which proposal of amendment was considered and concurred in.

### **Recess**

At eleven o'clock and fifteen minutes in the forenoon, the Speaker declared a recess until two o'clock and fifteen minutes in the afternoon.

At two o'clock and thirty-five minutes in the afternoon, the Speaker called the House to order.

### **Message from the Senate No. 49**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate requests the House to return to the custody of the Senate, a bill originating in the House of the following title:

**H. 213.** An act to provide fairness to tenants in cases of contested housing security deposit withholding.

### **Bill Read Third Time and Passed in Concurrence**

#### **S. 247**

Senate bill, entitled

An act relating to bisphenol A

Was taken up and pending third reading of the bill, **Rep. Dickinson of St. Albans Town** moved to propose to the Senate to amend the bill as follows:

In Sec. 2, 18 V.S.A. § 1512, as follows:

First: In subdivision (c)(1), following “bisphenol A”, by inserting “in any interior area of the container or jar that comes or may come into contact with the infant formula or baby food”

Second: In subdivision (c)(2), following “bisphenol A”, by inserting “in any interior area of the can that comes or may come into contact with the infant formula or baby food”

**Rep. Dickinson of St. Albans Town** asked that the question be divided and the second instance of proposal of amendment be voted on first.

Thereupon, the second instance of proposal of amendment was disagreed to and the first instance of proposal of amendment was disagreed to.

Thereupon, the bill was read the third time and passed in concurrence.

**Rules Suspended; Senate Proposal of Amendment Concurred in**

#### **H. 555**

On motion of **Rep. Komline of Dorset**, the rules were suspended and House bill, entitled

An act relating to youth hunting;

Appearing on the Calendar for notice, was taken up for immediate consideration.

The Senate proposed to the House to amend House bill, entitled

By striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 4742a is amended to read:

§ 4742a. YOUTH DEER HUNTING WEEKEND

(a) The Saturday and Sunday prior to opening day of regular deer season shall be youth deer hunting weekend.

(b) A person who is age 15 and under on the weekend of the hunt, who has successfully completed a hunter safety course, may take one wild deer during youth deer hunting weekend in accordance with the rules of the board. In order to hunt under this section, a young person shall also hold a valid hunting license under section 4255 of this title, hold a youth deer hunting tag, and be accompanied by an unarmed adult who holds a valid Vermont hunting license and who is over 18 years of age. An adult accompanying a youth under this section shall accompany no more than two young people at one time.



(c) Each year, the board shall determine whether antlerless deer may be taken under this section in any deer management unit or units. A determination under this subsection shall be made by rule, shall be based on the game management study conducted pursuant to section 4081 of this title and, notwithstanding subsection (g) of that section, may allow taking of antlerless deer.

(d) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

(e) Before the first youth deer hunting weekend and after each fall hunting season, the department shall collect information on youth deer hunting weekend during the regional public hearings held pursuant to subsection 4081(f) of this title. Information relative to the public's knowledge and concerns about the deer herd shall be gathered. The board shall administer youth deer hunting weekend, by deer management unit, based on public input and scientific information.

(f) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult who is accompanying the youth pursuant to subsection (b) of this section and who has the youth hunter in his or her charge.

(g) For the purposes of this section, "accompany," "accompanied," or "accompanying" means direct control and supervision, including the ability to see and communicate with the youth hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany no more than two youth hunters at a time.

Sec. 2. 10 V.S.A. § 4908 is amended to read:

§ 4908. YOUTH TURKEY HUNTING WEEKEND

(a) The Saturday and Sunday prior to opening day of spring turkey season shall be youth turkey hunting weekend.

(b) A person who is age 15 ~~and~~ or under on the weekend of the hunt, who has successfully completed a hunter safety course, may take one wild turkey during youth turkey hunting weekend in accordance with the rules of the board. In order to hunt under this section, a young person shall also hold valid hunting and turkey licenses under section 4255 of this title, hold a youth turkey hunting tag, and be accompanied by an unarmed adult who holds a valid Vermont hunting license and is over 18 years of age. An adult accompanying

a youth under this section shall accompany no more than two young people at one time.

(c) No person shall hunt under this section on privately owned land without first obtaining the permission of the owner or occupant.

(d) The scheduled amount of a fine under section 4555 of this title shall be doubled for a violation of this section, and the fine shall be assessed against the licensed adult who is accompanying the youth pursuant to subsection (b) of this section and who has the youth hunter in his or her charge.

(e) For the purposes of this section, “accompany,” “accompanied,” or “accompanying” means direct control and supervision, including the ability to see and communicate with the youth hunter without the aid of artificial devices such as radios or binoculars, except for medically necessary devices such as hearing aids or eyeglasses. While hunting, an individual who holds a valid hunting license under subsection 4254(b) of this title shall accompany no more than two youth hunters at a time.

Sec. 3. 10 V.S.A. § 4502(b) is amended to read:

(b) A person violating provisions of this part shall receive points for convictions in accordance with the following schedule (all sections are in Title 10 of Vermont Statutes Annotated):

(1) Five points shall be assessed for any violation of statutes or rules adopted under this part except those listed in subdivisions (2) and (3) of this subsection.

(2) Ten points shall be assessed for:

\* \* \*

(II) Appendix § 37, as it ~~applied~~ applies to annual deer limits and as it applies to youth deer hunting weekend. Points assessed for violation of Appendix 37 as it relates to youth turkey hunting weekend shall be assessed solely against the adult accompanying the youth hunter

(JJ) Appendix § 22, as it applies to youth turkey hunting weekend. Points assessed for violation of Appendix 22 as it relates to youth turkey hunting weekend shall be assessed solely against the adult accompanying the youth hunter.

(3) Twenty points shall be assessed for:

\* \* \*

(P) Appendix § 22 (excluding § 22E). Turkey season, excluding requirements for youth turkey hunting season.

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\* \* \*

(U) Appendix § 37, excluding violations of annual deer limits, requirements for youth deer hunting weekend, and limitations on feeding of deer.

Sec. 4. 10 V.S.A. § 4001(14) is amended to read:

(14) Fur-bearing animals: beaver, otter, marten, mink, raccoon, fisher, fox, skunk, coyote, bobcat, weasel, opossum, lynx, wolf, and muskrat.

Sec. 5. REPEAL

10 V.S.A. § 4865 (muskrat shooting season) is repealed.

Sec. 6. FISH AND WILDLIFE BOARD REPORT ON YOUTH DEER HUNTING LIMITS

On or before January 15, 2011, the fish and wildlife board shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy a recommendation as to whether a youth who hunts deer under 10 V.S.A. § 4742a should be limited to the taking of one deer prior to the youth turning 16 years of age.

Sec. 7. EFFECTIVE DATE

This act shall take effect July 1, 2010.

Which proposal of amendment was considered and concurred in.

**Rules Suspended; Senate Proposal of Amendment Concurred in**

**H. 788**

On motion of **Rep. Komline of Dorset**, the rules were suspended and House bill, entitled

An act relating to approval of amendments to the charter of the town of Berlin

Appearing on the Calendar for notice, was taken up for immediate consideration.

The Senate proposed to the House to amend House bill, entitled

In Sec. 3, 24 App. V.S.A. chapter 105 § 50(a), at the end of the subsection, by adding the following: Appointees shall have the same powers, duties, responsibilities, and liabilities as established by law for listers, except as otherwise provided in this charter.

Which proposal of amendment was considered and concurred in.

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**Bill Read Third Time and Passed****H. 782**

House bill, entitled

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

Was taken up and pending third reading of the bill, **Rep. Kilmartin of Newport City** moved to amend the bill as follows:

First: In Sec. 1, subdivision (2), after the semicolon, by deleting the word “and” and in subdivision (3), before the period, by adding the following

“.

(4) voters, as they currently have the right and obligation to determine the costs and budgets for the operation of their public schools and the enrollment options in their districts, should have the right and obligation to make local decisions regarding the existence, implementation, and cost of enrollment options in Vermont public schools and in approved independent schools. The latter right and obligation is currently being exercised by the voters and citizens in approximately 95 Vermont school districts, with excellent results and a high degree of citizen, taxpayer, parent, student, and community satisfaction and approval; and

(5) parents should have the right and opportunity to make meaningful decisions regarding school choice and other enrollment options in Vermont public schools and in approved independent schools that are appropriate for their children”

Second: By striking Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read:

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) 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) Notwithstanding subdivision (1) of this subsection, a Merged District shall be deemed to operate a public secondary school if it designates either a Vermont public school outside the district or a Vermont-approved independent school located inside or outside the district pursuant to the provisions of 16 V.S.A. § 827; provided, however, if a Merged District designates a school under this subdivision, then notwithstanding any provision of law to the contrary, the act of designation will not limit the enrollment options available to the Merged District, including paying tuition for students to attend public schools or approved independent schools inside or outside the Merged District.

(3) Notwithstanding subdivision (1) of this subsection, a Merged District shall be deemed to operate a public secondary school if it provides for the education of students in those grades by paying tuition pursuant to 16 V.S.A. § 824.

(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

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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.

(4) If one or more, but not all, member towns of an existing union school district wish to withdraw from the union school district for the express purposes of forming a Merged District under the terms of this act, then notwithstanding 16 V.S.A. § 721a or 724 or any other provision of law to the contrary, a member town shall be permitted to withdraw if:

(A) the withdrawing member town has paid, or has agreed to pay over the appropriate period of time, its portion of the outstanding capitalized financial obligations owed by the existing union school district in an amount and manner that is determined by the state board of education to be appropriate and equitable. In the event that the withdrawing member town disagrees with the decision of the state board of education, the member town shall have a de novo appeal to the Superior Court of the county in which the withdrawing member district is located.

(B) the plan of merger to be voted on by the electorate of all merging districts identifies the entity that will assume responsibility for payment of the amount identified in subdivision (A) of this subdivision (4); and

(C) a majority of the electorate of the withdrawing member town affirmatively votes to withdraw from the existing union school district for the purpose of forming a Merged District under this act, to take effect only if the merger plan is approved. If a majority of the electorate votes to withdraw, then the town clerk of the withdrawing member shall certify the vote to the secretary of state, who shall record the certificate and provide notice to the commissioner and state board of education, the remaining members of the existing school district, and the school districts with which the withdrawing member intends to merge to form a Merged District. In the event that the merger plan is approved, the state board shall declare the status of the withdrawing district or districts and declare one of the following: it may declare the existing union school district dissolved or it may declare that it continue without the former member. The state board shall file its declaration with the secretary of state, with the clerk of the existing union school district, the districts which will be members of the Merged District, and with the town clerks of the withdrawing member and all school districts affected by the merger.

(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 and in other schools, and whether and in what manner approved independent schools and designated schools will be included, 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;

(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; and

(4) if a Merged District provides for the education of students in one or more grades both by operating a school offering the grade and by paying tuition for any student in that same grade who, at the sole option of the student's legal guardian, is enrolled in a public school not operated by the Merged District or in an approved independent school, then notwithstanding any provision of law to the contrary:

(A) the Merged District shall pay tuition in an amount not to exceed the per-pupil cost of educating a student in the school operated by the Merged District; and

(B) the legal guardian of a student shall notify the school district of the intention to enroll the student in a school other than one operated by the Merged District no later than:

(i) November 15 of the academic year preceding the academic year in which the student will be enrolled in the school of the guardian's choice, if the student will be entering grades 2 through 12; and

(ii) July 1 of the academic year in which the student will be enrolled in the school of the guardian's choice, if the student will be entering kindergarten or first grade.

(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.

**Rep. Deen of Westminster** asked that the question be divided and that the second instance of amendment be taken up first.



Thereupon, **Rep. Deen of Westminster** raised a Point of Order that this amendment was in violation of Rule 77, which Point of Order the Speaker ruled well taken.

**Rep. Kilmartin of Newport City** moved to suspend the rules to permit reconsideration of the vote of the Kilmartin amendment in the Challenges For Change bill.

Pending the question, Shall the rules be suspended to permit reconsideration? **Rep. Kilmartin of Newport City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the rules be suspended to permit reconsideration? was decided in the negative. Yeas, 49. Nays, 85. A three-quarter vote of 101 needed.

Those who voted in the affirmative are:

Acinapura of Brandon	Helm of Castleton	Myers of Essex
Adams of Hartland	Higley of Lowell	Olsen of Jamaica
Ainsworth of Royalton	Howard of Cambridge	Pearce of Richford
Baker of West Rutland	Kilmartin of Newport City	Peaslee of Guildhall
Branagan of Georgia	Koch of Barre Town	Perley of Enosburg
Brennan of Colchester	Komline of Dorset	Reis of St. Johnsbury
Canfield of Fair Haven	Krawczyk of Bennington	Savage of Swanton
Clark of Vergennes	Krebs of South Hero	Scheuermann of Stowe
Clerkin of Hartford	Larocque of Barnet	Shaw of Pittsford
Crawford of Burke	Lawrence of Lyndon	South of St. Johnsbury
Devereux of Mount Holly	Lewis of Derby	Stevens of Shoreham
Dickinson of St. Albans	Marcotte of Coventry	Townsend of Randolph
Town	McAllister of Highgate	Turner of Milton
Donaghy of Poultney	McDonald of Berlin	Wheeler of Derby
Donahue of Northfield	McFaun of Barre Town	Winters of Williamstown
Fagan of Rutland City	McNeil of Rutland Town	Wright of Burlington
Geier of South Burlington	Morrissey of Bennington	

Those who voted in the negative are:

Ancel of Calais	Consejo of Sheldon	French of Randolph
Andrews of Rutland City	Corcoran of Bennington	Gilbert of Fairfax
Aswad of Burlington	Courcelle of Rutland City	Greshin of Warren
Atkins of Winooski	Davis of Washington	Haas of Rochester
Bissonnette of Winooski	Deen of Westminster	Head of South Burlington
Botzow of Pownal	Donovan of Burlington	Heath of Westford
Bray of New Haven	Edwards of Brattleboro	Hooper of Montpelier
Burke of Brattleboro	Emmons of Springfield	Howard of Rutland City
Cheney of Norwich	Evans of Essex	Howrigan of Fairfield
Clarkson of Woodstock	Fisher of Lincoln	Jerman of Essex
Condon of Colchester	Frank of Underhill	Jewett of Ripton
Conquest of Newbury	French of Shrewsbury	Johnson of South Hero

Keenan of St. Albans City	Milkey of Brattleboro	Shand of Weathersfield
Kitzmiller of Montpelier	Miller of Shaftsbury	Sharpe of Bristol
Klein of East Montpelier	Mitchell of Barnard	Smith of Mendon
Lanpher of Vergennes	Mook of Bennington	Spengler of Colchester
Larson of Burlington	Moran of Wardsboro	Sweaney of Windsor
Lenes of Shelburne	Mrowicki of Putney	Taylor of Barre City
Leriche of Hardwick	Nease of Johnson	Till of Jericho
Lippert of Hinesburg	Nuovo of Middlebury	Toll of Danville
Lorber of Burlington	O'Brien of Richmond	Waite-Simpson of Essex
Macaig of Williston	Obuchowski of Rockingham	Webb of Shelburne
Maier of Middlebury	Pellett of Chester	Weston of Burlington
Malcolm of Pawlet	Peltz of Woodbury	Wilson of Manchester
Manwaring of Wilmington	Poirier of Barre City	Wizowaty of Burlington
Marek of Newfane	Potter of Clarendon	Zenie of Colchester
Martin of Springfield	Pugh of South Burlington	Zuckerman of Burlington
Martin of Wolcott	Ram of Burlington	
Masland of Thetford	Rodgers of Glover	

Those members absent with leave of the House and not voting are:

Audette of South Burlington	Hubert of Milton	Orr of Charlotte
Bohi of Hartford	Johnson of Canaan	Partridge of Windham
Browning of Arlington	McCullough of Williston	Stevens of Waterbury
Copeland-Hanzas of Bradford	Minter of Waterbury	Young of St. Albans City
Grad of Moretown	Morley of Barton	
	O'Donnell of Vernon	

Pending the question, Shall the bill be amended as offered by Rep. Kilmartin of Newport City in the first instance? **Rep. Kilmartin of Newport City** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as offered by Rep. Kilmartin of Newport City in the first instance? was decided in the negative. Yeas, 48. Nays, 86.

Those who voted in the affirmative are:

Acinapura of Brandon	Donahue of Northfield	Lewis of Derby
Adams of Hartland	Fagan of Rutland City	Marcotte of Coventry
Ainsworth of Royalton	Geier of South Burlington *	McAllister of Highgate
Baker of West Rutland	Helm of Castleton	McDonald of Berlin
Branagan of Georgia	Higley of Lowell	McFaun of Barre Town
Brennan of Colchester	Howrigan of Fairfield	McNeil of Rutland Town
Canfield of Fair Haven	Kilmartin of Newport City	Morrissey of Bennington
Clark of Vergennes	Koch of Barre Town	Myers of Essex
Clerkin of Hartford	Komline of Dorset	Olsen of Jamaica *
Crawford of Burke	Krawczyk of Bennington	Pearce of Richford
Devereux of Mount Holly	Krebs of South Hero	Peaslee of Guildhall
Dickinson of St. Albans Town	Larocque of Barnet	Perley of Enosburg
	Lawrence of Lyndon	Reis of St. Johnsbury

Savage of Swanton	Stevens of Shoreham	Winters of Williamstown
Scheuermann of Stowe	Townsend of Randolph	Wright of Burlington
Shaw of Pittsford	Turner of Milton	
South of St. Johnsbury	Wheeler of Derby	

Those who voted in the negative are:

Ancel of Calais	Head of South Burlington	Moran of Wardsboro
Andrews of Rutland City	Heath of Westford	Mrowicki of Putney
Aswad of Burlington	Hooper of Montpelier	Nease of Johnson
Atkins of Winooski	Howard of Cambridge	Nuovo of Middlebury
Bissonnette of Winooski	Howard of Rutland City	O'Brien of Richmond
Botzow of Pownal	Jerman of Essex	Obuchowski of Rockingham
Bray of New Haven	Jewett of Ripton	Pellett of Chester
Burke of Brattleboro	Johnson of South Hero	Peltz of Woodbury
Cheney of Norwich	Keenan of St. Albans City	Poirier of Barre City
Clarkson of Woodstock	Kitzmiller of Montpelier	Potter of Clarendon
Condon of Colchester	Klein of East Montpelier	Pugh of South Burlington
Conquest of Newbury	Lanpher of Vergennes	Ram of Burlington
Consejo of Sheldon	Larson of Burlington	Rodgers of Glover
Corcoran of Bennington	Lenes of Shelburne	Shand of Weathersfield
Courcelle of Rutland City	Leriche of Hardwick	Sharpe of Bristol
Davis of Washington	Lippert of Hinesburg	Smith of Mendon
Deen of Westminster	Lorber of Burlington	Spengler of Colchester
Donaghy of Poultney	Macaig of Williston	Sweaney of Windsor
Donovan of Burlington	Maier of Middlebury	Taylor of Barre City
Edwards of Brattleboro	Malcolm of Pawlet	Till of Jericho
Emmons of Springfield	Manwaring of Wilmington	Toll of Danville
Evans of Essex	Marek of Newfane *	Waite-Simpson of Essex
Fisher of Lincoln	Martin of Springfield	Webb of Shelburne
Frank of Underhill	Martin of Wolcott	Weston of Burlington
French of Shrewsbury	Masland of Thetford	Wilson of Manchester
French of Randolph	Milkey of Brattleboro	Wizowaty of Burlington
Gilbert of Fairfax	Miller of Shaftsbury	Zenie of Colchester
Greshin of Warren	Mitchell of Barnard	Zuckerman of Burlington
Haas of Rochester	Mook of Bennington	

Those members absent with leave of the House and not voting are:

Audette of South Burlington	Hubert of Milton	Orr of Charlotte
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Browning of Arlington	McCullough of Williston	Stevens of Waterbury
Copeland-Hanzas of Bradford	Minter of Waterbury	Young of St. Albans City
Grad of Moretown	Morley of Barton	
	O'Donnell of Vernon	

**Rep. Geier of South Burlington** explained his vote as follows:

“Mr. Speaker:

Our founding fathers have been credited with being very wise when they wrote a constitution that separated church and state. They recommended that everyone have church choice, if free choice is best for religion, why is not free choice also good for education? I would ask members if one shoe fits all, then why do we have so many shoe stores?"

**Rep. Marek of Newfane** explained his vote as follows:

"Mr. Speaker:

Choice without equal funding and services is only an illusion of choice."

**Rep. Olsen of Jamaica** explained his vote as follows:

"Mr. Speaker:

Everyone in Vermont has school choice, unless you are poor and happen to live in one of the approximately 151 communities that do not offer school choice."

Pending third reading of the bill, **Rep. Jewett of Ripton** moved to amend the bill as follows:

In Sec. 19, by inserting the subsection designation "(a)" before the first sentence and by adding a new subsection to be subsection (b) to read:

- (b) Before finalizing the proposal required in subsection (a) of this section, the commissioner, or the commissioner's designee, shall visit all small schools for which the proposal may recommend the reduction or elimination of small school grant funding and shall discuss with the principal and school board of each visited school the school's education program and quality and the school's budget, financial viability, and reliance upon small school grant funding. The information obtained at these meetings shall be included with the proposal.

Which was agreed to.

Pending third reading of the bill, **Rep. Peltz of Woodbury** moved to amend the bill as follows:

By striking Sec. 20 in its entirety.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Message from the Senate No. 50**

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Mr. Speaker:

I am directed to inform the House that:

The Senate has considered a bill originating in the House of the following title:

**H. 462.** An act relating to encroachments on public waters.

And has passed the same in concurrence.

The Senate has considered a bill originating in the House of the following title:

**H. 485.** An act relating to the use value appraisal program.

**H. 763.** An act relating to establishment of an agency of natural resources' river corridor management program.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered House proposals of amendment to the following Senate bills and has refused to concur therein and asks for Committees of Conference upon the disagreeing votes of the two Houses to which the President pro tempore announced the appointment as members of such Committees on the part of the Senate:

**S. 97.** An act relating to a Vermont state employees' cost-savings incentive program.

Senator Doyle  
Senator Brock  
Senator Ayer

**S. 295.** An act relating to the creation of an agricultural development director.

Senator Kittell  
Senator Starr  
Senator Choate

Pursuant to the request of the House for a Committee of Conference on the disagreeing votes of the two Houses on House bill entitled:

**H. 590.** An act relating to mediation in foreclosure proceedings.

Senator Campbell  
Senator Illuzzi  
Senator Cummings

**Senate Proposal of Amendment Concurred in  
With a Further Amendment Thereto**

**H. 281**

The Senate proposed to the House to amend House bill, entitled  
An act relating to the removal of bodily remains

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 reintering 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~~ 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.

Pending the question, Shall the House concur in the Senate proposal of amendment? **Rep. Ram of Burlington** moved that the House concur in the Senate proposal of amendment with a further amendment thereto.

First: In Sec. 2, in subdivision (b)(2) by striking the final sentence and inserting in lieu thereof the following: “Each treatment plan shall include the following as appropriate:”

Second: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c)(3) by striking the word “decedent” and inserting in lieu thereof the word “descendant”

Third: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c), by adding a new subdivision (4) to read as follows:

(4) The state archeologist.

Fourth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (d), in the first sentence by striking the words “one of the individuals listed” and by inserting in lieu thereof the following: “any person listed”

Fifth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (h), by striking the first sentence and inserting in lieu thereof the following: “The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process.”

Fifth: By striking Secs. 5, 6, and 8.

Sixth: In Sec. 7. 18 V.S.A. § 5201 by striking subsection (c) and inserting in lieu thereof the following:

\* \* \*

Seventh: In Sec. 9 by striking the following “, except that Sec. 8 shall take effect on January 1, 2012.”

Eighth: by striking the change of title of the bill

Which was agreed to.

#### **Committee of Conference Appointed**

##### **S. 97**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on Senate bill, entitled

An act relating to a Vermont state employees’ cost-savings incentive program

The Speaker appointed as members of the Committee of Conference on the part of the House:

**Rep. Evans of Essex**  
**Rep. Martin of Wolcott**  
**Rep. McDonald of Berlin**

#### **Committee of Conference Appointed**

##### **S. 295**

Pursuant to the request of the Senate for a Committee of Conference on the disagreeing votes of the two Houses on House bill, entitled

An act relating to the creation of an agricultural development director

The Speaker appointed as members of the Committee of Conference on the part of the House:

**Rep. Stevens of Shoreham**  
**Rep. Taylor of Barre City**  
**Rep. Malcolm of Pawlet**

**Action on Bill Postponed**

**S. 297**

Senate bill, entitled

An act relating to miscellaneous changes to education law;

Was taken up and pending the question, Shall the House propose to the Senate to amend the bill as recommended by Rep. McAllister of Highgate? on motion of **Rep. Mook of Bennington**, action on the bill was postponed until the next legislative day.

**Rules Suspended; Bill Messaged to Senate Forthwith**

**H. 281**

House bill, entitled

An act relating to carrying of concealed firearms by qualified retired law enforcement officers;

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Adjournment**

At four o'clock and fifty minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

**Concurrent Resolutions Adopted**

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

**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;

[The full text of the concurrent resolutions appeared in the House and Senate Calendar Addendum on the preceding legislative day and will appear in the Public Acts and Resolves of the 2010, seventieth Biennial session.]