

Senate Calendar

THURSDAY, MARCH 15, 2012

SENATE CONVENES AT: 1:30 P.M.

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ORDERS OF THE DAY

**ACTION CALENDAR
UNFINISHED BUSINESS**

Second Reading

Favorable with Recommendation of Amendment

S. 115.

An act relating to malpractice claims against public defender contract attorneys.

Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

and that after passage the title of the bill be amended to read: "An act relating to ineffective assistance claims against assigned counsel"

(Committee vote: 5-0-0)

S. 244.

An act relating to referral to court diversion for driving with a suspended license.

Reported favorably with recommendation of amendment by Senator Nitka for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE PURPOSE

(a) The Vermont General Assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The committee began its work by looking at the most common nonviolent misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system.

(b) Currently, over 38,000 motor vehicle licenses are suspended in Vermont. There are a number of reasons that a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, failure to pay child support, procurement of alcohol by a minor, and automatic suspensions for serious violations such as driving while intoxicated. The majority of licenses (60 percent) are suspended for failure to pay a traffic ticket, followed by accumulation of points for moving violations (24 percent).

(c) The committee determined that many otherwise law-abiding citizens become caught in a cycle of suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates. The committee believes it is in the public interest to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

(d) Court diversion is an existing preadjudication option for many people who have been charged with a crime. The diversion program offers willing offenders the opportunity to take responsibility for their actions and make amends to victims and the community.

Sec. 2. DIVERSION PROGRAM FOR DRIVING WITH A SUSPENDED LICENSE

(a) The court administrator, the court diversion program, and the department of motor vehicles shall work cooperatively in an effort to assist Vermonters who have a suspended motor vehicle operator's license to regain their license through participation in the DLS diversion program, as provided in this section.

(b)(1) Except as provided in subdivision (2) of this subsection, the court administrator shall notify a person who has had his or her operator's license suspended pursuant to 23 V.S.A. §§ 674 or 676 that he or she is eligible to participate in the DLS diversion program, which is intended to assist people in regaining their operator's license. A person shall be eligible to participate in the DLS diversion program if the person completes all the requirements of the underlying violation and the suspension and if, as a result, the person would

otherwise be eligible to regain his or her license if not for unmet financial obligations.

(2) A person whose operator's license is suspended for a violation of 23 V.S.A. §§ 1091(b), 1094(b), 1128(b) or (c), or 1201 or 1205 shall not be eligible to participate in the DLS diversion program with respect to the suspension for such violation.

(3) The notice shall provide that:

(A) The program is designed to assist the person to get his or her driver's license reinstated prior to completion of payment of any debt related to the suspension.

(B) The person may be eligible for a reduction in the amount of the person's financial obligation to the state or may be permitted to establish a reasonable payment plan to discharge the debt.

(C) The program is voluntary but agreeing to participate would include certain requirements including:

(i) meeting with diversion staff to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension.

(ii) completing all conditions related to the offense and indicated by the screening process that are imposed by the diversion program.

(4) The court administrator may charge the cost of preparing and sending the notice against revenues collected pursuant to this subsection.

(c) Upon receiving a request from a person who has been issued a notice pursuant to subsection (b) of this section, the diversion program shall register the person in the DLS diversion program. The program staff shall meet with the person to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension. Based upon the assessment, the program shall develop a contract with the person that may include:

(1) Adherence to a plan to pay fines and fees required to reinstate a driver's license.

(2) Acquiring and showing proof of auto insurance.

(3) Performance of community service.

(4) Completion of a driving education program.

(5) Any other conditions related to the reasons for the violation that led to license suspension.

(d) A person with fewer than five violations of 23 V.S.A. § 676 may apply to the DLS diversion program. Upon receipt of an application and determination of eligibility, the diversion program shall send the person a notice to report to the diversion program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

(e) The diversion program shall notify the judicial bureau of acceptance of a person into the DLS diversion program and that a contract has been agreed to by the parties. Upon approval of the contract and any related payment plan, the judicial bureau shall notify the department of motor vehicles of compliance with the contract and the department shall reinstate the person's operator's license provided the person remains in compliance with the diversion contract. The department of motor vehicles may suspend a person's license for failure to comply with the diversion contract.

(f) The DLS diversion program shall work cooperatively with the judicial bureau to establish a reasonable payment plan for fines and fees owed by a person enrolled in the program. In addition to any remedies already provided, the judicial bureau may do the following in cases involving a person enrolled in the DLS diversion program:

(1) Reduce the amount of fines or fees owed in exchange for community service or education, or both, as provided in a diversion contract.

(2) Withdraw any debt placed for collection with a collection agency or the department of taxes.

(g) The court diversion program, in cooperation with the judiciary, shall adopt standards for operating the DLS diversion program, including determining whether a person is in compliance with conditions as set forth in this section. The standards shall specifically identify circumstances, such as additional violations or accumulation of points, which shall require additional contract conditions and circumstances that will result in dismissal from the program. Such standards shall be applicable in all county diversion programs.

(h) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by the program using a sliding-scale fee based on financial means of the participant. The fee shall not exceed \$300.00. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subsection shall be retained and used solely for the purpose of the DLS diversion program.

(i) The court administrator shall begin notification as provided in subsection (b) by January 15, 2013, at which time the DLS diversion program shall be operational. Priority shall be given to persons determined to be at

highest risk of acquiring a criminal DLS pursuant to 23 V.S.A. § 674 due to an accumulation of civil suspensions violation pursuant to 23 V.S.A. § 674.

(j) The department of motor vehicles and the court administrator shall coordinate a method for determining the appropriate mechanism to inform people about the DLS diversion program.

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before April 1, 2013 and again on or before January 15, 2014 on the implementation of the DLS diversion program and the advisability of implementing the program through roadside stops for driving without a license and extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

Sec. 3. DLS DIVERSION SPECIAL FUND

There is established the DLS diversion program special fund to be administered by the attorney general. The fund shall be used to fund the requirements of this act. Administrative fees collected pursuant to subsection (h) of Sec. 2 of this act shall be deposited and credited to this fund. The fund shall be available to the attorney general to enter into memorandums of understanding with diversion programs to pay for contractual and operating expenses and project-related staffing related to the implementation and continuing operations of the DLS diversion program.

Sec. 4. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

* * *

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times annually and shall cease to exist on January 1, ~~2012~~ 2014.

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 6-0-1)

Reported favorably with recommendation of amendment by Senator Nitka for the Committee on Appropriations.

The Committee recommends that the bill be amended by striking out Sec. 4 in its entirety and by renumbering the remaining section to be numerically correct.

(Committee vote: 5-0-2)

CONSIDERATION POSTPONED

Second Reading

S. 239.

An act relating to ensuring the humane treatment and slaughter of animals.

PENDING QUESTION: Shall the bill be amended as recommended by the Committee on Agriculture?

NEW BUSINESS

Third Reading

S. 136.

An act relating to vocational rehabilitation.

S. 152.

An act relating to the definition of line of duty in the workers' compensation statutes.

AMENDMENT TO S. 152 TO BE OFFERED BY SENATORS ILLUZZI, CAMPBELL AND CARRIS BEFORE THIRD READING

Senators Illuzzi, Campbell and Carris move to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(12) "Public employment" means the following:

* * *

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting ~~in the line of duty, after the governing officials of such municipal body so vote;~~ in any capacity under the direction and control of the fire department or rescue and ambulance squads.

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty after election by the organization to have its members covered by this chapter;~~ in any capacity under the direction and control of the fire department.

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting ~~in the line of duty after election by the organization to have its members covered by this chapter;~~ in any capacity under the direction and control of the rescue or ambulance squad.

* * *

S. 194.

An act relating to consolidation of supervisory unions.

H. 512.

An act relating to banking, insurance, securities, and health care administration.

Second Reading

Favorable with Recommendation of Amendment

S. 106.

An act relating to miscellaneous changes to municipal government law.

Reported favorably with recommendation of amendment by Senator Flory for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Violations; Penalties * * *

Sec. 1. 10 V.S.A. § 2675 is amended to read:

§ 2675. PENALTIES

A person who commits a violation under subsection 2645(a) or 2648(a) of this title shall be subject to a fine of not more than ~~\$25.00~~ \$75.00 per violation. In the case of a violation which continues after the issuance of a fire prevention complaint, each day's continuance may be deemed a separate violation.

Sec. 2. 24 V.S.A. § 1974a is amended to read:

§ 1974a. ENFORCEMENT OF CIVIL ORDINANCE VIOLATIONS

(a) A civil penalty of not more than ~~\$500.00~~ \$800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is ~~\$500.00~~ \$800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than ~~\$500.00~~ \$800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

* * *

Sec. 3. 24 V.S.A. § 4451 is amended to read:

§ 4451. ENFORCEMENT; PENALTIES

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than ~~\$100.00~~ \$300.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell

any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than ~~\$100.00~~ \$300.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

* * * Damages by Dogs * * *

Sec. 4. REPEAL

20 V.S.A. §§ 3741 (election of remedy), 3742 (notice of damage; appraisal); 3743 (examination of certificate), 3744 (fees and travel expenses), 3745 (identification and killing of dogs), 3746 (action against town), and 3747 (action by town against owner of dogs) are repealed.

* * * Taxes * * *

Sec. 5. 24 V.S.A. § 1535 is amended to read:

§ 1535. ABATEMENT

(a) The board may abate in whole or part taxes, interest, ~~and~~ or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

* * *

* * * Municipal Powers and Duties * * *

Sec. 6. 24 V.S.A. § 1571 is amended to read:

§ 1571. ACCOUNTS

(a) The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him or her, and of moneys paid out by him or her for the town and the town school district, which accounts shall at all times be open to the inspection of persons interested.

(b) Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.

(c) The town treasurer shall file quarterly reports with the legislative body regarding his or her actions described in subsections (a) and (b) of this section.

Sec. 7. 24 V.S.A. § 1972 is amended to read:

§ 1972. PROCEDURE

(a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. ~~The full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published~~ legislative body shall arrange for one formal publication of the ordinance or rule in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, the information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title, and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.

(2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by ~~section~~ subsection 1973(e) of this title.

* * *

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law, or particular statute.

Sec. 8. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. §§ ~~1141-1147~~ chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

* * *

(6) To regulate the location, installation, maintenance, repair, and removal of utility poles, wires and conduits, water pipes or mains, or gas mains and sewers, upon, under, or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227-.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise, or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon, or other conveyance, excepting persons selling fruits, vegetables, or other farm produce.

* * *

(11) To regulate, license, tax, or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.

* * *

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

* * *

(16) To name and rename streets and to number and renumber lots pursuant to section ~~4421~~ 4463 of this title.

* * *

* * * Poor Relief * * *

Sec. 9. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

* * *

(2) To perform all duties now conferred by law upon the ~~selectmen~~ selectboard, except that he or she shall not prepare tax bills, sign orders on the general fund of the town, ~~other than orders for poor relief~~, call special or annual town meetings, lay out highways, establish and lay out public parks, make assessments, award damages, act as member of the board of civil authority, nor make appointments to fill vacancies which the ~~selectmen are~~ selectboard is now authorized by law to fill; but he or she shall, in all matters herein excepted, render the ~~selectmen~~ selectboard such assistance as ~~they~~ it shall require;

* * *

(4) To have charge and supervision of all public town buildings, repairs thereon, and repairs of buildings of the town school district upon requisition of the school directors; and all building done by the town or town school district, unless otherwise specially voted, shall be done under his or her charge and supervision;

(5) To perform all the duties now conferred by law upon the road commissioner of the town, including the signing of orders; provided, however, that when an incorporated village lies within the territorial limits of a town which is operating under a town manager, and such village fails to pay to such town for expenditure on the roads of the town outside the village, at least ~~fifteen~~ 15 percent of the last highway tax levied in such village, the legal voters residing in such town, outside such village, may elect one or two road commissioners who shall have and exercise all powers of road commissioner within that part of such town as lies outside such village;

* * *

Sec. 10. 24 V.S.A. § 1762 is amended to read:

§ 1762. LIMITS

(a) A municipal corporation shall not incur an indebtedness for public improvements which, with its previously contracted indebtedness, shall, in the aggregate, exceed ten times the amount of the last grand list of such municipal

corporation. Bonds or obligations given or created in excess of the limit authorized by this subchapter and contrary to its provisions shall be void.

(b) However, the provisions of this subchapter as to the debt limit shall not apply to bonds issued under sections 1752, or 1754 ~~and 1769~~ of this title, relating to the ordinary expenses of a municipality, ~~nor to bonds issued for poor relief.~~

Sec. 11. REPEAL

24 V.S.A. §§ 1769 (notes and bonds for poor relief) and 1770 (application) are repealed.

* * * Glebe Lands * * *

Sec. 12. REPEAL

24 V.S.A. §§ 2404 (rents of other lands, how divided and applied) and 2405 (contract under previous law not affected) are repealed.

* * * Municipal Planning and Development * * *

Sec. 13. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

* * *

(33) "Public road" means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

Sec. 14. 24 V.S.A. § 4442 is amended to read:

§ 4442. ADOPTION OF BYLAWS AND RELATED REGULATORY TOOLS; AMENDMENT OR REPEAL

* * *

(c) Routine adoption.

(1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.

(2) However, a rural town ~~with a population of fewer than 2,500 persons~~ as defined in section 4303 of this chapter, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

* * *

* * * Property; Filing of Land Plats * * *

Sec. 15. 27 V.S.A. § 1404(b) is amended to read:

(b) Survey plats prepared and filed in accordance with ~~section 4416 of Title 24 V.S.A. § 4463~~ shall be exempt from subdivision 1403(b)(6) of this title. Survey plats or plans filed under this exemption shall contain a title area, the location of the land and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably by Senator Ashe for the Committee on Finance.

(Committee vote: 6-0-1)

S. 214.

An act relating to customer rights regarding smart meters.

Reported favorably with recommendation of amendment by Senator MacDonald for the Committee on Finance.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 2811 is added to read:

§ 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) “Smart meter” means a wired smart meter or a wireless smart meter.

(2) “Wired smart meter” means an advanced metering infrastructure device using a fixed wire for two-way communication between the device and an electric company.

(3) “Wireless smart meter” means an advanced metering infrastructure device using radio or other wireless means for two-way communication between the device and an electric company.

(b) Customer rights. Notwithstanding any law, order, or agreement to the contrary, an electric company may install a wireless smart meter on a customer’s premises, provided the company:

(1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights under subdivisions (2) and (3) of this subsection;

(2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge, unless such charge is approved by the public service board pursuant to subsection (c) of this section; and

(3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.

(c) Fees. Upon full deployment of its advanced metering infrastructure, an electric company may charge an opt-out fee to customers who choose not to have a wireless smart meter installed, or who have a wireless smart meter removed, provided the fee is cost based and approved by the board.

(d) Reports. On January 1, 2014 and again on January 1, 2016, the commissioner of public service shall publish a report on the energy savings realized through the use of smart meters, as well as on the occurrence of any breaches to a company’s cyber security infrastructure. The reports shall be based on electric company data requested by and provided to the commissioner of public service and shall be in a form and in a manner the commissioner deems necessary to accomplish the purposes of this subsection. The reports shall be submitted to the senate committees on finance and on natural resources and energy and the house committees on commerce and economic development and on natural resources and energy.

(e) Health report. On or before January 15, 2013, the commissioner of health shall submit a report to the senate committee on finance and the house committee on commerce and economic development which shall include: an update of the department of health’s 2012 report entitled “Radio Frequency Radiation and Health: Smart Meters”; a summary of the department’s activities monitoring the deployment of wireless smart meters in Vermont, including a representative sample of postdeployment radio frequency level testing; and recommendations relating to evidence-based surveillance on the potential health effects of wireless smart meters.

Sec. 2. INSTALLED WIRELESS SMART METERS

If an electric company has installed a wireless smart meter, as defined in 30 V.S.A. § 2811(a)(2), prior to the effective date of this act, the company shall provide notice of the installation to the applicable customers, and such notice shall include a statement of customer rights as described under 30 V.S.A. § 2811(b).

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 6-0-1)

S. 226.

An act relating to prohibiting synthetic stimulants.

Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)

(a) Prescription drug abuse is Vermont's fastest growing drug problem. Treatment demand has grown over 500 percent since 2005 for medication-assisted treatment from physicians and methadone programs.

(b) Increased crime is a community by-product of the increase in untreated addiction. Reducing demand for these substances is an essential component of Vermont's strategy to decrease the crime and health-related problems stemming from prescription drug abuse and opiate addiction.

(c) Current capacity for methadone and buprenorphine treatment is not sufficient to meet the demand. As a component of the development of health homes, expansion of these treatments shall be sought in order to meet the escalating demand.

(d) The integrated treatment continuum for opiate dependence, also known as the hub and spoke model, that is being developed by the agency of human services in collaboration with community providers will create a coordinated, systemic response to the complex issues of opiate addiction. The use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 2. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) Murder in the first or second degree.

(2) Arson under sections 501-504 and 506 of this title.

(3) Sexual exploitation of children under sections 7822, 2822, and 2824 of this title.

(4) Receiving stolen property under sections 2561-2564 of this title.

(5) An offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under ~~section 4237, subdivision 4231(c)(1), or subsection 4233(e) or 4234a(e) of Title 18;~~

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana.

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine.

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin.

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine.

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine.

Sec. 3. 13 V.S.A. § 1409 is amended to read:

§ 1409. PENALTIES

The penalty for conspiracy is the same as that authorized for the crime which is the object of the conspiracy, ~~except that no term of imprisonment shall exceed five years, and no fine shall exceed \$10,000.00.~~ A sentence

imposed under this section shall be concurrent with any sentence imposed for an offense which was an object of the conspiracy.

Sec. 4. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME

~~A Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony or while committing an offense under section 667 of Title 7, or while committing the crime of smuggling of an alien as defined by the laws of the United States, shall be imprisoned not more than five years or fined not more than \$500.00, or both.~~

Sec. 5. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A DRUG

(a) A person who uses a firearm during and in relation to selling or dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3), 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of this title shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, in addition to the penalty for the underlying crime.

(b) A person who uses a firearm during and in relation to trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or 4234a(c) of this title shall be imprisoned not more than five years or fined not more than \$10,000.00, or both, in addition to the penalty for the underlying crime.

(c) For purposes of this section, “use of a firearm” shall include the exchange of firearms for drugs, and this section shall apply to the person who trades his or her firearms for drugs and the person who trades his or her drugs for firearms.

Sec. 6. MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The Vermont drug task force (task force) was established in 1987 as a multi-jurisdictional, collaborative law enforcement approach to combating drug crime. The task force is composed of state, local, and county officers who are assigned to work undercover as full-time drug investigators. These investigators receive specialized training, equipment, and resources that enable them to conduct covert drug investigations. There are four units of the task force geographically located to cover all areas of the state. The drug investigators of each of the units are supervised by a state police sergeant. State police commanders of the special investigation section are responsible for overall supervision and oversight of the task force.

(b) Working closely with state, local, county, and federal law enforcement agencies, the task force strives to investigate and apprehend those individuals directly involved in the distribution of dangerous drugs. The task force focuses on mid- to upper-level dealers, but also targets street level dealers who are negatively impacting Vermont's communities.

(c) To address the growing concern regarding gang involvement in the illegal drug trade as well as other gang-related criminal activity in Vermont's communities, a mobile enforcement team (team) shall be established consistent with the task force model. According to the U.S. Department of Justice, a gang is defined as a group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in or have engaged in criminal activity which creates an atmosphere of fear and intimidation.

(d) The team shall be made up of state and local investigators to include uniformed troopers and shall focus on gangs and organized criminal activity to include drug and gun trafficking and associated crimes. The team shall work closely with federal law enforcement agencies, state and federal prosecutors, the Vermont information and analysis center, and the department of corrections in collecting intelligence on gangs and organized criminal groups, to be shared with law enforcement partners throughout Vermont. The team shall not be assigned to a specific geographical area of Vermont but shall act as a rapid response team to specific identified problem areas.

Sec. 7. GANG ACTIVITY TASK FORCE

(a) The gang activity task force is established for the purpose of raising public awareness about gang activity and organized crime in Vermont and across state and international borders, identifying resources for local, county, and state law enforcement officials, recommending to the public ways to identify and report acts of gang activity and organized crime, and making findings and recommendations regarding those efforts to the general assembly.

(b) The task force shall be composed of the following members:

(1) The commissioner of public safety or his or her designee, who shall serve as chair.

(2) The commissioner of liquor control or his or her designee.

(3) Representatives, appointed by the governor, from the following:

(A) a municipal police department;

(B) a sheriff's department;

(C) the department of corrections;

(D) the department of education;

(E) the business community; and

(F) the health care community.

(4) The United States' attorney for Vermont.

(5) A representative of the Vermont crime victims services.

(c) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about gang activity in Vermont communities.

(2) Recommend how the Vermont public, business community, local and state government, and health and education providers can best identify, report, and prevent acts of gang activity in Vermont.

(3) Identify the services needed by victims of gang activity and their families and recommend ways to provide those services.

(d) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(e) For attendance at meetings, members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010, plus mileage.

(f) On or before November 15, 2012, the task force shall report to the members of the senate and house committees on judiciary and to the legislative council its recommendations and legislative proposals, if any, relating to its findings.

(g) The task force may meet no more than six times and shall cease to exist on January 15, 2013.

Sec. 8. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity in Vermont and assess whether Vermont would benefit from a state Racketeer Influenced and Corrupt Organizations Act. The attorney general shall consult with the gang activity task force and the defender general in his or her deliberations. The report shall identify existing Vermont and federal law that addresses organized crime and recommendations for enhancing these laws, including any legislation necessary to implement the recommendations. The attorney general shall issue the report to the general assembly no later than January 15, 2013.

Sec. 9. APPROPRIATION; MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The amount of \$150,000.00 is appropriated from the general fund to the department of public safety to provide funding for the mobile enforcement team established in Sec. 6 of this act.

(b) The commissioner of public safety may, at his or her discretion, utilize grants dedicated to fund the work of the drug task force to support the efforts of the gang task force and mobile enforcement team.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction”

(Committee vote: 5-0-0)

Reported favorably by Senator Sears for the Committee on Appropriations.

(Committee vote: 6-0-1)

**Joint Resolutions For Action
J.R.H. 28.**

Joint resolution congratulating the Republic of China (Taiwan), President Ma Ying-jeou, and the 23 million Taiwanese people on their successful 2012 democratic elections and urging support for Taiwan’s participation in various international organizations.

(For text of resolution, see Senate Journal of March 14, 2012, page 318.)

J.R.H. 29.

Joint resolution commemorating Women’s History Month, the publication of the sixth edition of *The Legal Rights of Women in Vermont*, and reaffirming continuing support for equal rights for women.

(For text of resolution, see Senate Journal of March 14, 2012, page 320.)

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 148.

An act relating to a pilot project on expediting development of small hydroelectric plants.

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds:

(1) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) The Comprehensive Energy Plan issued in December 2011 by the department of public service (DPS) states in Sec. 5.8.2.1.1:

Opinions differ on the amount of available hydropower that is available in Vermont. Depending on assumptions used, reports vary from 25 MW at 44 sites (estimated by the ANR [agency of natural resources] in 2008) to 434 MW at 1,291 sites (estimated in a DOE [Department of Energy] study in 2006). A 2007 study for the DPS identified more than 90 MW developable at 300 of the existing 1,200 existing dams.

(3) Many hydroelectric projects require a license from the Federal Energy Regulatory Commission (FERC) unless FERC grants an exemption. The length and cost of the process of obtaining a FERC license or exemption do not vary significantly with the capacity of the hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

(4) There are two classes of hydroelectric license exemptions granted by FERC:

(A) Small hydropower projects, which are five megawatts or less, that will be built at an existing dam, or projects that utilize a natural water feature for head or an existing project that has a capacity of five megawatts or less and proposes to increase capacity.

(B) Conduit exemptions for generating capacities of 15 megawatts or less for nonmunicipal and 40 megawatts or less for a municipal project. The conduit must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, "conduit" refers to a human-made water conveyance (e.g., an irrigation canal).

(5) In August 2010, FERC and the state of Colorado, through its energy office, entered into a memorandum of understanding "to streamline and simplify the authorization of small-scale hydropower projects." Under this

agreement, Colorado has undertaken a pilot project to test options for simplifying the procedures to authorize the exemptions described in subdivision (4) of this section for projects in Colorado while ensuring environmental safeguards. The state's prescreening will allow FERC to waive stages of its exemption authorization process. The pilot project will continue until 20 projects have gone through the program.

(6) In Vermont, the state energy office is the department of public service and the main agency engaged in environmental regulation is the agency of natural resources (ANR). When a FERC license is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

(7) In a report to the general assembly entitled "The Development of Small Hydroelectric Projects in Vermont" (Jan. 9, 2008) at p. 19, ANR states that most hydroelectric projects in Vermont are smaller than five MW in capacity.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL HYDROELECTRIC PROJECTS

(a) In consultation with the secretary of natural resources (the secretary), the commissioner of the department of public service (the commissioner) shall enter into a memorandum of understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a project to simplify the procedures for FERC's granting exemptions to its license requirements for projects in Vermont that constitute small conduit hydroelectric facilities and small hydroelectric power projects as defined in 18 C.F.R. § 4.30 (the MOU project). By July 15, 2012, the commissioner shall initiate with FERC the process of negotiating this MOU.

(b) In negotiating and entering into this MOU, the commissioner shall seek terms at least as favorable to the development of in-state hydroelectric projects as those contained in the August 2010 "Memorandum of Understanding between the Federal Energy Regulatory Commission and the State of Colorado through the Governor's Energy Office to Streamline and Simplify the Authorization of Small Scale Hydropower Projects."

(c) In negotiating and entering into an MOU under this section, the commissioner in consultation with the secretary shall offer and agree to prescreening by the state of Vermont of hydroelectric projects participating in the MOU project.

(d) A MOU between the commissioner of public service and FERC under this section shall bind the state of Vermont and its agencies, including the department of public service and the agency of natural resources.

(e) No later than January 15, 2013 and annually by each January 15 thereafter through the first January 15 after completion of the MOU project, the commissioner shall submit a written report to the general assembly detailing the progress of the project, including an identification of each hydroelectric project participating in the MOU project. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection.

(f) On entry into an MOU with FERC under this section, the commissioner shall submit a copy of the MOU to the general assembly.

(g) As necessary and appropriate, the commissioner and the secretary shall seek funding from available sources to support the MOU project under this section, including funding from a federal agency or funding that may be available because a participating hydroelectric project will provide benefits to the regional electric transmission or local electric transmission and distribution systems. Inception of the MOU project shall not be contingent on receipt of such funding.

Sec. 3. MICRO HYDROELECTRIC PROJECTS; STUDY; REPORT

By January 15, 2013, the secretary of natural resources (the secretary), in consultation with the commissioner of the department of public service, shall evaluate options to facilitate the development in Vermont of micro hydroelectric projects and shall submit a report to the general assembly stating the results of this evaluation and providing the secretary's recommendations on how to facilitate such development.

(1) For the purpose of this section, "micro hydroelectric project" shall mean a hydroelectric project having a nameplate capacity of 100 kilowatts or less.

(2) The evaluation and report under this section shall address the regulatory barriers to the development of in-state micro hydroelectric projects.

(3) The report shall include the secretary's recommendations on how these barriers may be appropriately addressed, while protecting environmental quality, in order to facilitate the development of micro hydroelectric projects, including potential mechanisms to increase the transparency and reduce the cost and time of the process to obtain necessary government approvals.

(4) The report shall attach recommended legislation to facilitate the development in Vermont of micro hydroelectric projects.

(5) In preparing the report under this section, the secretary may build on work performed in preparing prior reports and studies that address the same subject matter.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to expediting development of small and micro hydroelectric projects”

(Committee vote: 5-0-0)

S. 201.

An act relating to expanding public school choice for elementary and high school students.

Reported favorably with recommendation of amendment by Senator Mullin for the Committee on Education.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR ~~PAY TUITION; TUITION~~

(a) Each school district shall ~~provide, furnish, and~~ maintain one or more approved ~~high~~ schools in which it provides high school education ~~is provided~~ for its resident pupils unless:

(1) ~~The~~ the electorate authorizes the school board to ~~close an existing high school and to~~ provide for the high school education of its resident pupils solely by paying tuition ~~in accordance with law. Tuition for its pupils shall be paid pursuant to this chapter~~ to a public high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or ~~without~~ outside the state; or

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory school attendance shall be obligated to pay tuition for its pupils for at least four additional years. [Repealed.]~~

(c) ~~The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at a

~~nearby~~ another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

Sec. 2. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) “High school” means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) “Student” means a student’s parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 3. 16 V.S.A. § 4001(1) is amended to read:

(1) “Average daily membership” of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

* * *

Sec. 4. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 5. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 2 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

Sec. 6. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on July 1, 2012; provided, however, that this act shall apply to enrollment in academic year 2013–2014 and after.

and that after passage the title of the bill be amended to read: “An act relating to creating full public school choice for high school students”

(Committee vote: 5-0-0)

S. 202.

An act relating to regulation of flood hazard areas.

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 32 is amended to read:

CHAPTER 32. FLOOD HAZARD AREAS

§ 751. PURPOSE

The purpose of this chapter is to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding; to ensure that the development of the flood hazard areas of this state is accomplished in a manner consistent with the health, safety and welfare of the public; ~~to provide state assistance to local government units in management of flood hazard areas;~~ to coordinate federal, state, and local management activities for flood hazard areas; to encourage local government units to manage flood hazard areas and other flood-prone lands; ~~to provide state assistance to local government units in management of flood-prone lands;~~ to authorize adoption of state rules for management in a flood hazard area of development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117; to maintain the wise agricultural use of flood-prone lands; to carry out a comprehensive statewide flood hazard area management program for the state in order to ~~make the state and units of local government eligible~~ ensure eligibility for flood insurance under the requirements of the ~~federal department of housing and urban development in administering Title XIII of the Housing and Urban Development Act of 1968~~ National Flood Insurance Program.

§ 752. DEFINITIONS

For the purpose of this chapter:

(1) “Agency” means the agency of natural resources.

(2) “Development,” for the purposes of flood hazard area management and regulation, shall have the same meaning as “development” under 44 C.F.R. § 59.1.

(3) “Flood hazard area” means an area which would be inundated in a flood of such severity that the flood would be statistically likely to occur once in every hundred years. In appropriate circumstances this might be the 1927 or the 1973 flood. In delineating any flood hazard area for the one hundred year flood based upon prior floods, flood control devices such as, but not limited to dams, canals, and channel work should be considered in the delineation shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

~~(3)~~(4) “Flood proofing” shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.

~~(5)~~ “Floodway” means the channel of a watercourse and adjacent land areas which are required to carry and discharge the one hundred year flood within a regulated flood hazard area without substantially increasing the flood heights delineation shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

~~(4)~~ “Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings delineation.

~~(5)~~(6) “Legislative body” means the ~~board of selectmen~~ selectboard, trustees, mayor, city council, and ~~board of aldermen~~ alderboard of a municipality.

~~(6)~~(7) “Municipality” means any town, city, or incorporated village.

~~(7)~~(8) “Obstruction” means any natural or artificial condition including but not limited to, real estate which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or so situated that the flow of the water might carry it downstream to the damage of life or property “National Flood Insurance Program” means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

~~(8)~~(9) “Regional planning commission” means the regional planning commission of which a municipality is a member or would be a member based upon its location.

(10) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium condition, as that term is defined in section 1422 of this title, and minimize fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

~~(9)~~(11) “Secretary” means the secretary of ~~the agency~~ of natural resources or the secretary’s duly authorized representative.

§ 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and schedule.—All~~ The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to ~~these ends~~ achieve the purposes of this chapter and to secure flood ~~plan~~ insurance for municipalities and the state of Vermont. All

correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the legislative body, ~~and the planning commission, and the conservation commission if one exists.~~ Copies of this correspondence shall be sent to the regional planning commission, and the agency of commerce and community development, ~~and the state planning office.~~

(b) Notice of designation of flood hazard areas; maps. The secretary shall, as the information becomes available, provide each municipality with a designation of flood hazard areas. The designation shall include a map or maps.

(c) Permit application review by certified floodplain managers. The secretary may delegate to a certified flood plain manager for a regional planning commission or for a municipality with a flood hazard area bylaw or ordinance the secretary's authority under 24 V.S.A. § 4424(a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. The secretary shall establish a procedure for authorizing a certified floodplain manager to conduct the review required under 24 V.S.A. § 4424(a)(2)(D), including eligibility requirements for authorization to conduct permit application review and an approved process or list of approved certifications that the secretary shall accept as proof of floodplain management certification. Comments provided by a certified floodplain manager delegated under this subsection shall not be binding on a municipality.

§ 754. FLOOD HAZARD AREA RULES; DEVELOPMENT EXEMPT FROM MUNICIPAL REGULATION

(a) Rulemaking authority. On or before July 1, 2013, the secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to development that is:

(1) exempt from municipal land use regulation under 24 V.S.A. chapter 117; and

(2) located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure that development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 is regulated by the state in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

(2) be designed to ensure that the state and municipalities meet community eligibility requirements for the National Flood Insurance Program.

(3) require that the secretary provide to a municipality in which the development will occur notice of an application received under this section and a copy of the permit issued.

(c) Discretionary rulemaking; general permit. The rules may:

(1) establish requirements that exceed the requirements of the National Flood Insurance Program for development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117.

(2) establish requirements, allowances, or exemptions for the regulation of development in established “downtowns” and “village centers,” as those terms are defined in 24 V.S.A. § 2791(3) and (10), provided that such requirements comply with the minimum regulatory obligations set forth under the National Flood Insurance Program.

(d) General permit. The rules authorized by this section may establish requirements for a general permit to implement the rules adopted under this section, including authorization under the general permit to conduct specified development without notifying or reporting to the secretary or to an agency delegated under subsection (i) of this section.

(e) Consultation with interested parties. Prior to adopting or amending rules under this section, the secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the Federal Emergency Management Agency; the secretary of commerce and community development; the secretary of agriculture, food and markets; the secretary of transportation; the regional planning commissions; and the Vermont League of Cities and Towns.

(f) FEMA approval. On completing the rulemaking process under 3 V.S.A. chapter 25, the secretary shall promptly request the Federal Emergency Management Agency’s approval of the rules adopted pursuant to this section.

(g) Effective date of rules. Notwithstanding 3 V.S.A. § 845(d), rules adopted under this section shall take effect 120 days after they are approved by the Federal Emergency Management Agency.

(h) Permit requirement. Upon the effective date of the rules required by this section, no person shall commence or conduct development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 in a flood hazard area in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 without a permit issued by the secretary under the rules required by this section.

(i) Delegation.

(1) The secretary may delegate to another state agency the authority to implement the rules adopted under this section, to issue a permit under subsection (h) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the secretary and a delegated state agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section. Prior to entering a memorandum of understanding, the secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the house and senate committees on natural resources and energy, the house committee on fish, wildlife and water resources, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

(j) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance only shall apply to development that is not exempt from municipal land use regulation under 24 V.S.A. chapter 117.

§ 755. MUNICIPAL EDUCATION; MODEL FLOOD HAZARD AREA BYLAW OR ORDINANCE

(a) Education and assistance. The secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance, and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program.

(b) Model flood hazard area bylaw or ordinance. The secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance may include provisions that exceed the minimum requirements of the National Flood Insurance Program in order to encourage municipal land use regulation of nonexempt development in a manner that minimizes the risk of harm to life, property, and infrastructure from flooding.

(c) Assistance to municipalities with no flood hazard area bylaw or ordinance. The secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the National Flood Insurance Program.

* * * Stream Alteration; Emergency Activities * * *

Sec. 2. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) “Artificial regulation of stream flow” means the intermittent or periodic manipulation of water levels and the intermittent or periodic regulation of discharge of water into the stream below the dam.

(2) “Banks” means that land area immediately adjacent to the bed of the stream, which is essential in maintaining the integrity thereof.

(3) “Bed” means the maximum area covered by waters of the stream for not less than 15 consecutive days in one year.

(4) “Board” means the natural resources board.

(5) “Cross section” means the entire channel to the top of the banks.

(6) “Dam” applies to any artificial structure on a stream or at the outlet of a pond or lake, which is utilized for holding back water by ponding or storage together with any penstock, flume, piping or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.

(7) “Department” means the department of environmental conservation.

(8) ~~“Repealed.”~~ “Instream material” means gravel, soil, silt, or large woody debris in the bed of a watercourse or within the banks of a watercourse.

(9) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.

(10) “Watercourse” means any perennial stream. “Watercourse” shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

(11) "Secretary" means the secretary of the agency of natural resources, or the secretary's duly authorized representative.

(12) "Berm" means a linear fill of earthen material on or adjacent to the bank of a watercourse constructed for the purpose of constraining waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title.

(13) "Large woody debris" means any piece of wood with a diameter of 10 or more inches and a length of 10 or more feet.

Sec. 3. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or ~~by~~ excavation of ten cubic yards or more of instream material in any year, unless authorized by the secretary. A person shall not construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title, unless authorized by the secretary or constructed as an emergency protective measure under subsection (b) of this section.

(b) This subchapter shall not apply to emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both. The protective measures shall:

(1) be limited to the minimum amount necessary to remove imminent threats to life or property, ~~shall~~;

(2) have prior approval from a member of the municipal legislative body ~~and shall~~;

(3) be reported to the secretary by the legislative body within ~~72~~ 24 hours after the onset of the emergency; ~~and~~

(4) be implemented in a manner consistent with the rules adopted under section 1027 of this title regarding stream alteration during a declared emergency.

(c)(1) No person shall remove ~~gravel~~ instream material from any watercourse primarily for construction or for sale.

(2) No person shall remove instream material from any watercourse for the purpose of constructing a berm in a river corridor or flood plain, as those terms are defined in subdivisions 752(3) and (10) of this title, unless the construction of the berm is permitted by the secretary under section 1023 of this title or construction of the berm is an emergency protective measure under subsection (b) of this section.

(d) Notwithstanding subsection (c) of this section, a riparian owner may remove up to 50 cubic yards of ~~gravel~~ instream material per year from that portion of a watercourse running through or bordering on the owner's property, provided:

(1) the material shall be removed only for the owner's use on the owner's property;

(2) the material removed shall be above the waterline of the watercourse at the time of removal; ~~and~~

(3) at least 72 hours prior to the removal of 10 cubic yards, or more, the landowner shall notify the secretary;

(4) ~~however~~, if the portion of the watercourse in question has been designated as outstanding resource waters, then the riparian owner may ~~se~~ remove no more than 10 cubic yards of ~~gravel~~ instream material per year, and ~~must~~ shall notify the secretary at least 72 hours prior to the removal of any ~~gravel~~ instream material.

(e) This subchapter does not apply to dams subject to chapter 43 of this title nor to highways or bridges subject to 19 V.S.A. § 10(12).

(f) This subchapter shall not apply to accepted agricultural or silvicultural practices, as defined by the secretary of agriculture, food and markets, or the commissioner of forests, parks and recreation, respectively.

(g) Nothing in this chapter shall prohibit, in the normal use of land, the fording of or access to a watercourse by a person with the right or privilege to use the land.

* * *

Sec. 4. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

(a) Upon receipt of an application, the secretary shall cause an investigation of the proposed change to be made. Prior to making a decision, a written report shall be made by the secretary concerning the effect of the proposed change on the watercourse. The permit shall be granted, subject to such conditions determined to be warranted, if it appears that the change:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. Notice of the action of the secretary shall also be sent to the selectmen of the town in which the proposed change is located, and to each owner of property which abuts or is opposite the land where the alteration is to take place.

(c) If the local legislative body and planning commission determine in writing by majority vote of each that ~~gravel~~ instream material in a watercourse is threatening life or property, due to increased potential for flooding, and that the removal of ~~gravel~~ instream material is necessary to prevent the threat to life or property, and if a complete permit application has been submitted to the secretary, requesting authority to remove ~~gravel~~ instream material in the minimum amount necessary to remove threats to life or property, the local legislative body and the planning commission may request an expedited review of the complete permit application by notifying the secretary and providing copies of their respective decisions. If the secretary fails to approve or deny the application within 45 calendar days of receipt of notice of the decisions, the application shall be deemed approved and a permit shall be deemed to have been granted. ~~Gravel~~ Instream material removed shall be used only for public purposes, and cannot be sold, traded, or bartered. The fact that an application for a permit has been filed under this subsection shall not limit the ability to take emergency measures under subsection 1021(b) of this title. For the purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.

(d) The secretary shall conduct training programs or seminars regarding how to conduct the stream alteration, water quality review, stormwater discharge, and wastewater discharge activities necessary during a state of emergency declared under 20 V.S.A. chapter 1. The secretary shall make the training programs or seminars available to agency employees in an agency division other than the watershed management division, employees of other state agencies, regional planning commission members and employees, and municipal officers and employees.

(e) The secretary is authorized to enter into reciprocal mutual aid agreements or compacts with other states in the region to assist the secretary and the state in addressing watershed, river management, and transportation system issues that arise when a state of emergency is declared under 20 V.S.A. § 9.

Sec. 5. 10 V.S.A. § 1027 is added to read:

§ 1027. RULEMAKING; EMERGENCY PERMIT

(a) The secretary may adopt rules to implement the requirements of this subchapter.

(b) The secretary shall adopt rules regarding the permitting of stream alteration activities under this subchapter when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stream alteration emergency permit or receive coverage under a general stream alteration emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit; and

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity.

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stream alteration.

Sec. 6. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(k) The secretary shall adopt rules regarding the permitting of stormwater discharges under this section when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit;

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity;

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stormwater discharge or other activity.

* * * River Corridor Assessment and Planning * * *

Sec. 7. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 8. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

(1) "Agency" means the agency of natural resources.

* * *

(7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative.

* * *

(12) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel, and necessary to maintain or restore fluvial dynamic equilibrium conditions and minimize fluvial erosion hazards, ~~as delineated by the agency of natural resources in accordance with river corridor protection procedures.~~

(13) “River” means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(14) “Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(15) “Flood hazard area” shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

(16) “Fluvial erosion” means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(17) “Geomorphic condition” means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) “River corridor protection area” means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

(19) “Sensitivity” means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

Sec. 9. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

~~(1) upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a municipality shall delineate a recommended buffer that is based on site specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and assess the geomorphic condition and sensitivity of the rivers of the state and identify where the sensitivity of the river poses a probable risk of harm to life, property, or infrastructure. As used in this section, "infrastructure" means state and municipal highways and roads, public and private buildings, public and private utility construction, and cemeteries.~~

~~(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the secretary by procedure; and~~

~~(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.~~

~~(b) River sensitivity assessment. No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers. Notwithstanding the schedule established by the secretary under subdivision (a)(2) of this section, the secretary may complete a sensitivity assessment for a river if, in the secretary's discretion, the sensitivity of a river and the risk it poses to life, property, and infrastructure require an expedited assessment.~~

~~(c) No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section. Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the secretary shall consult with the legislative body or designee of municipalities in which a river is located.~~

Sec. 10. 10 V.S.A. §§ 1428 is added to read:

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains and river corridor protection areas and shall recommend best management

practices, including vegetated buffers, based on site-specific conditions. The secretary shall post a copy of the sensitivity assessment and river corridor map to the agency of natural resources' website. A municipality shall post a copy of a sensitivity assessment or river corridor map received under this subsection in the municipal offices of the municipality or municipalities in which the river or river segment is located.

(b) Flood resilient communities program; incentives. No later than February 1, 2013, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall establish a flood resilient communities program. The program shall list the existing financial incentives under state law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The secretary of natural resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection.

* * * Municipal Planning; Flood Hazard and
River Corridor Protection Areas * * *

Sec. 11. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

* * *

(8) ~~“Flood hazard area” for purposes of section 4424 of this title means the land subject to flooding from the base flood. “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:~~

~~(A) “Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.~~

~~(B) “Floodway” means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than~~

one foot shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

(C) “Hazard area” means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a “local mitigation plan” enacted under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

(D) “National Flood Insurance Program” means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

(E) “New construction” means construction of structures or filling commenced on or after the effective date of the adoption of a community’s flood hazard bylaws.

~~(E)~~(F) “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(G) “Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(H) “Fluvial erosion” means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(I) “River” means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(J) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium conditions and minimize fluvial erosion hazards.

(K) “River corridor protection area” means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and would represent a hazard to life, property, and infrastructure placed within the area.

* * *

Sec. 12. 24 V.S.A. § 4411(b) is amended to read:

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

* * *

(G) Flood, ~~fluvial erosion~~ river corridor protection area, or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

* * *

Sec. 13. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS; FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING BYLAWS

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or a local hazard mitigation plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood, fluvial erosion, and loss or damage to life and property.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(i) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources.

(ii) Either 30 days have elapsed following the mailing or the agency delivers comments on the application.

~~(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:~~

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.~~

~~(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.~~

~~(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner.~~

(b) A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

Sec. 14. 24 V.S.A. § 4469 is amended to read:

§ 4469. APPEAL; VARIANCES

(a) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may

grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program, as that term is defined in 10 V.S.A. § 752(8).

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title.

Sec. 16. 10 V.S.A. § 6086(c) is amended to read:

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (1) through (10) of subsection (a), including but not limited to those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of

bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

* * * Enforcement, Appeals, Transition; Effective Dates * * *

Sec. 17. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) ~~Deleted.~~ 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter 23, relating to air quality 32, relating to flood hazard areas;

* * *

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; and

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps.

Sec. 18. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(R) chapter 32 (flood hazard areas).

Sec. 19. IMPLEMENTATION; TRANSITION

(a) By July 1, 2013, the secretary of natural resources shall conduct and complete the processes for adopting rules under Sec. 1 of this act, 10 V.S.A. § 754 (flood hazard area rules) and shall submit the adopted rules to the Federal Emergency Management Agency (FEMA) for approval.

(b) No later than 30 days after the approval of such rules by FEMA, the secretary shall notify municipalities of the effective date of the rules.

(c) The consolidated executive branch fee report and request to be submitted on or before the third Tuesday of January 2013 pursuant to

32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or fees to support the agency's services provided under Sec. 1 of this act, 10 V.S.A. § 754 (flood hazard area rules). The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the agency of natural resources of implementing, administering, and enforcing the rules adopted under 10 V.S.A. § 754.

Sec. 20. REPEAL

25 V.S.A. chapter 3 (general provisions relating to rivers and streams), except for 25 V.S.A. § 141 (public easement in stream), is repealed.

Sec. 21. EFFECTIVE DATES

(a) This section and Secs. 1 (flood hazard area regulation), 2 (stream alteration; definitions), 4 (stream alteration permit), 5 (stream alteration; rulemaking), 6 (stormwater; emergency permit), 7 (river corridor policy), 8 (river corridor definitions), 9 (river corridor mapping; sensitivity assessment), 10 (river corridor protection), 11 (municipal planning definitions), 12 (municipal planning; zoning bylaw districts), 13 (zoning bylaws; hazard areas), 14 (municipal planning; variances), 15 (municipal enumeration of powers), 16 (conforming amendment; municipal planning reference), 18 (ANR appeals), 19 (transition), and 20 (repeal of general municipal authority relating to rivers and streams) of this act shall take effect on passage.

(b) Sec. 3 (stream alteration; prohibitions and exceptions) of this act shall take effect on January 1, 2013.

(c) Sec. 17 (ANR enforcement) of this act shall take effect on July 1, 2013.

and, after passage, by amending the title of the bill to read "An act relating to regulation of flood hazard areas, river corridors, and stream alteration"

(Committee vote: 5-0-0)

S. 218.

An act relating to high-quality, early childhood education programs.

Reported favorably with recommendation of amendment by Senator Kittell for the Committee on Education.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ACCESS TO EARLY EDUCATION PROGRAMS

In consultation with appropriate community partners and stakeholder groups, the building bright futures state council shall develop recommendations to increase statewide access to high-quality early education for three- and four-year-old children pursuant to 16 V.S.A. § 829. The

recommendations shall be designed to promote equitable opportunities throughout the state, including the availability of publicly supported programs to similarly situated families in different communities. The recommendations shall maximize use of community-based care and education programs whenever possible. The council shall present its recommendations to the senate and house committees on education on or before January 15, 2013.

Sec. 2. EARLY CHILDHOOD DEVELOPMENT TRAINING;
APPROPRIATION

Of the sums appropriated in fiscal year 2013 to the department of labor for the workforce education and training fund, the commissioner of labor shall appropriate up to \$100,000.00 on a one-time basis to the agency of human services, child development division, for the purpose of providing grant funding to support professional development opportunities for Vermont workers in early childhood and afterschool programs designed to improve the workers' knowledge, skills, and career opportunities, including innovative programs of competency-based education, training, apprenticeship, and mentoring. The agency of human services and any subgrantees shall meet all application and reporting requirements established by the department of labor.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

CONCURRENT RESOLUTIONS FOR NOTICE

H.C.R. 292-303 (For text of Resolutions, see Addendum to House Calendar for March 15, 2012.)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8lng for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/21/12)

PUBLIC HEARINGS

Wednesday, March 21, 2012 – Room 11 – 6:00-8:00 P.M. – Immunizations/Philosophical Exemption – (S. 199) – House Committee on Health Care.

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2012 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 16, 2012 and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) For bills referred pursuant to Senate Rule 31, all Senate bills must be reported out of the Committees on Appropriations and Finance on or before March 23, 2012 and filed with the Secretary of the Senate.

(3) All bills to be referenced from the House not meeting the respective applicable dates shall be referred to the Senate Rules Committee.

(4) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).