

# Journal of the House

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Wednesday, May 5, 2010

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

## Devotional Exercises

Devotional exercises were conducted by Rev. Michael Augustinowitz of St. Autustine Parish, Montpelier, Vt.

## Message from the Senate No. 53

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 House proposals of amendment to Senate bills of the following titles:

**S. 88.** An act relating to health care financing and universal access to health care in Vermont.

**S. 222.** An act relating to recognition of Abenaki tribes.

And has severally concurred in the House proposals of amendment with proposals of amendment in the adoption of which the concurrence of the House is requested.

## Bill Referred to Committee on Appropriations

**S. 262**

Senate bill, entitled

An act relating to a study of coverage of appropriate services for children with autism spectrum disorders

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

## Joint Resolution Placed on Calendar

**J.R.H. 49**

Joint resolution strongly criticizing the United States Department of Education for requiring the Vermont Department of Education to identify persistently low-achieving schools

Offered by: Representatives Sharpe of Bristol, Fisher of Lincoln, Andrews of Rutland City, Atkins of Winooski, Audette of South Burlington, Bissonnette of Winooski, Bray of New Haven, Canfield of Fair Haven, Clark of Vergennes, Courcelle of Rutland City, Donahue of Northfield, Donovan of Burlington, Fagan of Rutland City, Grad of Moretown, Helm of Castleton, Howard of Cambridge, Howard of Rutland City, Larson of Burlington, Martin of Wolcott, McNeil of Rutland Town, Nease of Johnson, Shand of Weathersfield, Smith of Mendon, South of St. Johnsbury, Stevens of Shoreham, Sweaney of Windsor, Weston of Burlington, Wizowaty of Burlington and Zuckerman of Burlington

Whereas, on August 26, 2009, the United States Department of Education published and proposed and has since finalized federal regulations directing each state to identify the 10 “persistently low-achieving schools,” and

Whereas, this identification process was part of a broader report required from each state categorizing school achievement in all of its public schools, and

Whereas, in accordance with the federal regulations, in order for the 10 “persistently low-achieving schools” to receive federal school improvement funds included in the American Recovery and Reinvestment Act of 2009 (ARRA), they are required to embrace one of four specific courses of action: (i) replace the principal and at least 50 percent of the school’s staff, adopt a new governance structure, and implement a revised educational program; (ii) close the school and reopen it under the management of a charter school operator; (iii) close the school and send the students to another school; or (iv) adopt a transformation model that addresses four specific areas critical to transforming the school, and

Whereas, in March, the Vermont Department of Education released its list, which included Mount Abraham Union High School, Wheeler Elementary School (Integrated Arts Academy), Johnson Elementary School, Rutland High School, Northfield Elementary School, Winooski High School, St. Johnsbury School, Windsor High School, Fair Haven Union High School, and Lamoille Union High School, and

Whereas, the designation of these schools will severely damage their reputations and hamper their ability to receive much-needed federal financial assistance, and

Whereas, to stigmatize schools and impose these major changes on Vermont schools that have worked under often difficult circumstances to improve their quantifiable measurements of achievement is extremely inequitable and unfair, and

Whereas, the United States Department of Education is punishing vulnerable schools that it should be nurturing instead of impeding, and

Whereas, Vermont's education system should not be held hostage to unreasonable federal demands that are all but impossible to implement, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly criticizes the United States Department of Education for its mischaracterization of designated Vermont schools as "persistently low-achieving schools" and the extensive prerequisites required for these schools to receive federal financial aid, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Education Arne Duncan, to Vermont Education Commissioner Armando Vilaseca, to each school listed in this resolution, and to the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

**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 Senat 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 Friday, May 7, 2010.

**Action on Bill Postponed**

**H. 213**

House bill, entitled

An act to provide fairness to tenants in cases of contested housing security deposit withholding

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

**Favorable Report; Third Reading Ordered**

**J.R.S. 57**

**Rep. Shaw of Pittsford**, for the committee on Corrections and Institutions, to which had been referred Joint resolution, entitled

Joint resolution relating to authorizing the commissioner of forests, parks and recreation to proceed with an exchange of rights-of-way in Groton state forest;

Reported in favor of its passage in concurrence. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

**Rules Suspended; Proposal of Amendment Agreed to; Third Reading Ordered; Rules Suspended; Bill Read Third Time and Passed in Concurrence with Proposal of Amendment; Rules Suspended and Bill was Ordered Messaged to the Senate Forthwith**

**S. 90**

On motion of **Rep. Komoine of Dorset**, the rules were suspended and Senate bill, entitled

An act relating to representative annual meetings

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

**Rep. Higley of Lowell**, for the committee on Government Operations, to which had been referred the bill reported in favor of its passage in concurrence with proposal of amendment as follows:

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

Sec. 1. 17 V.S.A. § 2640a is added to read:

§ 2640a. REPRESENTATIVE ANNUAL MEETINGS

(a) A municipality with a population of 5,000 or greater may vote at a special or annual town meeting to establish a representative form of annual or special meeting.

(b)(1) A representative form of annual or special meeting is a meeting of members elected by district to exercise the powers vested in the voters of the town to act upon articles. However, the election of officers, public questions, and all articles to be voted upon by Australian ballot as required by law or as voted under section 2680 of this title at a prior annual or special meeting, and reconsideration of articles under section 2661 of this title shall remain vested in the voters of the town.

(2) An organizational resolution to adopt a representative form of annual or special meeting may be made by the legislative body of the municipality or by petition of five percent of the voters of the municipality. An official copy of the organizational resolution shall be filed in the office of the clerk of the municipality at least 10 days before the annual or special meeting at which the vote whether to adopt the organizational resolution shall take place, and copies thereof shall be made available to members of the public upon request.

(3) An organizational resolution shall include the following:

(A) a certain number of elected members, a range of elected members, or a ratio of elected members to the number of voters. However, in no case shall the number of elected members be less than 100;

(B) a certain number of districts and the boundaries of those districts;

(C) who shall be ex officio voting members, if any, of the meeting;

(D) the procedure for conducting the representative meeting;

(E) specific action, if any, to be taken at the representative meeting;

and

(F) a procedure whereby the voters of the municipality may reconsider any action taken at a representative meeting.

(c) The form of the question of whether to establish a representative form of annual or special meeting shall be substantially as follows: "Shall the [name of municipality] adopt the representative form of annual or special meeting as set forth in the organizational resolution?"

(d) A vote establishing a representative form of annual or special meeting shall remain in effect until the municipality votes to discontinue or establish a new representative form of annual or special meeting at an annual or special meeting duly warned for that purpose.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence with proposal of amendment. The bill was read the third time and passed in concurrence with proposal of amendment and, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Senate Proposal of Amendment to House Proposal of  
Amendment Concurred in; Rules Suspended and Bill Ordered  
Messaged to the Senate Forthwith**

**S. 222**

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

An act relating to recognition of Abenaki tribes

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

The Senate concurred in the House proposal of amendment with the following proposal of amendment thereto:

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

Sec. 1. 1 V.S.A. § 851 is amended to read:

§ 851. FINDINGS

The general assembly finds that:

(1) At least 1,700 Vermonters claim to be direct descendants of the several indigenous Native American peoples, now known as Western Abenaki tribes, who originally inhabited all of Vermont and New Hampshire, parts of western Maine, parts of southern Quebec, and parts of upstate New York for hundreds of years, beginning long before the arrival of Europeans.

(2) There is ample archaeological evidence that demonstrates that the Missisquoi and Cowasuck Abenaki were indigenous to and farmed the river floodplains of Vermont at least as far back as the 1100s A.D.

(3) The Western Abenaki, including the Missisquoi, have a very definite and carefully maintained oral tradition that consistently references the Champlain valley in western Vermont.

(4) State recognition confers official acknowledgment of the long-standing existence in Vermont of Native American Indians who predated European settlement and enhances dignity and pride in their heritage and

community.

~~(4)~~(5) Many contemporary Abenaki families continue to produce traditional crafts and intend to continue to pass on these indigenous traditions to the younger generations. In order to create and sell Abenaki crafts that may be labeled as Indian- or Native American-produced, the Abenaki must be recognized by the state of Vermont.

~~(5) Federal programs may be available to assist with educational and cultural opportunities for Vermont Abenaki and other Native Americans who reside in Vermont~~

(6) According to a public affairs specialist with the U.S. Bureau of Indian Affairs (BIA), state recognition of Indian tribes plays a very small role with regard to federal recognition. The only exception is when a state recognized a tribe before 1900.

(7) At least 15 other states have recognized their resident indigenous people as Native American Indian tribes without any of those tribes previously or subsequently acquiring federal recognition.

(8) State-recognized Native American Indian tribes and their members will continue to be subject to all laws of the state, and recognition shall not be construed to create any basis or authority for tribes to establish or promote any form of prohibited gambling activity or to claim any interest in land or real estate in Vermont.

Sec. 2. 1 V.S.A. chapter 23 is amended to read:

CHAPTER 23. ~~ABENAKI~~ NATIVE AMERICAN INDIAN PEOPLE

Sec. 3. 1 V.S.A. § 852 is amended to read:

§ 852. VERMONT COMMISSION ON NATIVE AMERICAN AFFAIRS ESTABLISHED; AUTHORITY

(a) In order to recognize the historic and cultural contributions of Native Americans to Vermont, to protect and strengthen their heritage, and to address their needs in state policy, programs, and actions, there is hereby established the Vermont commission on Native American affairs (the “commission”).

(b) The commission shall ~~comprise seven~~ be composed of nine members appointed by the governor for staggered two-year terms from a list of candidates compiled by the division for historic preservation. The governor shall appoint ~~a chair from among the members of the commission~~ members who have been residents of Vermont for a minimum of three years and reflect a diversity of affiliations and geographic locations in Vermont. A member

may serve for no more than two consecutive terms, unless there are insufficient eligible candidates. The division shall compile a list of ~~candidates' recommendations~~ candidates from the following:

(1) ~~Recommendations from the Missisquoi Abenaki and other Abenaki and other Native American regional tribal councils and communities~~ residing in Vermont. Once a Native American Indian tribe has been recognized under this chapter, a qualified candidate recommended by that tribe shall have priority for appointment to fill the next available vacancy on the commission.

~~(2) Applicants~~ Individuals who apply ~~in response to solicitations, publications, and website notification by~~ to the division of historical preservation. Candidates shall indicate their residence and Native American affiliation.

(c) ~~The commission shall have the authority to assist Native American tribal councils, organizations, and individuals to:~~

~~(1) Secure social services, education, employment opportunities, health care, housing, and census information.~~

~~(2) Permit the creation, display, and sale of Native American arts and crafts and legally to label them as Indian or Native American produced as provided in 18 U.S.C. § 1159(e)(3)(B) and 25 U.S.C. § 305e(d)(3)(B).~~

~~(3) Receive assistance and support from the federal Indian Arts and Crafts Board, as provided in 25 U.S.C. § 305 et seq.~~

~~(4) Become eligible for federal assistance with educational, housing, and cultural opportunities.~~

~~(5) Establish and continue programs offered through the U.S. Department of Education Office on Indian Education pursuant to Title VII of the Elementary and Secondary Education Act established in 1972 to support educational and cultural efforts of tribal entities that have been either state or federally recognized.~~

(1) Elect a chair each year.

(2) Provide technical assistance and an explanation of the process to applicants for state recognition.

(3) Compile and maintain a list of professionals and scholars for appointment to a review panel.

(4) Appoint a three-member panel acceptable to both the applicant and the commission to review supporting documentation of an application for recognition and advise the commission of its accuracy and relevance.



(5) Review each application, supporting documentation and findings of the review panel, and make recommendations for or against state recognition to the legislative committees.

(6) Assist Native American Indian tribes recognized by the state to:

(A) Secure assistance for social services, education, employment opportunities, health care, and housing.

(B) Develop and market Vermont Native American fine and performing arts, craft work, and cultural events.

(7) Develop policies and programs to benefit Vermont's Native American Indian population within the scope of the commission's authority.

(d) The commission shall meet at least three times a year and at any other times at the request of the chair. The division of historic preservation within the agency of commerce and community development and the department of education shall provide administrative support to the commission, including providing communication and contact resources.

(e) The commission may seek and receive funding from federal and other sources to assist with its work.

Sec. 4. 1 V.S.A. § 853 is amended to read:

§ 853. CRITERIA AND PROCESS FOR STATE RECOGNITION OF ABENAKI PEOPLE NATIVE AMERICAN INDIAN TRIBES

~~(a) The state of Vermont recognizes the Abenaki people and recognizes all Native American people who reside in Vermont as a minority population.~~

~~(b) Recognition of the Native American or Abenaki people provided in subsection (a) of this section shall be for the sole purposes specified in subsection 852(c) of this title and shall not be interpreted to provide any Native American or Abenaki person with any other special rights or privileges that the state does not confer on or grant to other state residents.~~

~~(c) This chapter shall not be construed to recognize, create, extend, or form the basis of any right or claim to land or real estate in Vermont for the Abenaki people or any Abenaki individual and shall be construed to confer only those rights specifically described in this chapter.~~

(a) For the purposes of this section:

(1) "Applicant" means a group or band seeking formal state recognition as a Native American Indian tribe.

(2) "Legislative committees" means the house committee on general,

housing and military affairs and the senate committee on economic development, housing and general affairs.

(3) “Recognized” or “recognition” means acknowledged as a Native American Indian tribe by the Vermont general assembly.

(4) “Tribe” means an assembly of Native American Indian people who are related to each other by kinship and who trace their ancestry to a kinship group that has historically maintained an organizational structure that exerts influence and authority over its members.

(b) The state recognizes all individuals of Native American Indian heritage who reside in Vermont as an ethnic minority. This designation does not confer any status to any collective group of individuals.

(c) In order to be eligible for recognition, an applicant must file an application with the commission and demonstrate compliance with subdivisions (1) through (8) of this subsection which may be supplemented by subdivision (9) of this subsection:

(1) A majority of the applicant’s members currently reside in a specific geographic location within Vermont.

(2) A substantial number of the applicant’s members are related to each other by kinship and trace their ancestry to a kinship group through genealogy or other methods. Genealogical documents shall be limited to those that show a descendency from identified Vermont or regional native people.

(3) The applicant has a connection with Native American Indian tribes and bands that have historically inhabited Vermont.

(4) The applicant has historically maintained an organizational structure that exerts influence and authority over its members that is supported by documentation of the structure, membership criteria, the names and residential addresses of its members, and the methods by which the applicant conducts its affairs.

(5) The applicant has an enduring community presence within the boundaries of Vermont that is documented by archaeology, ethnography, physical anthropology, history, folklore, or any other applicable scholarly research and data.

(6) The applicant is organized in part:

(A) To preserve, document, and promote its Native American Indian culture and history, and this purpose is reflected in its bylaws.

(B) To address the social, economic, political or cultural needs of the

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members with ongoing educational programs and activities.

(7) The applicant can document traditions, customs, oral stories, and histories that signify the applicant's Native American heritage and connection to their historical homeland.

(8) The applicant has not been recognized as a tribe in any other state, province, or nation.

(9) Submission of letters, statements, and documents from:

(A) Municipal, state, or federal authorities that document the applicant's history of tribe-related business and activities.

(B) Tribes in and outside Vermont that attest to the Native American Indian heritage of the applicant.

(d) The commission shall consider the application pursuant to the following process which shall include at least the following requirements:

(1) The commission shall:

(A) Provide public notice of receipt of the application and supporting documentation.

(B) Hold at least one public hearing on the application.

(C) Provide written notice of completion of each step of the recognition process to the applicant.

(2) Established appropriate time frames that include a requirement that the commission and the review panel shall complete a review of the application and issue a determination regarding recognition within one year after an application and all the supporting documentation have been filed, and if a recommendation is not issued, the commission shall provide written explanation to the applicant and the legislative committees of the reasons for the delay and the expected date that a decision will be issued.

(3) A process for appointing a three-member review panel for each application to review the supporting documentation and determine its sufficiency, accuracy, and relevance. The review panel shall provide a detailed written report of its findings and conclusions to the commission, the applicant, and legislative committees. Members of each review panel shall be appointed cooperatively by the commission and the applicant from a list of professionals and academic scholars with expertise in cultural or physical anthropology, Indian law, archaeology, Native American Indian genealogy, history, or another related Native American Indian subject area. If the applicant and the commission are unable to agree on a panel, the state historic preservation

officer shall appoint the panel. No member of the review panel may be a member of the commission or affiliated with or on the tribal rolls of the applicant.

(4) The commission shall review the application, the supporting documentation, the report from the review panel, and any other relevant information to determine compliance with subsection (b) of this section and make a determination to recommend or deny recognition. The decision to recommend recognition shall require a majority vote of all eligible members of the commission. A member of the commission who is on the tribal roll of the applicant is ineligible to participate in any action regarding the application. If the commission denies recognition, the commission shall provide the applicant and the legislative committees with written notice of the reasons for the denial, including specifics of all insufficiencies of the application.

(5) The applicant may file additional supporting documentation for reconsideration within one year after receipt of the notice of denial.

(6) An applicant may withdraw an application any time before the commission issues a recommendation, and may not file a new application for two years following withdrawal. A new application and supporting documentation shall be considered a de novo filing, and the commission shall not consider the withdrawn application or its supporting documentation.

(7) The commission shall provide a detailed written report of its findings and conclusions to the applicant and the legislative committees along with a recommendation that the general assembly recognize or deny recognition to the applicant as a Native American Indian tribe.

(8) All proceedings, applications, and supporting documentation shall be public except material exempt pursuant to subsection 317(40) of this title. Any documents relating to genealogy submitted in support of the application shall be available only to the three-member review panel.

(e) An applicant for recognition shall be recognized as follows:

(1) By approval of the general assembly.

(2) Two years after a recommendation to recognize a tribe by the commission is filed with the legislative committees, provided the general assembly took no action on the recommendation.

(f) A decision by the commission to recommend denial of recognition is final unless an applicant or a successor of interest to the applicant that has previously applied for and been denied recognition under this chapter provides new and substantial documentation and demonstrates that the new

documentation was not reasonably available at the time of the filing of the original application.

(g) Vermont Native American Indian bands and tribes and individual members of those bands and tribes remain subject to all the laws of the state.

(h) Recognition of a Native American Indian tribe shall not be construed to create, extend, or form the basis of any right or claim to land or real estate in Vermont or right to conduct any gambling activities prohibited by law, but confers only those rights specifically described in this chapter.

Sec. 5. 1 V.S.A. § 317(40) is added to read:

(40) Records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title.

Sec. 6. TRANSITIONAL PROVISIONS

(a) The terms of the present members of the commission on Native American affairs shall be deemed expired and the governor shall appoint all nine members of the commission.

(b) The present members of the commission may not reapply for appointment to the commission for two years following the end of their term.

(c) Appointments to the commission shall be made no later than September 1, 2010, provided a sufficient number of qualified candidates have been submitted to the governor.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

And that the bill title be amended to read:

“An act relating to state recognition of Native American Indian tribes in Vermont.”

Which proposal of amendment was considered and concurred in.

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

### **Recess**

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

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

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**Rules Suspended; Bill Read Second Time;  
Consideration Interrupted by Recess**

**S. 290**

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

An act relating to restoring solvency to the unemployment trust fund

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

**Rep. Marcotte of Coventry** spoke for the committee on Commerce and Economic Development.

**Rep. Sharpe of Bristol**, for the committee on Ways and Means, recommended that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time and pending the question, Shall the bill be read the third time?

**Recess**

At eleven o'clock and thirty-five minutes in the forenoon, the Speaker declared a recess until one o'clock and fifteen minutes in the afternoon.

At one o'clock and fifteen minutes in the afternoon, the Speaker called the House to order.

**Consideration Resumed; Rules Suspended; Bill Read Third Time and  
Passed in Concurrence; Rules Suspended and the Bill was  
Ordered Messaged to the Senate Forthwith**

**S. 290**

Consideration resumed on Senate bill, entitled

An act relating to restoring solvency to the unemployment trust fund;

Pending the question, Shall the bill be read the third time? **Reps. Davis of Washington, Poirier of Barre City and Zuckerman of Burlington** moved to amend the bill as follows:

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

Sec. 4. 21 V.S.A. § 1338a is amended to read:

§ 1338A. DISREGARDED EARNINGS

(a) An individual shall be deemed "partially unemployed" in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section "wages" in any one week includes only that amount of remuneration to the nearest dollar which is in excess of ~~30~~ 20 percent of the individual's weekly benefit, ~~or \$40.00, whichever amount is greater.~~ For each dollar of wages earned in excess of 20 percent of the individual's weekly benefit, the weekly benefit amount shall be reduced by \$0.60.

(b) Notwithstanding subsection (a) of this section, an individual shall not be deemed to be "partially unemployed" if the individual performed less than full-time work only because there was a holiday in that week for which the individual was entitled to holiday pay.

Second: In Sec. 6, 21 V.S.A. § 1343 in subsection (a), by striking out subdivision (4) in its entirety.

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read:

Sec. 7. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

(1) For not more than ~~12~~ 15 weeks nor less than six weeks immediately following the filing of a claim for benefits (in addition to the waiting period) as may be determined by the commissioner according to the circumstances in each case, if the commissioner finds that:

(A) He or she has been discharged by his or her last employing unit for misconduct connected with his or her work; or

(B) He or she was separated from his or her last employing unit because he or she became unable to perform all or an essential part of his or her normal duties in such employment without good cause attributable to such employing unit because of the consequences which flow from his or her conviction of a felony or misdemeanor or from an action or order of a judge or court in any criminal or civil matter. In the event a conviction or the action or order of any judge or court in any criminal or civil matter is rescinded or expunged, the individual may be eligible for benefits from the time the individual would have otherwise been eligible for benefits.

\* \* \*

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation.

(B) He or she has been discharged by his or her last employing unit for gross misconduct connected with his or her work. For purposes of this section, "gross misconduct" means conduct directly related to the employee's work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer's business interest, and that has direct and significant impact upon the employer's business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, any conduct that constitutes a felony, or repeated incidents after written warning of either unprovoked insubordination or public use of profanity. An individual shall not suffer more than one disqualification by reason of such separation.

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Thereupon, **Rep. Poirier of Barre City** asked that the question be divided and that the second recommendation of amendment be voted on first, then the third recommendation of amendment be voted on second and the first recommendation be voted on last.

Pending the question, Shall the House propose to the Senate to amend the bill in the second instance as recommended by Reps. Davis of Washington et al? **Rep. Poirier of Barre 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 House propose to the Senate to amend the bill in the second instance, as recommended by Reps. Davis of Washington et al? was decided in the negative. Yeas, 24. Nays, 113.

Those who voted in the affirmative are:

Burke of Brattleboro  
Davis of Washington  
Edwards of Brattleboro  
Haas of Rochester  
Howard of Rutland City

Koch of Barre Town  
Krawczyk of Bennington  
Larocque of Barnet  
Lewis of Derby  
Lorber of Burlington

Macaig of Williston  
McDonald of Berlin  
McFaun of Barre Town  
Milkey of Brattleboro  
Moran of Wardsboro



Morrissey of Bennington  
Poirier of Barre City  
Ram of Burlington

Reis of St. Johnsbury  
South of St. Johnsbury  
Spengler of Colchester

Taylor of Barre City  
Weston of Burlington  
Zuckerman of Burlington \*

Those who voted in the negative are:

Acinapura of Brandon  
Adams of Hartland  
Ancel of Calais  
Andrews of Rutland City  
Aswad of Burlington  
Atkins of Winooski  
Baker of West Rutland  
Bissonnette of Winooski  
Bohi of Hartford  
Botzow of Pownal  
Branagan of Georgia  
Brennan of Colchester  
Browning of Arlington  
Canfield of Fair Haven  
Cheney of Norwich  
Clarkson of Woodstock  
Clerkin of Hartford  
Conquest of Newbury  
Consejo of Sheldon  
Copeland-Hanzas of  
Bradford  
Corcoran of Bennington  
Courcelle of Rutland City  
Crawford of Burke  
Deen of Westminster  
Devereux of Mount Holly  
Dickinson of St. Albans  
Town  
Donaghy of Poultney  
Donahue of Northfield  
Donovan of Burlington  
Emmons of Springfield  
Evans of Essex  
Fagan of Rutland City  
Fisher of Lincoln  
Frank of Underhill  
French of Shrewsbury  
French of Randolph  
Geier of South Burlington

Gilbert of Fairfax  
Grad of Moretown  
Greshin of Warren  
Head of South Burlington  
Heath of Westford  
Higley of Lowell  
Hooper of Montpelier  
Howard of Cambridge  
Howrigan of Fairfield  
Hubert of Milton  
Jerman of Essex  
Jewett of Ripton  
Johnson of South Hero  
Keenan of St. Albans City  
Kilmartin of Newport City  
Kitzmiller of Montpelier  
Klein of East Montpelier  
Komline of Dorset  
Krebs of South Hero  
Lanpher of Vergennes  
Larson of Burlington  
Lawrence of Lyndon  
Lenes of Shelburne  
Leriche of Hardwick  
Lippert of Hinesburg  
Maier of Middlebury  
Malcolm of Pawlet  
Manwaring of Wilmington  
Marcotte of Coventry  
Marek of Newfane  
Martin of Springfield  
Martin of Wolcott  
Masland of Thetford  
McAllister of Highgate  
McNeil of Rutland Town  
Miller of Shaftsbury  
Minter of Waterbury  
Mitchell of Barnard  
Mook of Bennington

Mrowicki of Putney  
Myers of Essex  
Nease of Johnson  
Nuovo of Middlebury  
O'Brien of Richmond  
Obuchowski of Rockingham  
Olsen of Jamaica  
Orr of Charlotte  
Partridge of Windham  
Pearce of Richford  
Peaslee of Guildhall  
Peltz of Woodbury  
Perley of Enosburg  
Potter of Clarendon  
Pugh of South Burlington  
Rodgers of Glover  
Savage of Swanton  
Scheuermann of Stowe  
Shand of Weathersfield  
Sharpe of Bristol  
Shaw of Pittsford  
Smith of Mendon  
Stevens of Waterbury  
Stevens of Shoreham  
Sweaney of Windsor  
Till of Jericho  
Toll of Danville  
Townsend of Randolph  
Turner of Milton  
Waite-Simpson of Essex  
Wheeler of Derby  
Wilson of Manchester  
Winters of Williamstown  
Wizowaty of Burlington  
Wright of Burlington  
Young of St. Albans City  
Zenie of Colchester

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

Ainsworth of Royalton  
Audette of South Burlington

Bray of New Haven  
Clark of Vergennes

Condon of Colchester  
Helm of Castleton

Johnson of Canaan  
McCullough of Williston

Morley of Barton  
O'Donnell of Vernon

Pellett of Chester  
Webb of Shelburne

Pending the question, Shall the House propose to the Senate to amend the bill in the third instance, as recommended by Reps. Davis of Washington et al? **Rep. Davis of Washington** 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 in the third instance as recommended by Reps. Davis of Washington et al? was decided in the negative. Yeas, 16. Nays, 123.

Those who voted in the affirmative are:

Burke of Brattleboro  
Davis of Washington  
Edwards of Brattleboro  
Haas of Rochester  
Howard of Rutland City  
Lewis of Derby

Lorber of Burlington  
McFaun of Barre Town  
Moran of Wardsboro  
Poirier of Barre City  
Ram of Burlington  
South of St. Johnsbury

Spengler of Colchester  
Taylor of Barre City  
Weston of Burlington  
Zuckerman of Burlington

Those who voted in the negative are:

Acinapura of Brandon  
Adams of Hartland  
Ancel of Calais  
Andrews of Rutland City  
Aswad of Burlington  
Atkins of Winooski  
Baker of West Rutland  
Bissonnette of Winooski  
Bohi of Hartford  
Botzow of Pownal  
Branagan of Georgia  
Brennan of Colchester  
Browning of Arlington  
Canfield of Fair Haven  
Cheney of Norwich  
Clark of Vergennes  
Clarkson of Woodstock  
Clerkin of Hartford  
Condon of Colchester  
Conquest of Newbury  
Consejo of Sheldon  
Copeland-Hanzas of  
Bradford  
Corcoran of Bennington  
Courcelle of Rutland City  
Crawford of Burke

Deen of Westminster  
Devereux of Mount Holly  
Dickinson of St. Albans  
Town  
Donaghy of Poultney  
Donahue of Northfield  
Donovan of Burlington  
Emmons of Springfield  
Evans of Essex  
Fagan of Rutland City  
Fisher of Lincoln  
Frank of Underhill  
French of Shrewsbury  
French of Randolph  
Geier of South Burlington  
Gilbert of Fairfax  
Grad of Moretown  
Greshin of Warren  
Head of South Burlington  
Heath of Westford  
Higley of Lowell  
Hooper of Montpelier  
Howard of Cambridge  
Howrigan of Fairfield  
Hubert of Milton  
Jerman of Essex

Jewett of Ripton  
Johnson of South Hero  
Keenan of St. Albans City  
Kitzmiller of Montpelier  
Klein of East Montpelier  
Koch of Barre Town  
Komline of Dorset  
Krawczyk of Bennington  
Krebs of South Hero  
Lanpher of Vergennes  
Larocque of Barnet  
Larson of Burlington  
Lawrence of Lyndon  
Lenes of Shelburne  
Leriche of Hardwick  
Lippert of Hinesburg  
Macaig of Williston  
Maier of Middlebury  
Malcolm of Pawlet  
Manwaring of Wilmington  
Marcotte of Coventry  
Marek of Newfane  
Martin of Springfield  
Martin of Wolcott  
Masland of Thetford  
McAllister of Highgate

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McDonald of Berlin	Partridge of Windham	Stevens of Waterbury
McNeil of Rutland Town	Pearce of Richford	Stevens of Shoreham
Milkey of Brattleboro	Peaslee of Guildhall	Sweaney of Windsor
Miller of Shaftsbury	Pellett of Chester	Till of Jericho
Minter of Waterbury	Peltz of Woodbury	Toll of Danville
Mitchell of Barnard	Perley of Enosburg	Townsend of Randolph
Mook of Bennington	Potter of Clarendon	Turner of Milton
Morrissey of Bennington	Pugh of South Burlington	Waite-Simpson of Essex
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	Shand of Weathersfield	Wright of Burlington
Obuchowski of Rockingham	Sharpe of Bristol	Young of St. Albans City
Olsen of Jamaica	Shaw of Pittsford	Zenie of Colchester
Orr of Charlotte	Smith of Mendon	

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

Ainsworth of Royalton	Johnson of Canaan	O'Donnell of Vernon
Audette of South Burlington	Kilmartin of Newport City	Webb of Shelburne
Bray of New Haven	McCullough of Williston	
Helm of Castleton	Morley of Barton	

Pending the question, Shall the House propose to the Senate to amend the bill in the first instance, as recommended by Reps. Davis of Washington, et al? **Rep. Zuckerman of Burlington** 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 in first instance as recommended by Reps. Davis of Washington, et al? was decided in the negative. Yeas, 19. Nays, 121.

Those who voted in the affirmative are:

Bray of New Haven	Lewis of Derby	Spengler of Colchester
Burke of Brattleboro	Lorber of Burlington	Stevens of Shoreham
Davis of Washington	Moran of Wardsboro	Taylor of Barre City
Donahue of Northfield	Poirier of Barre City	Weston of Burlington
Edwards of Brattleboro	Ram of Burlington	Zuckerman of Burlington
Haas of Rochester	Reis of St. Johnsbury	
Howard of Rutland City	South of St. Johnsbury	

Those who voted in the negative are:

Acinapura of Brandon	Aswad of Burlington	Branagan of Georgia
Adams of Hartland	Atkins of Winooski	Brennan of Colchester
Ainsworth of Royalton	Bissonnette of Winooski	Browning of Arlington
Ancel of Calais	Bohi of Hartford	Canfield of Fair Haven
Andrews of Rutland City	Botzow of Pownal	Cheney of Norwich

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Clark of Vergennes	Jewett of Ripton	Myers of Essex
Clarkson of Woodstock	Johnson of South Hero	Nease of Johnson
Clerkin of Hartford	Keenan of St. Albans City	Nuovo of Middlebury
Condon of Colchester	Kilmartin of Newport City	O'Brien of Richmond
Conquest of Newbury	Kitzmiller of Montpelier	Obuchowski of Rockingham
Consejo of Sheldon	Klein of East Montpelier	Olsen of Jamaica
Copeland-Hanzas of Bradford	Koch of Barre Town	Orr of Charlotte
Corcoran of Bennington	Komline of Dorset	Partridge of Windham
Courcelle of Rutland City	Krawczyk of Bennington	Pearce of Richford
Crawford of Burke	Krebs of South Hero	Peaslee of Guildhall
Deen of Westminster	Lanpher of Vergennes	Pellett of Chester
Devereux of Mount Holly	Larocque of Barnet	Peltz of Woodbury
Dickinson of St. Albans Town	Larson of Burlington	Perley of Enosburg
Donaghy of Poultney	Lawrence of Lyndon	Potter of Clarendon
Donovan of Burlington	Lenes of Shelburne	Pugh of South Burlington
Emmons of Springfield	Leriche of Hardwick	Rodgers of Glover
Evans of Essex	Lippert of Hinesburg	Savage of Swanton
Fagan of Rutland City	Macaig of Williston	Scheuermann of Stowe
Fisher of Lincoln	Maier of Middlebury	Shand of Weathersfield
Frank of Underhill	Malcolm of Pawlet	Sharpe of Bristol
French of Shrewsbury	Manwaring of Wilmington	Shaw of Pittsford
French of Randolph	Marcotte of Coventry	Smith of Mendon
Geier of South Burlington	Marek of Newfane	Stevens of Waterbury
Gilbert of Fairfax	Martin of Springfield	Sweaney of Windsor
Grad of Moretown	Martin of Wolcott	Till of Jericho
Greshin of Warren	Masland of Thetford	Toll of Danville
Head of South Burlington	McAllister of Highgate	Townsend of Randolph
Heath of Westford	McDonald of Berlin	Turner of Milton
Higley of Lowell	McFaun of Barre Town	Waite-Simpson of Essex
Hooper of Montpelier	McNeil of Rutland Town	Wheeler of Derby
Howard of Cambridge	Milkey of Brattleboro	Wilson of Manchester
Howrigan of Fairfield	Miller of Shaftsbury	Winters of Williamstown
Hubert of Milton	Minter of Waterbury	Wizowaty of Burlington
Jerman of Essex	Mook of Bennington	Wright of Burlington
	Morrissey of Bennington	Young of St. Albans City
	Mrowicki of Putney	Zenie of Colchester

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

Audette of South Burlington	Johnson of Canaan	Morley of Barton
Baker of West Rutland	McCullough of Williston	O'Donnell of Vernon
Helm of Castleton	Mitchell of Barnard	Webb of Shelburne

Pending the question, Shall the bill be read a third time? **Rep. Marcotte of Coventry** 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 read a third time? was decided in the affirmative. Yeas, 133. Nays, 9.

## Those who voted in the affirmative are:

Acinapura of Brandon	Grad of Moretown	Moran of Wardsboro
Adams of Hartland	Greshin of Warren	Morley of Barton
Ainsworth of Royalton	Head of South Burlington	Morrissey of Bennington
Ancel of Calais	Heath of Westford	Mrowicki of Putney
Andrews of Rutland City	Higley of Lowell	Myers of Essex
Aswad of Burlington	Hooper of Montpelier	Nease of Johnson
Atkins of Winooski	Howrigan of Fairfield	Nuovo of Middlebury
Baker of West Rutland	Hubert of Milton	O'Brien of Richmond
Bissonnette of Winooski	Jerman of Essex	Obuchowski of Rockingham
Bohi of Hartford	Jewett of Ripton	Olsen of Jamaica
Botzow of Pownal	Johnson of South Hero	Orr of Charlotte
Branagan of Georgia	Keenan of St. Albans City	Partridge of Windham
Bray of New Haven	Kilmartin of Newport City	Pearce of Richford
Brennan of Colchester	Kitzmiller of Montpelier *	Peaslee of Guildhall
Browning of Arlington	Klein of East Montpelier	Pellett of Chester
Burke of Brattleboro	Koch of Barre Town *	Peltz of Woodbury
Canfield of Fair Haven	Komline of Dorset	Perley of Enosburg
Cheney of Norwich	Krawczyk of Bennington	Potter of Clarendon
Clark of Vergennes	Krebs of South Hero	Pugh of South Burlington
Clarkson of Woodstock	Lanpher of Vergennes	Ram of Burlington
Clerkin of Hartford	Larocque of Barnet	Reis of St. Johnsbury
Condon of Colchester	Larson of Burlington	Rodgers of Glover
Conquest of Newbury	Lawrence of Lyndon	Savage of Swanton
Consejo of Sheldon	Lenes of Shelburne	Scheuermann of Stowe
Copeland-Hanzas of	Leriche of Hardwick	Shand of Weathersfield
Bradford	Lewis of Derby	Sharpe of Bristol
Corcoran of Bennington	Lippert of Hinesburg	Shaw of Pittsford
Courcelle of Rutland City	Lorber of Burlington	Smith of Mendon
Crawford of Burke	Macaig of Williston	Spengler of Colchester
Deen of Westminster	Maier of Middlebury	Stevens of Waterbury
Devereux of Mount Holly	Malcolm of Pawlet	Stevens of Shoreham
Dickinson of St. Albans	Manwaring of Wilmington	Sweaney of Windsor
Town	Marcotte of Coventry	Till of Jericho
Donaghy of Poultney	Marek of Newfane	Toll of Danville
Donahue of Northfield	Martin of Springfield	Townsend of Randolph
Donovan of Burlington	Martin of Wolcott	Turner of Milton
Emmons of Springfield	Masland of Thetford	Waite-Simpson of Essex
Evans of Essex	McAllister of Highgate	Weston of Burlington
Fagan of Rutland City	McDonald of Berlin	Wheeler of Derby
Fisher of Lincoln	McFaun of Barre Town	Wilson of Manchester
Frank of Underhill	McNeil of Rutland Town	Winters of Williamstown
French of Shrewsbury	Milkey of Brattleboro	Wizowaty of Burlington
French of Randolph	Miller of Shaftsbury	Wright of Burlington
Geier of South Burlington	Minter of Waterbury	Young of St. Albans City
Gilbert of Fairfax	Mook of Bennington	Zenie of Colchester

Those who voted in the negative are:

Davis of Washington *	Howard of Cambridge	South of St. Johnsbury
Edwards of Brattleboro	Howard of Rutland City *	Taylor of Barre City
Haas of Rochester	Poirier of Barre City *	Zuckerman of Burlington

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

Audette of South Burlington	McCullough of Williston	Webb of Shelburne
Helm of Castleton	Mitchell of Barnard	
Johnson of Canaan	O'Donnell of Vernon	

**Rep. Davis of Washington** explained her vote as follows:

“Mr. Speaker:

My vote today is for all laborers; workers who we represent.”

**Rep. Howard of Rutland City** explained his vote as follows:

“Mr. Speaker:

Vermonters are already paying too great a price for the failed economic policies of the last eight years. Policies that promised jobs, then affordability instead they made the wealthiest wealthier and forced the rest of us to do more with less. Vermonters are already sharing the pain of the corruption and greed of Wall Street. I cannot ask my unemployed neighbors to pay a greater price for these failures.”

**Rep. Kitzmiller of Montpelier** explained his vote as follows:

“Mr. Speaker:

When we started working on this issue, I said we were “wading into the tar pits”.

Now, 16 months later, we emerge pretty well covered with tar, that is, a compromise that none of us likes, but with a solution that will return this critical program to solvency.

I am convinced that this is the right thing to do, and I’m willing to accept the tar.”

**Rep. Koch of Barre Town** explained his vote as follows:

“Mr. Speaker:

It has been said that there is something in this bill for everyone to hate.

One part that I have is the re-imposition of the one-week waiting period, which I worked diligently to repeal a decade ago. This provision has a

particularly adverse effect on the granite industry workers whom I represent.

I appreciate the fact that this provision is not permanent, but has a sunset. I just hope that when 2017 comes, the sunset is not extended.

That said, it is absolutely necessary that we fix our UI fund, and my yes vote recognizes the good work of those who did the hard negotiating to craft this compromise bill.”

**Rep. Poirier of Barre City** explained his vote as follows:

“Mr. Speaker:

I voted no because this is just another example of corporate welfare at the expense of Vermonters who have lost their jobs due to no fault of their own.

I hope the next Legislature will remember the plight of the working families of Vermont.”

**Rep. Zuckerman of Burlington** explained his vote as follows:

“Mr. Speaker:

With the average unemployed Vermonter going back to work in 14 weeks we have just sustained the 7% cut in the underlying bill.”

#### **Message from the Senate No. 54**

A message was received from the Senate by Mr. Gibson, its 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. 769.** An act relating to the licensing and inspection of plant and tree nurseries.

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 the report of the Committee of Conference upon the disagreeing votes of the two Houses upon House bill of the following title:

**H. 784.** An act relating to the state’s transportation program.

And has accepted and adopted the same on its part.

The Senate has considered House proposals of amendment to Senate bills of the following titles:

**S. 58.** An act relating to electronic payment of wages.

**S. 263.** An act relating to the Vermont Benefit Corporations Act.

**S. 278.** An act relating to the department of banking, insurance, securities, and health care administration.

And has concurred therein.

The Senate has considered House proposal of amendment to Senate bill entitled:

**H. 281.** An act relating to the removal of bodily remains.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The President pro tempore announced the appointment as members of such Committee on the part of the Senate:

Senator Illuzzi  
Senator Carris  
Senator Ashe

The Senate has considered House proposal of amendment to Joint Senate resolution entitled:

**J.R.S. 54.** Joint resolution related to the payment of dairy hauling costs.

And has refused to concur therein and asked for a Committee of Conference upon the disagreeing votes of the two Houses;

The President pro tempore announced the appointment as members of such Committee on the part of the Senate:

Senator Starr  
Senator Giard  
Senator Kittell

On motion of **Rep. Komline of Dorset**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence. The bill was read the third time and passed in concurrence and, on motion of **Rep. Komline of Dorset**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

**Rules Suspended; Favorable Report; Third Reading Ordered;  
Rules Suspended; Bill Read the Third Time;  
Consideration Interrupted by Recess**



On motion of **Rep. McDonald of Berlin**, the rules were suspended and Senate bill, entitled

An act relating to voyeurism

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

**Rep. Jewett of Ripton**, for the committee on Judiciary, to which had been referred House bill, entitled

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

On motion of **Rep. McDonald of Berlin**, the rules were suspended and the bill placed on all remaining stages of passage in concurrence.

Thereupon, the bill was read the third time.

Thereupon, **Rep. Donahue of Northfield** asked permission to offer an amendment after third reading, which was agreed to.

#### **Recess**

At three o'clock and twenty-five minutes in the afternoon, the Speaker declared a recess until five o'clock and thirty minutes in the afternoon.

At five o'clock and forty-five minutes in the evening, the Speaker called the House to order.

#### **Consideration Resumed; Proposal of Amendment Agreed to and the Bill was Passed in Concurrence with Proposal of Amendment**

#### **S. 218**

Consideration resumed on Senate bill, entitled

An act relating to voyeurism;

Thereupon, **Rep. Donahue of Northfield** moved to propose to the Senate to amend the bill as follows:

In Sec. 1, 13 V.S.A. § 2605(e), after the words "while that person is" by adding "in a place where a person has a reasonable expectation of privacy and that person is"

Which was agreed to.

Thereupon, the bill passed in concurrence with proposal of amendment.

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

#### **J.R.S. 54**

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

Joint resolution related to the payment of dairy hauling costs

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

**Rep. Bray of New Haven**  
**Rep. Conquest of Newbury**  
**Rep. McAllister of Highgate**

**Committee of Conference Appointed**

**H. 281**

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 removal of bodily remains

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

**Rep. Head of South Burlington**  
**Rep. Baker of West Rutland**  
**Rep. Ram of Burlington**

**Rules Suspended; Report of Committee of Conference Adopted**

**H. 784**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Komline of Dorset**, the rules were suspended and House bill, entitled

An act relating to the state's transportation program;

Was taken up for immediate consideration.

The Speaker placed before the House the following Committee of Conference report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon the bill respectfully reports that it has met and considered the same and recommended that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2011 transportation program appended to the agency of transportation's proposed fiscal year 2011 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) the term "agency" means the agency of transportation;

(2) the term "secretary" means the secretary of transportation;

(3) the table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading;

(4) the term "ARRA funds" refers to federal funds allocated to the state by the American Recovery and Reinvestment Act of 2009;

(5) the term "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f;

(6) the term "debt service reserve" refers to funds required to be segregated under the terms of a trust agreement entered into to secure transportation infrastructure bonds issued pursuant to subchapter 4 of chapter 13 of Title 32;

(7) the column heading "TIB" in the agency's proposed fiscal year 2011 transportation program refers to TIB funds and to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 13 of this act; and

(8) the term "TIB bond" refers to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 19 of this act.

## Sec. 2. RAIL

The following modifications are made to the rail program:

(1) A new project is added for Albany, New York – Bennington, Vermont – Rutland, Vermont bi-state intercity rail corridor track 3 planning with the following spending authority:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other 0 1,000,000	1,000,000	
Total 0 1,000,000	1,000,000	

Source of funds

State	0	250,000	250,000
Federal	0	500,000	500,000
Local	0	250,000	250,000
Total	0	1,000,000	1,000,000

The local share indicated represents the state of New York participation in the project.

(2) A new project is added for Amtrak Vermonter – New England Central Railroad track 1 improvements with the following spending authority:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>	
Construction	0	26,231,846	26,231,846
Total	0	26,231,846	26,231,846

Sources of funds

State	0	0	0
Federal	0	0	0
ARRA	0	26,231,846	26,231,846
Local	0	0	0
Total	0	26,231,846	26,231,846

## Sec. 3. DEPARTMENT OF MOTOR VEHICLES

Spending authority for the department of motor vehicles is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>	
Personal Services	15,786,441	15,786,441	0
Operating Expenses	8,377,553	8,303,553	-74,000
Grants	136,476	136,476	
Total	24,300,470	24,226,470	-74,000

Sources of funds

State	23,096,730	23,022,730	-74,000
Federal	1,203,740	1,203,740	0
Total	24,300,470	24,226,470	-74,000

## \* \* \* Program Development \* \* \*

## Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

The following modifications are made to the program development — roadway program:

(1) Authorized spending on the Waterbury FEGC F 013-4(13) project is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE100,000 100,000	0	
Construction	0	350,000 350,000
Total 100,000	450,000	350,000

Sources of funds

State 3,000 3,000	0
TIB fund 0	10,500 10,500
Federal 95,000	427,500 332,500
Local 2,000 9,000	7,000
Total 100,000	450,000 350,000

(2) Authorized spending on the Cabot-Danville FEGC F 028-3(26)C/1 project is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE100,000 100,000	0	
Construction	500,000 447,500	-52,500
Total 600,000	547,500	-52,500

Sources of funds

State 5,000 5,000	0
TIB fund 25,000	14,500 -10,500
Federal 570,000	528,000 -42,000
Total 600,000	547,500 -52,500

(3) The following project has received a federal earmark and is added to program development – roadway program – roadway projects candidate list as follows:

Rutland STP 3000( ) - Rutland Center Street Marketplace Improvements - \$973,834.00; 100 percent federal funds.

Sec. 5. PROGRAM DEVELOPMENT – INTERSTATE BRIDGE

The following modification is made to the program development – interstate bridge program:

Authorized spending on the Littleton, NH – Waterford, VT IM 093-1( ) project (rehabilitation of I-93 bridges over CT River connecting VT and NH) is added to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Construction	0 500,000	500,000
Total	0 500,000	500,000

Sources of funds

State	0 0 0
TIB fund	0 50,000 50,000
Federal	0 450,000 450,000
Total	0 500,000 500,000

Sec. 6. PROGRAM DEVELOPMENT – BIKE AND PEDESTRIAN FACILITIES

The following project has received a federal earmark and is added to program development – bike and pedestrian facilities – bike and pedestrian facilities candidates list:

Thetford STP 0180( ) – Thetford Village Pedestrian Improvements – \$438,225.00; 100 percent federal funds.

Sec. 7. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

(1) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of \$1,949,321.00 in transportation funds with the same amount in TIB funds.

(2) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of \$130,000.00 in transportation funds with the same amount in federal funds via the use of federal toll credits.

\* \* \* Aviation \* \* \*

## Sec. 8. AVIATION

The following modifications are made to the aviation program:

(1) Spending authority for the South Burlington – Burlington International AIP Program project is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>	
ROW 4,050,000	4,050,000	0	
Construction	10,880,000	10,850,000	-30,000
Total 14,930,000	14,900,000	-30,000	

Sources of funds

State 218,200	447,000	228,800	
Federal 14,183,500	14,155,000	-28,500	
Local 528,300	298,000	-230,300	
Total 14,930,000	14,900,000	-30,000	

(2) Spending authority for the Berlin CAP HQ project is amended to read as follows. The agency is authorized to proceed with the Berlin CAP HQ project if a federal earmark can be secured for the project.

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
PE 100,000 0	-100,000	
Construction	900,000 0	-900,000
Total 1,000,000	0	-1,000,000

Sources of funds

State 100,000	0	-100,000
Federal 900,000	0	-900,000
Total 1,000,000	0	-1,000,000

(3) Spending authority for Statewide – Facility Improvements is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Construction	322,000 263,600	-58,400
Total 322,000	263,600	-58,400

Sources of funds

State 322,000	263,600	-58,400
---------------	---------	---------

Total 322,000      263,600-58,400  
 \* \* \* Vermont Local Roads \* \* \*

#### Sec. 9. TOWN HIGHWAY – VERMONT LOCAL ROADS

Spending authority for the town highway – Vermont local roads program is amended to read:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Grants 375,000	390,000	15,000
Total 375,000	390,000	15,000
<u>Sources of funds</u>		
State 235,000	235,000	
Federal 140,000	155,000	15,000
Total 375,000	390,000	15,000
	* * *	Public Transit * * *

#### Sec. 10. PUBLIC TRANSIT

The following modifications are made to the public transit program:

(1) Spending authority for the public transit program is increased by \$30,000.00 in transportation funds. The agency shall allocate \$30,000.00 in transportation funds for a grant to the Vermont Kidney Association to support the transportation costs of dialysis patients.

(2) From the funds allocated to the public transit general capital program, \$100,000.00 in federal funds shall be held by the agency in reserve to cover shortfalls in the funding of the elders and persons with disabilities program (E&D) that occur as a result of unanticipated demand for non-Medicaid transportation services. Transit agencies that have grant agreements with the agency for the provision of E&D services shall be eligible to receive disbursements from the reserve. Disbursements from the reserve funds shall be limited to transit agencies that have administered appropriately constrained E&D programs.

\* \* \* Personal Services Spending \* \* \*

#### Sec. 11. AGENCY PERSONAL SERVICES SPENDING

Total spending authority for agency personal services is reduced by up to \$686,400.00 in transportation funds to reflect fiscal year 2011 personnel pension benefit savings. The agency shall apportion the reduction among its programs and activities accordingly.



\* \* \* ARRA Maintenance of Effort – Appropriation Transfers \* \* \*

Sec. 12. AMERICAN RECOVERY AND REINVESTMENT ACT;  
TRANSPORTATION MAINTENANCE OF EFFORT

(a) The general assembly finds that the state should maximize the federal money available for transportation. It is the intent of this section to assist the state in complying with the maintenance of effort requirements in section 1201 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, which requires the state to certify and maintain planned levels of expenditure of state funds for the types of projects funded by ARRA during the period February 17, 2009 through September 30, 2010. Failure to maintain the certified level of effort will prohibit the state from receiving additional federal funds through the August 2011 redistribution of federal aid highway and safety programs.

(b) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 and 2011 transportation programs, the secretary, with the approval of the secretary of administration and subject to the provisions of subsection (c) of this section, may transfer transportation fund or federal fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, to redirect funding to activities eligible for inclusion in, and for the specific purpose of complying with, the maintenance of effort requirements of section 1201 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any appropriations so transferred shall be expended on projects or activities within the fiscal year 2010 or 2011 transportation programs.

(c) If a contemplated transfer of an appropriation would, by itself, have the effect of significantly delaying the planned work schedule of a project which formed the basis of the project's funding in the fiscal year of the contemplated transfer, the secretary shall submit the proposed transfer for approval by the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, by the joint transportation oversight committee. In all other cases, the secretary may execute the transfer, giving prompt notice thereof to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

(d) This section shall expire on September 30, 2010.

\* \* \* FY 2011 Transportation Infrastructure Bonds \* \* \*

Sec. 13. AUTHORITY TO ISSUE TRANSPORTATION  
INFRASTRUCTURE BONDS

(a) The state treasurer is authorized to issue transportation infrastructure bonds pursuant to 32 V.S.A. § 972 for the purpose of funding the appropriations of Sec. 14 of this act and associated costs of the transportation infrastructure bonds as defined in 32 V.S.A. § 972(b) in the amount of \$13,500,000.00 in fiscal year 2011.

(b) The state treasurer is authorized to increase the issue of transportation infrastructure bonds authorized in subsection (a) of this section up to a total amount of \$16,500,000.00 in the event the state treasurer determines that:

(1) the creation and funding of a debt service reserve is advisable to support the successful issuance of transportation infrastructure bonds, or the cost of preparing, issuing, and marketing the bonds is likely to exceed \$202,500.00; and

(2) the balance of the TIB fund as of the end of fiscal year 2010 is insufficient to fund a debt service reserve and to pay associated issuance costs of the bonds.

Sec. 14. TRANSPORTATION INFRASTRUCTURE BONDS;  
APPROPRIATION

The amount of up to \$13,500,000.00 from the issuance of transportation infrastructure bonds is appropriated in fiscal year 2011 to the agency of transportation program development appropriation (8100001100) for use on eligible projects as defined in 32 V.S.A. § 972(c) in the state's fiscal year 2011 transportation program.

\* \* \* Transportation Infrastructure Bond Reserves \* \* \*

Sec. 15. FISCAL YEAR END 2010 TRANSPORTATION FUND SURPLUS

Subject to the funding of the transportation fund stabilization reserve in accordance with 32 V.S.A. § 308a and notwithstanding 32 V.S.A. § 308c (transportation fund surplus reserve), any surplus in the transportation fund as of the end of fiscal year 2010 up to a maximum amount of \$3,000,000.00 shall be transferred to the TIB fund.

Sec. 16. AUTHORITY TO REDUCE FISCAL YEAR 2010  
APPROPRIATIONS AND TRANSFER TRANSPORTATION  
FUNDS TO THE TIB FUND TO PAY FISCAL YEAR 2011 BOND  
OBLIGATIONS

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may reduce fiscal year 2010 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, and transfer in fiscal year 2010 the amount of the reductions from the transportation fund to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011.

(b) The secretary's authority under subsection (a) of this section to reduce appropriations is limited to appropriations, the reduction of which, by itself, will not have the effect of significantly delaying the planned fiscal year 2010 work schedule of a project which formed the basis of the project's funding in fiscal year 2010.

(c) When any appropriation is reduced pursuant to this section, the secretary shall report the reduction to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

#### Sec. 17. CHANGE TO CONSENSUS REVENUE FORECAST

In the event the July 2010 consensus revenue forecast of fiscal year 2011 transportation fund revenue is increased above the January 2010 forecast, the increase up to \$3,000,000.00 shall be transferred to the TIB fund to provide the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011 or fiscal year 2012.

#### Sec. 18. AUTHORITY TO REDUCE FISCAL YEAR 2011 APPROPRIATIONS AND TRANSFER THE BALANCE TO THE TIB FUND TO PAY FISCAL YEAR 2012 BOND OBLIGATIONS

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2011 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may reduce fiscal year 2011 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or

TIB fund appropriations, and transfer in fiscal year 2011 the amount of the reductions from the transportation fund to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act or to pay the principal and interest due on such bonds in fiscal year 2012.

(b) The secretary's authority under subsection (a) of this section to reduce appropriations is limited to appropriations, the reduction of which, by itself, in the context of any spending authorized for the project in the fiscal year 2011 transportation program, will not have the effect of significantly delaying the planned work schedule of the project which formed the basis of the project's funding in fiscal years 2011 and 2012.

(c) The agency shall expedite the procedures required to determine the eligibility and certification of federal toll credits with respect to potentially qualifying capital expenditures made by Vermont entities through the end of fiscal year 2010 which, subject to compliance with federal maintenance of effort requirements, would be available for use by the state in fiscal year 2012. The fiscal year 2012 transportation program shall reserve up to \$3,000,000.00 of such potentially available federal toll credits and federal formula funds and authorize the secretary to utilize the federal toll credits and federal formula funds to accomplish the objectives of this section.

(d) When any appropriation is reduced pursuant to this section, the secretary shall report the reduction to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

\* \* \* FY 2011 Contingent Transportation Bonding Authority \* \* \*

Sec. 19. FY 2011 CONTINGENT BONDING AUTHORITY; WESTERN  
CORRIDOR GRANT APPLICATION

(a) Notwithstanding 32 V.S.A. § 980 (authority to issue transportation infrastructure bonds), the state treasurer is authorized to issue transportation infrastructure bonds for fiscal year 2011 of up to \$15,000,000.00 more than the amounts authorized in the preceding sections of this act, provided that the agency describes the proposed use of the funding and receives approval from the general assembly, or if the general assembly is not in session, the joint transportation oversight committee, of such issue and the proposed use of the funds.

(b) The agency is authorized to apply for a Federal Railroad Administration High-Speed Intercity Passenger Rail (HSIPR) grant to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service. In applying for a grant, the agency is authorized to identify the bonds authorized by this section as a possible source of nonfederal match dollars which could be included in and would thereby strengthen the application. Upon its completion, the agency shall send an electronic copy of the grant application to the joint fiscal office.

(c) In the event transportation infrastructure bonds are issued pursuant to subsection (a) of this section for purposes other than the funding of the potential Federal Railroad Administration HSIPR grant referenced in subsection (b) of this section, the proposed spending of bond proceeds approved by the general assembly or by the joint transportation oversight committee is authorized, and the amount of the approved spending is appropriated to the programs as identified by the agency.

(d) In the event the state is awarded a Federal Railroad Administration HSIPR grant for infrastructure improvements to upgrade the state's western rail corridor for intercity passenger rail service as referenced in subsection (b) of this section:

(1) a project for the improvements covered by the grant is added to the state's transportation program;

(2) authority to spend the federal grant funds is added as follows and the specified amount of federal funds is appropriated to the rail program; and

(3) to the extent that other state funds are not available and transportation infrastructure bonds are issued pursuant to subsection (a) of this section to fund the project, authority to spend the bond proceeds on the project is added as follows and the specified amount of transportation infrastructure bond proceeds is appropriated to the rail program:

<u>FY11 As Proposed</u>	<u>As Amended</u>	<u>Change</u>
Other 0 7,500,000	7,500,000	
Total 0 7,500,000	7,500,000	

Sources of funds

TIB bond 0	1,500,000	1,500,000
Federal 0	6,000,000	6,000,000
Total 0	7,500,000	7,500,000

\* \* \* Central Garage \* \* \*

Sec. 20. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2011, the amount of \$1,120,000.00 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

Sec. 21. REPEAL

19 V.S.A § 13(g) (report on central garage activity, equipment rental, and fleet condition) is repealed.

\* \* \* Notification of Emergency and Safety Projects; Reporting of Expenditures and Carry Forwards \* \* \*

Sec. 22. 19 V.S.A. § 10g is amended to read:

§ 10g. ANNUAL REPORT; TRANSPORTATION PROGRAM; ADVANCEMENTS, CANCELLATIONS, AND DELAYS

(a) The agency of transportation shall annually present to the general assembly a multiyear transportation program covering the same number of years as the statewide transportation improvement plan (STIP), consisting of the recommended budget for all agency activities for the ensuing fiscal year and projected spending levels for all agency activities for the following fiscal years. The program shall include a description and year-by-year breakdown of recommended and projected funding of all projects proposed to be funded within the time period of the STIP and, in addition, a description of all projects which are not recommended for funding in the first fiscal year of the proposed program but which are ~~projected to be ready~~ scheduled for construction ~~at that time (shelf projects)~~ during the time period covered by the STIP. The program shall be consistent with the planning process established by No. 200 of the Acts of the 1987 Adj. Sess. (1988), as codified in ~~3 V.S.A.~~ chapter 67 of Title 3 and ~~24 V.S.A.~~ chapter 117 of Title 24, the statements of policy set forth in sections 10b-10f of this title, and the long-range systems plan, corridor studies, and project priorities developed through the capital planning process under section 10i of this title.

\* \* \*

(e)(1) The agency's annual transportation program shall include a separate report summarizing with respect to the most recently ended fiscal year:

(A) all expenditures of funds by source; and

(B) all unexpended appropriations of transportation funds and TIB funds that have been carried forward from the previous fiscal year to the ensuing fiscal year.

(2) The summary shall identify expenditures and carry forwards for each program category included in the proposed annual transportation program as adopted for the closed fiscal year in question and such other information as the agency deems appropriate.

\* \* \*

(g) The agency's annual transportation program shall include a separate report referencing this section describing all proposed projects in the program which would be new to the state transportation program if adopted.

(h) Should capital projects in the transportation program be delayed because of unanticipated problems with permitting, right-of-way acquisition, construction, local concern, or availability of federal or state funds, the secretary is authorized to advance projects in the approved transportation program, ~~giving priority to shelf projects~~. The secretary is further authorized to undertake projects to resolve emergency or safety issues. Upon authorizing a project to resolve an emergency or safety issue, the secretary shall give prompt notice of the decision and action taken to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. Should an approved project in the current transportation program require additional funding to maintain the approved schedule, the agency is authorized to allocate the necessary resources. However, the secretary shall not delay or suspend work on approved projects to reallocate funding for other projects except when other funding options are not available. In such case, the secretary shall notify the members of the joint transportation oversight committee and the joint fiscal office. With respect to projects in the approved transportation program, the secretary shall notify, in the district affected, the regional planning commission, the municipality, legislators, ~~and~~ members of the senate and house committees on transportation, and the joint fiscal office of any significant change in design, change in construction cost estimates requiring referral to the transportation board under ~~19 V.S.A. § section 10h of this title~~, or any change which likely will affect the fiscal year in which the project is planned to go to construction. No project shall be cancelled without the approval of the general assembly.

\* \* \* Joint Transportation Oversight Committee; Meetings \* \* \*

Sec. 23. 19 V.S.A. § 12b is amended to read:

§ 12b. JOINT TRANSPORTATION OVERSIGHT COMMITTEE

(a) There is created a joint transportation oversight committee composed of the chairs of the house and senate committees on appropriations, the house and senate committees on transportation, the house committee on ways and means, and the senate committee on finance. The committee shall be chaired alternately by the chairs of the house and senate committees on transportation, and the ~~two-year~~ two-year term shall run concurrently with the biennial session of the legislature. The chair of the senate committee on transportation shall chair the committee during the 2009–2010 legislative session.

(b) The committee shall meet during adjournment for official duties. Meetings shall be convened by the chair and when practicable shall be coordinated with the regular meetings of the joint fiscal committee. Members shall be entitled to compensation and reimbursement pursuant to 2 V.S.A. § 406. The committee shall have the assistance of the staff of the legislative council and the joint fiscal office.

(c) The committee shall provide legislative overview of the transportation fund revenues collection and the operation and administration of the agency of transportation construction, paving and rehabilitation programs. The secretary of transportation shall report to the oversight committee upon request.

(d)(1) In coordination with the regular meetings of the joint fiscal committee, ~~the joint transportation oversight committee shall meet~~ in mid-July, mid-September, and mid-November. ~~At these meetings,~~ the secretary shall prepare a report on the status of the state's transportation finances and transportation programs, including. If a meeting of the committee is not convened on the scheduled dates of the joint fiscal committee meetings, the secretary in advance shall transmit the report electronically to the joint fiscal office for distribution to committee members. The report shall include a report on contract bid awards versus project estimates and a detailed report on all known or projected cost overruns, project savings and funding availability from delayed projects; and the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds with respect to:

(A) all paving projects other than statewide maintenance programs;  
and

(B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of \$500,000.00 or



more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.

(2) In addition, ~~at~~ with respect to the July meeting of the joint ~~transportation oversight~~ fiscal committee, the ~~secretarys shall~~ secretary's report ~~to the committee on~~ shall discuss the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.

\* \* \* Vermont Bridge Maintenance Program \* \* \*

Sec. 24. REPEAL

The following are repealed:

(1) 19 V.S.A. § 40 (Vermont bridge maintenance program).

(2) Sec. 56 of No. 80 of the Acts of 2005 (allocation of vehicle inspection change revenue).

Sec. 25. 23 V.S.A. § 1230 is amended to read:

§ 1230. CHARGE

For each inspection certificate issued by the department of motor vehicles, the commissioner shall be paid \$4.00 provided that state and municipal inspection stations that inspect only state or municipally owned and registered vehicles shall not be required to pay a fee. All vehicle inspection certificate charge revenue shall be allocated to the transportation fund with one-half reserved for bridge maintenance activities.

Sec. 26. CARRY-FORWARD AUTHORITY – BRIDGE MAINTENANCE

Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, transportation fund appropriations remaining unexpended on June 30, 2010, in the transportation – bridge maintenance appropriation (8100005400) shall be carried forward, shall be designated for expenditure in the transportation – program development appropriation (8100001100), and shall be used for the purpose of bridge maintenance.

\* \* \* Transportation Projects; Construction Claims \* \* \*

Sec. 27. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

\* \* \*

(4) provide appellate review, when requested in writing, regarding legal disputes in the execution of contracts awarded by the agency or by

municipalities cooperating with the agency to advance projects in the state's transportation program;

\* \* \*

\* \* \* Transportation Contracts; Procurement Standards \* \* \*

Sec. 28. 19 V.S.A. § 10 is amended to read:

§ 10. DUTIES

The agency shall, except where otherwise specifically provided by law:

(1) Award contracts on terms as it deems to be in the best interest of the state, for the construction, repair, or maintenance of transportation related facilities; for the use of any machinery or equipment either with or without operators or drivers; for the operation, repair, maintenance, or storage of any state-owned machinery or equipment; for professional engineering services, inspection of work or materials, diving services, mapping services, photographic services, including aerial photography or surveys, and any other services, with or without equipment, in connection with the planning, construction, and maintenance of transportation facilities. Persons rendering these services shall not be within the classified service, and the services shall not entitle the provider to rights under any state retirement system. Notwithstanding ~~3-V.S.A.~~ chapter 13 of Title 3, the agency may contract for services also provided by persons in the classified service, either at present or at some time in the past. ~~Any contract of more than \$50,000.00 shall be advertised and awarded to the lowest qualified bidder unless determined otherwise by the board.~~ The solicitation and award of contracts by the agency shall follow procurement standards approved by the secretary of administration as well as applicable federal laws and regulations.

\* \* \*

\* \* \* Cancellation of Locally Managed Projects \* \* \*

Sec. 29. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

\* \* \*

(12) ~~maintain the accounting functions for the duties imposed by 9-V.S.A. chapter 108 of Title 9 separately from the accounting functions relating to its other duties;~~

(13) hear and determine disputes involving a determination of the agency under section 309c of this title that the municipality is responsible for repayment of federal funds required by the Federal Highway Administration.

Sec. 30. 19 V.S.A. § 309c is added to read:

§ 309c. CANCELLATION OF LOCALLY MANAGED PROJECTS

(a) Notwithstanding section 309a of this title, a municipality or other local sponsor responsible for a locally managed project through a grant agreement with the agency shall be responsible for the repayment, in whole or in part, of federal funds required by the Federal Highway Administration or other federal agency because of cancellation of the project by the municipality or other local sponsor due to circumstances or events wholly or partly within the municipality's or other local sponsor's control. Prior to any such determination that cancellation of a project was due to circumstances or events wholly or partly within a municipality's or other local sponsor's control, the agency shall consult with the municipality or other local sponsor to attempt to reach an agreement to determine the scope of the municipality's or other local sponsor's repayment obligation.

(b) Within 15 days of an agency determination under subsection (a) of this section, a municipality may petition the board for a hearing to determine if cancellation of the project was due to circumstances or events in whole or in part outside the municipality's control. The board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 30 days thereafter. If the board determines that cancellation of the project was due in whole or in part to circumstances or events outside the municipality's control, it shall order that the municipality's repayment obligation be reduced proportionally, in whole or in part. The municipality shall have no obligation to make a repayment under this section until the board issues its order.

\* \* \* Filing of Transportation Deeds and Leases \* \* \*

Sec. 31. 3 V.S.A. § 103 is amended to read:

§ 103. DOCUMENTS REQUIRED TO BE FILED

(a) All deeds, contracts of sale, leases, and other documents or copies of same conveying land or an interest therein to the state, except for ~~highway rights-of-way~~ transportation rights-of-way, leases, and conveyances, shall be filed in the office of the secretary of state.

(b) All deeds, contracts of sale, leases, and other documents conveying land or an interest in land from the state as grantor, except for transportation rights-of-way, leases, and conveyances, shall be made out in duplicate by the authorized agent of the state. The original shall be delivered to the grantee and the duplicate copy, so marked, shall be filed in the office of the secretary of state.

(c) The secretary of state shall also record the state treasurer's bonds and other documents required to be recorded in ~~his~~ the secretary of state's office and give copies of the same upon tender of ~~his~~ the secretary of state's legal fees.

\* \* \* Transportation Board; Town Reports \* \* \*

Sec. 32. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, ~~transportation board~~, state board of health, commissioner for children and families, director of the office of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

\* \* \*

\* \* \* Signs and Other Traffic Control Devices \* \* \*

Sec. 33. 23 V.S.A. § 1025 is amended to read:

§ 1025. STANDARDS

(a) The United States Department of Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways as amended shall be the standards for all traffic control signs, signals, and markings within the state. The latest revision of the MUTCD shall be adopted upon its effective date except in the case of projects beyond a preliminary state of design that are anticipated to be constructed within two years of the otherwise applicable effective date; such projects may be constructed according to the MUTCD standards applicable at the design stage. Existing signs, signals, and markings shall be valid until such time as they are replaced or reconstructed. When new traffic control devices are erected or placed or existing traffic control devices are replaced or repaired the equipment, design, method of installation, placement or repair shall conform with ~~such standards~~ the MUTCD.

(b) ~~These~~ The standards of the MUTCD shall apply for both state and local authorities as to traffic control devices under their respective jurisdiction.

\* \* \*

## \* \* \* School Zone Warning Signs \* \* \*

Sec. 34. 19 V.S.A. § 921 is amended to read:

§ 921. SCHOOL ZONES

(a) Municipalities shall erect or cause to be erected on all public highways near a school warning signs ~~bearing the legend "school zone."~~ The signs shall conform to the standards of the manual on uniform traffic control devices as provided in 23 V.S.A. § 1025.

(b) For the purposes of this section and 23 V.S.A. § 1025, the term "school" shall include school district-operated prekindergarten program facilities owned or leased by a school district.

## \* \* \* State Airports \* \* \*

Sec. 35. WILLIAM H. MORSE STATE AIRPORT (BENNINGTON);  
AUTHORIZATION TO ACCEPT DONATION OF HANGAR

(a) The secretary of transportation, as agent for the state of Vermont, is authorized to accept donation of an existing hangar building at the William H. Morse State Airport in the town of Bennington from Business Air, Inc., d/b/a Air Now. Notwithstanding 19 V.S.A. § 26a, the secretary is further authorized to enter into an amendment of Air Now's existing lease to allow Air Now to use the hangar building rent free, subject to Air Now's continuing to do business at the airport and maintaining the building at no expense to the state. In the event that Air Now ceases to do business at the airport or requests to assign its leasehold to some other person, the requirement to pay fair market value rent pursuant to 19 V.S.A. § 26a shall resume.

(b) Upon accepting conveyance of the hangar building under subsection (a) of this section, the secretary of transportation shall notify the secretary of administration so the hangar building can be added to the inventory of state-owned buildings maintained for purposes of 32 V.S.A. §§ 3701–3707.

## \* \* \* State-owned Railroad Property \* \* \*

Sec. 36. 5 V.S.A. § 3406(b) is amended to read:

(b) ~~The secretary shall have authority, with the approval of the governor, to sell to any person or legal entity part or all of any parcel of state-owned railroad property or rights therein, provided that the terms of the sale are approved by the legislature or, in the event that the general assembly is not in session, by the joint fiscal committee~~ subject to the following conditions:

(1) the property is located more than 33 feet from the centerline of main line track (or former main line track), and the secretary determines that the

property no longer is needed for railroad operating purposes or for railbanking under section 3408 of this title; and

(2)(A) if the appraised value of the property is \$100,000.00 or above, with the prior approval of the general assembly of the sale and its terms, or, in the event that the general assembly is not in session, with the prior approval of the joint transportation oversight committee; or

(B) if the appraised value of the property is below \$100,000.00, without further approval.

Sec. 37. 5 V.S.A. § 3408 is amended to read:

§ 3408. RAILBANKING; NOTIFICATION

(a) If the secretary finds that the continued operation of any state-owned railroad property is not economically feasible under present conditions, he or she may place the line in railbanked status after giving advance notice of such planned railbanking to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. The agency, on behalf of the state, shall continue to hold the right-of-way of a railbanked line for reactivation of railroad service or for other public purposes not inconsistent with future reactivation of railroad service. Such railbanking shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the rights-of-way for railroad purposes.

\* \* \*

Sec. 38. APPROVAL OF TRANSACTIONS REGARDING STATE-OWNED RAILROAD PROPERTY

(a) The secretary of transportation, as agent for the state of Vermont, is authorized to sell to New England Central Railroad, Inc., for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 137.86 and extending northerly a distance of approximately 1.26 miles to approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River.

(b) The secretary, as agent for the state of Vermont, is authorized to sell to Shelburne Limestone Corporation, for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River, and

extending northerly a distance of approximately 0.58 miles to approximate mile post 139.70, which is the southwesterly line of U.S. Route 7.

(c) In aid of the descriptions contained in this section, reference may be had to valuation plans V8/138-140 for the former Central Vermont Railway Company (dated June 30, 1917); the October 17, 1973 quit-claim deed of Central Vermont Railway, Inc. to the St. Johnsbury & Lamoille County Railroad, which is recorded at book 81, page 278 of the Swanton land records; and the December 7, 1973 quit-claim deed of the St. Johnsbury & Lamoille County Railroad to the Vermont Transportation Authority, which is recorded at book 81, page 368 of the Swanton land records.

\* \* \* Out-of-State First Responder Vehicles \* \* \*

Sec. 39. 23 V.S.A. § 1251 is amended to read:

§ 1251. SIRENS AND COLORED SIGNAL LAMPS; OUT OF STATE EMERGENCY AND RESCUE VEHICLES

(a) No motor vehicle shall be operated upon a highway of this state equipped with a siren or signal lamp colored other than amber unless a permit authorizing such equipment, issued by the commissioner of motor vehicles, is carried in the vehicle. The commissioner may adopt additional rules as may be required to govern the acquisition of permits and the use pertaining to sirens and colored signal lamps.

(b) Notwithstanding the provisions of subsection (a) of this section, when responding to emergencies, law enforcement vehicles, ambulances, fire vehicles, or vehicles owned or leased by, or provided to, volunteer firefighters or rescue squad members which are registered or licensed by another state or province may use sirens and signal lamps in Vermont, and a permit shall not be required for such use, as long as the vehicle is properly permitted in its home state or province.

\* \* \* Establishing Speed Limits \* \* \*

Sec. 40. 23 V.S.A. § 1003(a) is amended to read:

(a) When the traffic committee constituted under 19 V.S.A. § 1(24) determines, on the basis of an engineering and traffic investigation that shall take into account, if applicable, safe speeds within school zones (or safe speeds within 200 feet of school district-operated prekindergarten program facilities owned or leased by a school district) when children are traveling to or from such schools or facilities, that a maximum speed limit established by this chapter is greater or less than is reasonable or safe under conditions found to exist at any place or upon any part of a state highway, ~~except~~ including the

Dwight D. Eisenhower national system of interstate and defense highways, it may determine and declare a reasonable and safe limit which is effective when appropriate signs stating the limit are erected. This limit may be declared to be effective at all times or at times indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, or based on other factors, bearing on safe speeds which are effective when posted upon appropriate fixed or alterable signs.

Sec. 41. 23 V.S.A. § 1004(a) is amended to read:

(a) The traffic committee has exclusive authority to make and publish, and from time to time may alter, amend, or repeal, rules pertaining to vehicular, pedestrian, and animal traffic, ~~speed limits~~, and the public safety on the Dwight D. Eisenhower national system of interstate and defense highways and other limited access and controlled access highways within this state. The rules and any amendments or revisions may be made by the committee only in accordance with chapter 25 of Title 3. The rules shall be consistent with accepted motor vehicle codes or standards, shall be consistent with law, and shall not be unreasonable or discriminatory in respect to persons engaged in like, similar, or competitive activities. The rules are applicable only to the extent that they are not in conflict with regulations or orders issued by any agency of the United States having jurisdiction and shall be drawn with due consideration for the desirability of uniformity of law of the several states of the United States.

\* \* \* Special Occasions \* \* \*

Sec. 42. 23 V.S.A. § 1010 is amended to read:

§ 1010. SPECIAL OCCASIONS; TOWN HIGHWAY MAINTENANCE

(a) When it appears that traffic will be congested by reason of a public occasion or when a town highway is being reconstructed or maintained or where utilities are being installed, relocated, or maintained, the legislative body of a municipality may make special regulations as to the speed of motor vehicles, may exclude motor vehicles from ~~certain public~~ town highways and may make such traffic rules and regulations as the public good requires. However, signs indicating the special regulations must be conspicuously posted in and near all affected areas, giving as much notice as possible to the public so that alternative routes of travel could be considered.

\* \* \*



## \* \* \* Replacement of Gasoline Dispensers \* \* \*

Sec. 43. 10 V.S.A. § 583 is amended to read:

## § 583. REPEAL OF STAGE II VAPOR RECOVERY REQUIREMENTS

(a) Effective January 1, 2013, all rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities are repealed. The secretary may not issue further rules requiring such controls. For purposes of this section, “stage II vapor recovery” means a system for gasoline vapor recovery of emissions from the fueling of motor vehicles as described in 42 U.S.C. § 7511a(b)(3).

(b) Prior to January 1, 2013, stage II vapor recovery rules shall not apply to:

\* \* \*

(4) Any existing gasoline dispensing facility that, after May 1, 2009, replaces all of its existing gasoline dispensers with ~~new~~ gasoline dispensers that support triple data encryption standard (TDES) usage or replaces one or more of its gasoline dispensers pursuant to a plan to achieve full TDES compliance, upon verification and approval by the secretary.

\* \* \*

## \* \* \* Relinquishment of State Highway Segments to Municipalities \* \* \*

## Sec. 44. RELINQUISHMENT OF FORMER VERMONT ROUTE 109 TO TOWN OF BELVIDERE

(a) Under the authority of 19 V.S.A. § 15(2), approval is granted for the secretary to enter into an agreement with the town of Belvidere to relinquish to the town’s jurisdiction a segment of former VT Route 109 beginning at a point in the northerly right-of-way boundary of the present VT Route 109, said point also being the northerly right-of-way boundary of the former VT Route 109, being 35 feet distant northerly radially from station 73+00 of the established centerline of Highway Project Belvidere S 0282(1); thence 155 feet, more or less, southeasterly, crossing the former VT Route 109, to a point in the northerly right-of-way boundary of the present VT Route 109, said point also being in the southerly right-of-way boundary of the former VT Route 109, being 45 feet distant northerly radially from station 74+55 of the centerline; thence northeasterly, easterly, and southeasterly along the southerly right-of-way boundary of the former VT Route 109 to a point in the northerly right-of-way boundary of the present VT Route 109, being 70 feet distant northerly at right angle from station 82+15 of the centerline; thence 79 feet, more or less, northeasterly crossing the former VT Route 109 to a point in the northerly

right-of-way boundary of present VT Route 109, being 92 feet distant northerly at right angle from station 82+90 of the centerline; thence northwesterly, westerly, and southwesterly along the northerly right-of-way boundary of the former VT Route 109 to the point and place of beginning.

(b) The relinquishment shall include a three-rod (49.5 feet) right-of-way and slope rights within the area and is subject to the rights of utility companies under chapter 71 of Title 30 and other statutes of similar effect.

Sec. 45. RELINQUISHMENT OF U.S. ROUTE 5 AND NORWICH  
STATE HIGHWAY IN THE TOWN OF NORWICH

(a) Pursuant to 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the town of Norwich to relinquish to the town's jurisdiction a segment of the state highway known as VT Route 10A in the town of Norwich, beginning at the low-water mark of the Connecticut River at a point in the center of VT Route 10A and continuing 2,756 feet (approximately 0.52 miles) westerly to mile marker 1.218 where VT Route 10A intersects with U.S. Route 5 (this point also is station 78+00 on the U.S. Route 5 centerline of Highway Project Hartford-Norwich I 91-2(5)). The relinquishment shall continue 6,496 feet (approximately 1.230 miles) northerly and easterly along the center of U.S. Route 5 (Church Street) to its intersection with the Norwich State Highway at approximately U.S. Route 5 mile marker 2.448.

(b) Control of the highways but not ownership of the lands or easements within the highway right-of-way shall be relinquished to the town of Norwich. The town of Norwich shall not sell or abandon any portion of the relinquishment areas or allow any encroachments within the relinquishment areas without written permission of the agency of transportation.

\* \* \* Town of Bennington; Adjustments to State Highway System \* \* \*

Sec. 46. TOWN OF BENNINGTON; ADJUSTMENTS TO STATE  
HIGHWAY SYSTEM

(a) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to relinquish to the town's jurisdiction approximately 1.07 miles of U.S. Route 7 (South Street) between mile marker 1.088 (near Carpenter Hill Road [TH #48]) and mile marker 2.156 (near the entrance to the Park Lawn Cemetery) to become a class 1 town highway.

(b) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to accept as part of the state highway system approximately 1,300

feet of VT Route 9 (Main Street [TH #2]) between mile marker 5.655, near the location of a crosswalk to be constructed under the transportation project Bennington NH 019-1(51), and mile marker 5.901, which is the existing jurisdictional boundary between the state highway and the class 1 town highway. The agreement shall provide for the town of Bennington to be responsible for maintenance of sidewalks within the subject area.

\* \* \* Short-Range Public Transit Plan \* \* \*

Sec. 47. REPEAL

The following are repealed:

(1) 24 V.S.A. § 5088(7) (definition of “short-range public transit plan”).

(2) 24 V.S.A. § 5091(f) (requirement that grantees shall be eligible for funding only if a short-range public transit plan has been completed).

\* \* \* Study of Councils \* \* \*

Sec. 48. RAIL, AVIATION, PUBLIC TRANSIT ADVISORY, AND  
SCENERY PRESERVATION COUNCILS

The agency of transportation shall examine the current functions of the Vermont Rail Advisory Council, the Vermont Aviation Advisory Council, the public transit advisory council, and the scenery preservation council. The agency shall, in consultation with the respective council being examined, consider the structure, composition, and format of each council and shall report back to the senate and house committees on transportation with any recommendations for modifications to improve the efficiency and effectiveness of each council by January 15, 2011.

\* \* \* Scenery Preservation Council \* \* \*

Sec. 49. 10 V.S.A. § 425 is amended to read:

§ 425. SCENERY PRESERVATION COUNCIL

(a) The scenery preservation council shall:

(1) upon request, advise and consult with organizations, municipal planning commissions or legislative bodies, or regional planning commissions concerning byway program grants and in the designation of municipal scenic roads or byways;

(2) recommend for designation state scenic roads or byways after holding a public meeting to determine local support for designation; and

(3) encourage and assist in fostering public awareness, understanding, and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest.

~~(b) There is created within the state planning office a scenery preservation council to advise and assist the state planning director in the performance of his duties with respect to this chapter. The scenery preservation council shall consist of ten seven members including: the secretary of the agency of natural resources, or his or her designee; the secretary of the agency of transportation and the director of the state planning office or their designees. The governor shall appoint his or her designee; and five members appointed by the governor. The speaker of the house shall appoint one member of the house as member and the committee on committees of the senate shall appoint one senator as member. The terms of the members appointed by the governor shall be for three years, except that he or she shall appoint the first members so that the terms of the members end in one year, two years, and three years. The terms of the members appointed by the speaker of the house and the committee on committees of the senate shall end on January 15 in every odd-numbered year and their successors shall be appointed at that time. The governor shall designate an appointed member to serve as chairman at the governor's pleasure. Except as provided in this section, no state employee or member of any state commission ~~nor~~ or any federal employee or member of any federal commission shall be eligible for membership on the scenery preservation council. Members of the council who are not full-time state employees, including members of the general assembly when the general assembly is not in session, shall be entitled to a per diem of \$30.00 as provided in 32 V.S.A. § 1010(b) and their actual necessary expenses. The council shall meet no more than two times per year, and meetings may be called by the chair of the council or the secretary of transportation or his or her designee.~~

~~(b) The scenery preservation council shall:~~

~~(1) upon request, advise and consult with municipal planning commissions or legislative bodies and regional planning commissions in the designation of municipal scenic roads;~~

~~(2) recommend for designation state scenic roads, after consultation with regional planning commissions, pursuant to the provisions of chapter 25 of Title 19;~~

~~(3) encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest;~~

~~(4) report biennially to the governor and the general assembly upon the effectiveness of this chapter and make continuing recommendations regarding scenic corridors, scenic areas and scenic sites. The reports shall indicate the status of all state and town designated scenic roads;~~

~~(5) prepare and recommend to the transportation board prior to January 1, 1978 aesthetic criteria to carry out the purposes of this chapter.~~

\* \* \*

\* \* \* Highway Condemnation Orders \* \* \*

Sec. 50. 19 V.S.A. § 512 is amended to read:

§ 512. ORDER FIXING COMPENSATION; INVERSE CONDEMNATION; RELOCATION ASSISTANCE

(a) Within ~~45~~ 30 days after the compensation hearing, the ~~transportation~~ board shall by its order fix the compensation to be paid to each person from whom land or rights are taken, ~~and~~. Within 30 days of the board's order, the agency of transportation shall file and record the order in the office of the clerk of the town where the land is situated, and shall deliver to each person or persons a copy of that portion of the order directly affecting the person or persons, and shall pay or tender the award to each person entitled ~~which. A person to whom a compensation award is paid or tendered under this subsection may be accepted, retained and disposed~~ accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency ~~of transportation~~ may proceed with the work for which the land is taken.

\* \* \*

\* \* \* Traveler Information Services \* \* \*

Sec. 51. INTERSTATE 91 TRAVELER INFORMATION SERVICES FACILITY

(a) Pursuant to Sec. 109(b) of No. 50 of the Acts of 2009, the commissioner of buildings and general services (BGS) is authorized to negotiate and contract with businesses interested in providing travel information services near Exit 7 of Interstate 91 for the purpose of establishing a privately operated travel information center near this exit.

(b) The agency of transportation shall work with BGS and the Federal Highway Administration to implement a signage strategy to clearly direct

travelers to businesses providing travel information services at any travel information center established pursuant to subsection (a) of this section.

Sec. 52. INFORMATION CENTERS; CROSS-BORDER OPPORTUNITIES

The commissioner of buildings and general services may evaluate opportunities to reach agreement with neighboring states and provinces concerning advertising at information centers or the joint operation of information centers. The commissioner shall report findings and recommendations related to any evaluation conducted pursuant to this section to the senate and house committees on transportation by January 15, 2011.

\* \* \* Lake Champlain Bridge Facilities \* \* \*

Sec. 53. LAKE CHAMPLAIN BRIDGE FACILITIES

(a) The secretary of transportation and the commissioner of fish and wildlife shall work together in consultation with the division for historic preservation to develop plans regarding the repair and expansion of existing fishing access facilities at the Lake Champlain bridge at Crown Point.

(b) The secretary of transportation and the commissioner of buildings and general services shall work together in consultation with the division for historic preservation in seeking federal funds for renovations to Chimney Point State Historic Site facilities and the repair and expansion of existing fishing access facilities in connection with construction of the Lake Champlain bridge at Crown Point.

\* \* \* Official Business Directional Sign Fees \* \* \*

Sec. 54. 10 V.S.A. § 501 is amended to read:

§ 501. FEES

Subject to the provisions of subsection 486(c) of this title, an applicant for an official business directional sign or an information plaza plaque shall pay to the travel information council an initial license fee and an annual renewal fee as established by this section.

\* \* \*

(2) Annual renewal fees shall be as follows:

(A) for full and half-sized official business directional signs, ~~\$125.00~~ \$100.00 per sign;

(B) information plaza plaques, \$25.00 per plaque.

\* \* \* Rest Area Advisory Committee \* \* \*

## Sec. 55. REPEAL

19 V.S.A. § 12c (rest area advisory committee) is repealed.

\* \* \* Low-Bed Trailer Permits \* \* \*

## Sec. 56. 23 V.S.A. § 1402(e) is amended to read:

(e) ~~Pilot project allowing annual permits for low bed trailers.~~

(1) The commissioner may issue an annual permit to allow the transportation of a so-called "low-bed" trailer. A "low-bed" trailer is defined as a trailer manufactured for the primary purpose of carrying heavy equipment on a flat-surfaced deck, which deck is at a height equal to or lower than the top of the rear axle group.

(2) A blanket permit may be obtained for an annual fee of \$275.00 per unit, provided the total vehicle length does not exceed 75 feet, does not exceed a loaded width of 12'6", does not exceed a total weight of 108,000 lbs., and has a height not exceeding 14 feet.

(3) Warning signs and flags shall be required if the vehicle exceeds 75 feet in length, or exceeds 8'6" in width.

(4) ~~This subsection shall expire on June 30, 2010. No later than January 15, 2010, the department of motor vehicles, after consultation with the agency of transportation, Vermont League of Cities and Towns, and Vermont Truck and Bus Association, shall report to the house and senate committees on transportation on the results of this two year pilot project. The report shall include recommendations on extending this provision on low bed trailers, as well as other recommendations relating to longer vehicle lengths. [Repealed.]~~

\* \* \* Limited Access Facility Sign Restriction; Exemption \* \* \*

## Sec. 57. ON-PREMISE SIGN ON LIMITED ACCESS FACILITY

Notwithstanding the restriction on on-premise signs located as to be readable primarily from a limited access facility set forth in 10 V.S.A. § 495(b) and the requirement set forth in 10 V.S.A. § 493(1) that on-premise signs be erected no more than 1,500 feet from a main entrance from the highway to the activity or premises advertised, an on-premise sign directing traffic to the facilities of a postsecondary educational institution may be erected at the intersection of U.S. Route 4 Western Bypass and U.S. Route 7 in the city of Rutland.

\* \* \* Effective Dates \* \* \*

Sec. 58. EFFECTIVE DATES

(a) This section and the following sections of this act shall take effect on passage:

(1) Sec. 12 (ARRA maintenance of effort – appropriation transfers).

(2) Sec. 13 (FY11 transportation infrastructure bonds).

(3) Sec. 15 (end FY10 transportation fund surplus).

(4) Sec. 16 (authority to reduce FY10 appropriations).

(5) Sec. 40 (speed limits).

(6) Sec. 41 (traffic committee rulemaking).

(7) Sec. 43 (replacement of gasoline dispensers). Notwithstanding 1 V.S.A. § 214, Sec. 43 shall apply retroactively to gasoline dispensers installed at an existing gasoline dispensing facility after May 1, 2009.

(8) Sec. 56 (low-bed trailer permits).

(b) All other sections of this act not specifically enumerated in subsection (a) of this section shall take effect on July 1, 2010.

COMMITTEE ON THE PART OF THE SENATE	COMMITTEE ON THE PART OF THE THE HOUSE
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SEN. RICHARD T. MAZZA

REP. PATRICK M. BRENNAN

SEN. PHILIP B. SCOTT

REP. DAVID E. POTTER

SEN. M. JANE KITCHEL

REP. TIMOTHY R. CORCORAN

Which was considered and adopted on the part of the House.

**Message from the Senate No. 55**

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. 709.** An act relating to creating a prekindergarten–16 council.

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



The Senate has considered House proposals of amendment to Senate bills of the following titles:

**S. 90.** An act relating to representative annual meetings.

**S. 280.** An act relating to prohibiting texting while operating on a highway.

And has severally concurred in the House proposals of amendment with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered House proposal of amendment to Senate bill of the following title:

**S. 205.** An act relating to the Revised Uniform Anatomical Gift Act.

And has concurred therein.

**Rules Suspended; Action on Bill Postponed**

**S. 280**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Komline of Dorset**, the rules were suspended and Senate bill, entitled

An act relating to prohibiting texting while operating on a highway;

Was taken up for immediate consideration.

Pending the question, Shall the House concur in the Senate proposal of amendment? on motion of **Rep. Grad of Moretown**, action on the bill was postponed until the next legislative day.

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

**S. 218**

Senate bill, entitled

An act relating to voyeurism

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

**Rules Suspended; Action Ordered Messaged to Senate Forthwith  
and Bill Delivered to the Governor Forthwith**

**H. 784**

House bill, entitled

An act relating to the state's transportation program;

On motion of **Rep. Komline of Dorset**, the rules were suspended and action on the Joint resolution was ordered messaged to the Senate forthwith and the bill delivered to the Governor forthwith.

**Action on Bill Postponed**

**H. 485**

House bill, entitled

An act relating to the use value appraisal program;

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

**Committee Relieved of Consideration  
and Joint resolution Committed to Other Committee**

**J.R.S. 47**

**Rep. Head of South Burlington** moved that the committee on General, Housing and Military Affairs be relieved of Joint resolution, entitled

Joint resolution strongly urging the Republic of Turkey to recognize the right to religious freedom for all its residents and to end all discriminatory policies directed against the Ecumenical Patriarchate of the Orthodox Church

And that the Joint resolution be committed to the committee on Commerce and Economic Development, which was agreed to.

**Rules Suspended; Report of Committee of Conference Adopted;  
Rules Suspended; Action of the House on the Bill was Ordered Messaged  
to the Senate Forthwith and the Bill Delivered to the Governor Forthwith**

**H. 540**

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

An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation

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

The Speaker placed before the House the following Committee of Conference report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon the bill respectfully reports that it has met and considered the same and recommended that the Senate recede from its proposal of amendment and that the bill be amended by striking all after the enacting clause and by inserting in lieu thereof the following:

Sec. 1. 23 V.S.A. § 4(81) is added to read:

(81) “Vulnerable user” means a pedestrian; an operator of highway building, repair, or maintenance equipment or of agricultural equipment; a person operating a wheelchair or other personal mobility device, whether motorized or not; a person operating a bicycle or other nonmotorized means of transportation (such as, but not limited to, roller skates, rollerblades, or roller skis); or a person riding, driving, or herding an animal.

Sec. 2. 23 V.S.A. § 1033 is amended to read:

§ 1033. PASSING ON THE LEFT MOTOR VEHICLES AND VULNERABLE USERS

(a) ~~Vehicles~~ Passing motor vehicles. Motor vehicles proceeding in the same direction may be overtaken and passed only as follows:

(1) The driver of a motor vehicle overtaking another motor vehicle proceeding in the same direction may pass to its left at a safe distance, and when so doing shall exercise due care, ~~may~~ shall not pass to the left of the center of the highway unless the way ahead is clear of approaching traffic, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken motor vehicle shall give way to the right in favor of the overtaking motor vehicle on audible signal and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Passing vulnerable users. The operator of a motor vehicle approaching or passing a vulnerable user as defined in subdivision 4(81) of this title shall exercise due care, which includes increasing clearance, to pass the vulnerable user safely, and shall cross the center of the highway only as provided in subdivision (a)(1) of this section.

Sec. 3. 23 V.S.A. § 1039 is amended to read:

§ 1039. FOLLOWING TOO CLOSELY, CROWDING, AND HARASSMENT

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and the conditions of, the highway. The operator of a vehicle shall not, in a careless or imprudent manner, approach, pass, or maintain speed unnecessarily close to a vulnerable user as defined in subdivision 4(81) of this title, and an occupant of a vehicle shall not throw any object or substance at a vulnerable user.

\* \* \*

Sec. 4. 23 V.S.A. § 1065 is amended to read:

§ 1065. HAND SIGNALS

(a) ~~All~~ A right or left turn shall not be made without first giving a signal of intention either by hand or by signal in accordance with section 1064 of this title. Except as provided in subsection (b) of this section, all signals to indicate change of speed or direction, when given by hand, shall be given from the left side of the vehicle and in the following manner:

- (1) Left turn. – Hand and arm extended horizontally.
- (2) Right turn. – Hand and arm extended upward.
- (3) Stop or decrease speed. – Hand and arm extended downward.

(b) ~~No turn to right or left may be made without first giving a signal of an intention to do so either by hand or by signal in accordance with section 1064 of this title. A person operating a bicycle may give a right-turn signal by extending the right hand and arm horizontally and to the right side of the bicycle.~~

Sec. 5. 23 V.S.A. § 1127 is amended to read:

§ 1127. CONTROL IN PRESENCE OF HORSES AND CATTLE ANIMALS

(a) Whenever upon a public highway and approaching a vehicle drawn by a ~~horse or other~~ draft animal, ~~or approaching a horse or other~~ an animal upon which a person is riding, or animals being herded, the operator of a motor vehicle shall operate the vehicle in such a manner as to exercise every reasonable precaution to prevent the frightening of ~~such horse or~~ any animal and to ~~insure~~ ensure the safety and protection of the animal and the person riding ~~or~~, driving, or herding.

(b) The operator of a motor vehicle shall yield to any ~~cattle, sheep, or goats~~ which are animals being herded on or across a highway.

Sec. 6. 23 V.S.A. § 1139(a) is amended to read:

(a) A person operating a bicycle upon a roadway shall exercise due care when passing a standing vehicle or one proceeding in the same direction and generally shall ride as near to the right side of the roadway as practicable ~~exercising due care when passing a standing vehicle or one proceeding in the same direction,~~ but shall ride to the left or in a left lane when:

(1) preparing for a left turn at an intersection or into a private roadway or driveway;

(2) approaching an intersection with a right-turn lane if not turning right at the intersection;

(3) overtaking another highway user; or

(4) taking reasonably necessary precautions to avoid hazards or road conditions.

Sec. 7. 23 V.S.A. § 1141(a) is amended to read:

(a) ~~No~~ A person may shall not operate a bicycle at nighttime from one-half hour after sunset until one-half hour before sunrise unless it the bicycle or the bicyclist is equipped with a lamp on the front, which emits a white light visible from a distance of at least 500 feet to the front, and with a red reflector on the rear, which shall be visible at least 300 feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. Lamps emitting red lights visible to the rear may be used in addition to the red reflector. In addition, bicyclists shall operate during these hours with either a lamp on the rear of the bicycle or bicyclist which emits a flashing or steady red light visible at least 300 feet to the rear, or with reflective, rear-facing material or reflectors, or both, with a surface area totaling at least 20 square inches on the bicycle or bicyclist and visible at least 300 feet to the rear.

Sec. 8. REPEAL

23 V.S.A. § 1053 (passing pedestrians on a highway) is repealed.

COMMITTEE ON THE PART OF THE SENATE                      COMMITTEE ON THE PART OF THE HOUSE

SEN. ROBERT M. HARTWELL                      REP. MOLLIE S. BURKE

SEN. M. JANE KITCHEL                              REP. ADAM HOWARD

SEN. PHILIP B. SCOTT                              REP. DIANE LANPHER

Which was considered and adopted on the part of the House.

On motion of **Rep. Komine of Dorset**, the rules were suspended and action on the bill was ordered messaged to the Senate forthwith and the bill delivered to the Governor forthwith.

**Rules Suspended; Report of Committee of Conference Adopted;  
Rules Suspended and the Bill was Ordered Messaged  
to the Senate Forthwith**

**S. 282**

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

An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles

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

The Speaker placed before the House the following Committee of Conference report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon the bill respectfully reports that it has met and considered the same and recommended that the Senate concur with the House's proposal of amendment, and the bill be further amended:

First: By adding new sections to be sections 19a–19l to read:

Sec. 19a. 23 V.S.A. § 4 is amended to read:

§ 4. DEFINITIONS

Except as may be otherwise provided herein, and unless the context otherwise requires in statutes relating to motor vehicles and enforcement of the law regulating vehicles, as provided in this title and part 5 of Title 20, the following definitions shall apply:

\* \* \*

(18) "Motorcycle" shall mean any motor driven vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding ~~mopeds~~ motor-driven cycles, golf carts, track driven vehicles, tractors, electric personal assistive mobility devices, and vehicles on which the operator and passengers ride within an enclosed cab, except that a vehicle which is fully enclosed, has three wheels in contact with the ground, weighs less than 1,500 pounds, has the capacity to

maintain posted highway speed limits, and which uses electricity as its primary motive power shall be registered as a motorcycle but the operator of such vehicle shall not be required to have a motorcycle endorsement nor to comply with the provisions of section 1256 of this title (motorcycles-headgear) in the operation of such a vehicle.

\* \* \*

(45) ~~“Moped”~~ “Motor-driven cycle” means ~~a motor-driven cycle~~ any vehicle equipped with two or three wheels, ~~foot pedals to permit muscular propulsion,~~ a power source providing up to a maximum of two brake horsepower and having a maximum piston or rotor displacement of 50 cubic centimeters if a combustion engine is used, which will propel the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface, and which is equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. As motor vehicles, ~~mopeds~~ motor-driven cycles shall be subject to the purchase and use tax imposed under chapter 219 of Title 32 rather than to a general sales tax. An electric personal assistive mobility device is not a ~~moped~~ motor-driven cycle.

\* \* \*

Sec. 19b. 23 V.S.A. § 364a is amended to read:

§ 364a. ~~MOPEDS~~ MOTOR-DRIVEN CYCLES:

REGISTRATION; FINANCIAL RESPONSIBILITY

(a) The annual fee for registration of a ~~moped~~ motor-driven cycle shall be \$20.00.

(b) ~~Moped~~ Motor-driven cycle operators shall be subject to the provisions of section 801 of this title, which requires, in certain cases, that proof of financial responsibility to be filed with the commissioner after an accident.

Sec. 19c. 23 V.S.A. § 453(d) is amended to read:

(d) If a dealer is engaged only in the manufacturing, buying, selling, or exchanging of motorcycles or ~~mopeds~~ motor-driven cycles, the registration fee shall be \$45.00, which shall include three sets of number plates. The commissioner may, in his or her discretion, furnish further sets of plates at a fee of \$10.00 for each set.

Sec. 19d. 23 V.S.A. § 476 is amended to read:

§ 476. MOTOR VEHICLE WARRANTY FEE

A motor vehicle warranty fee of \$5.00 is imposed on the registration of each new motor vehicle in this state not including trailers, tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, ~~mopeds~~ motor-driven cycles, or trucks with a gross vehicle weight over 12,000 pounds.

Sec. 19e. 23 V.S.A. § 601(e) is amended to read:

(e) A ~~moped~~ motor-driven cycle may be operated only by a licensed driver at least 16 years of age.

Sec. 19f. 23 V.S.A. § 1114 is amended to read:

§ 1114. RIDING ON MOTORCYCLES AND ~~MOPEDS~~ MOTOR-DRIVEN CYCLES

(a) A person operating a motorcycle or ~~moped~~ motor-driven cycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle or ~~moped~~ motor-driven cycle unless such motorcycle or ~~moped~~ motor-driven cycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle or ~~moped~~ motor-driven cycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle or ~~moped~~ motor-driven cycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle or ~~moped~~ motor-driven cycle.

(c) No person shall operate a motorcycle or ~~moped~~ motor-driven cycle while carrying any package, bundle, or other article which prevents him from keeping both hands on the handlebars.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or ~~moped~~ motor-driven cycle or the view of the operator.

Sec. 19g. 23 V.S.A. § 1115 is amended to read:

§ 1115. —OPERATING MOTORCYCLES AND ~~MOPEDS~~  
MOTOR-DRIVEN CYCLES ON ROADWAYS LANED FOR  
TRAFFIC



(a) All motorcycles or ~~mopeds~~ motor-driven cycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle or ~~moped~~ motor-driven cycle of the full use of a lane.

(b) The operator of a motorcycle or ~~moped~~ motor-driven cycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle or ~~moped~~ motor-driven cycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) No motorcycle or ~~moped~~ motor-driven cycle may be operated in the same lane with, and along side of or closer than ten feet ahead of, or ten feet behind another motorcycle, ~~moped~~ motor-driven cycle, or other motor vehicle.

\* \* \*

Sec. 19h. 23 V.S.A. § 1116 is amended to read:

§ 1116. —CLINGING TO OTHER VEHICLES

No person riding a motorcycle or ~~moped~~ motor-driven cycle shall attach himself or herself or the motorcycle or ~~moped~~ motor-driven cycle to any other vehicle on a roadway.

Sec. 19i. 23 V.S.A. § 1117 is amended to read:

§ 1117. —FOOTRESTS AND HANDLEBARS

(a) Any motorcycle or ~~moped~~ motor-driven cycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle or ~~moped~~ motor-driven cycle with handlebars more than 15 inches in height above that portion of the seat occupied by the operator.

Sec. 19j. 23 V.S.A. § 1243(a) is amended as follows:

(a) A motor vehicle, except a motorcycle and ~~moped~~ motor-driven cycle, in use or at rest on a highway, unless otherwise provided, during the period from 30 minutes after sunset to 30 minutes before sunrise, shall also be equipped with at least two lighted head lamps of substantially the same intensity and with reflectors and lenses of a design approved by the commissioner of motor vehicles, and with a lighted tail or rear lamp of a design so approved. A motorcycle or ~~moped~~ motor-driven cycle may be operated during the period mentioned if equipped with at least one lighted head lamp and at least one lighted tail or rear lamp, both of a design approved by the commissioner of motor vehicles. A side car attached to such motorcycle or ~~moped~~ motor-driven cycle shall be equipped with a light on the right side of such side car visible

from the front thereof. A person shall not operate a motor vehicle during the period mentioned unless it is equipped as defined in this section.

Sec. 19k. 23 V.S.A. § 2012 is amended to read:

§ 2012. EXEMPTED VEHICLES

No certificate of title need be obtained for:

\* \* \*

(8) A ~~moped~~ motor-driven cycle;

\* \* \*

Sec. 19l. 9 V.S.A. § 4171(6) is amended to read:

(6) “Motor vehicle” means a passenger motor vehicle which is purchased or leased, or registered in the state of Vermont and shall not include tractors, motorized highway building equipment, road-making appliances, snowmobiles, motorcycles, ~~mopeds~~ motor-driven cycles, or the living portion of recreation vehicles, or trucks with a gross vehicle weight over 12,000 pounds.

Second: In Sec. 20, by inserting a new subsection to be subsection (d) to read:

(d) Secs. 19a–19l shall take effect on September 1, 2010.

COMMITTEE ON THE PART OF THE SENATE	COMMITTEE ON THE PART OF THE THE HOUSE
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SEN. M. JANE KITCHEL

REP. WILLIAM N. ASWAD

SEN. PHILIP B. SCOTT

REP. PATRICK M. BRENNAN

SEN. RICHARD T. MAZZA

REP. GALE COURCELLE

Which was considered and adopted on the part of the House.

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

### Adjournment

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