Senate Calendar

TUESDAY, APRIL 10, 2012

SENATE CONVENES AT: 9:30 A.M.

TABLE OF CONTENTS

NEW BUSINESS

Second Reading

Favorable

Favorable with Recommendation of Amendment

Favorable with Proposal of Amendment

NOTICE CALENDAR

Second Reading

Favorable

Favorable with Recommendation of Amendment

Favorable with Proposal of Amendment

ORDERS OF THE DAY

ACTION CALENDAR

UNFINISHED BUSINESS

Third Reading

H. 752.

An act relating to permitting stormwater discharges in impaired watersheds.

Second Reading

Favorable with Recommendation of Amendment

S. 99.

An act relating to agricultural economic development.

Reported favorably with recommendation of amendment by Senator Ashe for the Committee on Economic Development, Housing and General Affairs.

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 AND PURPOSE

The general assembly finds:

(1) The damage resulting throughout Vermont from both the 2011 spring flooding and from Tropical Storm Irene had a devastating impact in many areas on mobile homes and mobile home parks.

(2) Given that mobile homes represent one of few available affordable housing options in the state, these storms caused significant hardship for many lower and middle income Vermonters whose homes were damaged or destroyed.

(3) Although the local, state, and federal housing and disaster relief officials have worked cooperatively throughout the recovery, questions on authority to issue condemnation letters to homeowners who could then apply for FEMA assistance may have cost some homeowners the opportunity for significant federal reimbursement for their destroyed homes.

(4) Given the economic costs endured by mobile home owners, it is appropriate at this time to exempt the purchase of mobile homes from sales and use tax, local option sales tax, and property transfer tax when such homes are purchased to replace homes destroyed by recent flooding and natural disasters.

(5) During the course of exploring the issues surrounding the impacts of these disasters, it is apparent that mobile home owners and mobile home park owners face unique economic pressures, and more assistance should be focused to facilitate the availability and ownership of modern, safe, mobile homes and the availability of suitable lots, and to facilitate the sale of parks to residents or nonprofit entities in order to preserve affordability and availability of housing.

(6) It is the purpose of this act to focus state, municipal, and private resources on assisting mobile home owners recovering from the storms, and on ensuring that in the long term, Vermonters have an adequate supply of safe, affordable housing.

Sec. 2. 10 V.S.A. chapter 153 is amended to read:

CHAPTER 153. MOBILE HOME PARKS

§ 6201. DEFINITIONS

As used in this chapter, unless the context requires otherwise:

(1) "Mobile home" means:

(A) a structure or type of manufactured home, including the plumbing, heating, air-conditioning, and electrical systems contained in the structure, that is:

(i) built on a permanent chassis ~~and is~~;

(ii) designed to be used as a dwelling with or without a permanent foundation~~, includes plumbing, heating, cooling, and electrical systems, and is:~~ when connected to the required utilities;

~~(A)~~(iii) transportable in one or more sections; and

~~(B)~~(iv)(I) at least eight feet wide ~~or~~, 40 feet long, or when erected has at least 320 square feet; or

(II) if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or

~~(C)~~(B) any structure that meets all the requirements of this subdivision (1) except ~~for~~ the size requirements, and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the construction and safety standards established under Title 42 of the U.S. Code.

* * *

(4) ~~"Commission" means the advisory commission on manufactured homes, established under section 6202 of this title.~~ [Repealed.]

* * *

(8) "Department" means the ~~department of housing and community affairs~~ department of economic, housing and community development.

(9) "Good faith" means honesty in fact and the observance of reasonable standards and fair dealing, such that each party shall respond promptly and fairly to offers from the other party.

(10) ~~[Expired.]~~ "Lot rent" means a charge assessed on a mobile home park resident for the occupancy of a mobile home lot, but does not include charges permitted under section 6238 of this title.

(11) "Commissioner" means the commissioner of ~~housing and community affairs~~ economic, housing and community development.

* * *

§ 6231. RULES

(a) [Deleted.]

(b) The department may adopt rules to carry out the provisions ~~of sections 6236-6243~~ of this ~~title~~ chapter.

(c) A mobile home park that has been closed pursuant to section 6237a of this title and reduced to no more than two occupied leased lots, shall be required, if the number of occupied leased lots subsequently is increased to more than two, to obtain all state land use and environmental permits required for a mobile home park that has been established or expanded after May 31, 1970.

§ 6236. LEASE TERMS; MOBILE HOME PARKS

* * *

(e) All mobile home lot leases shall contain the following:

* * *

(3) Notice that the park owner shall not discriminate for reasons of race, religious creed, color, sex, sexual orientation, gender identity, marital status, ~~handicap~~ disability, ~~or~~ national origin, or because a person is a recipient of public assistance.

(4) Notice that the park owner shall not discriminate based on age or the presence of one or more minor children in the household, except as permitted under 9 V.S.A. § 4503(b) and (c). If age restrictions exist in all or part of a park, the specific restrictions and geographic sections in which restrictions apply shall be documented in the lease.

* * *

§ 6237. EVICTIONS

(a) A leaseholder may be evicted only for nonpayment of rent or for a substantial violation of the lease terms of the mobile home park, or if there is a change in use of the park land or parts thereof or a termination of the mobile home park, and only in accordance with the following procedure:

* * *

(4) A substantial violation of the lease terms, other than an uncured nonpayment of rent, will be insufficient to support a judgment of eviction unless the proceeding is commenced within 60 days of the last alleged violation. A substantial violation of the lease terms based upon criminal activity will be insufficient to support a judgment of eviction unless the proceeding is commenced no later than 60 days after arraignment.

* * *

§ 6237a. MOBILE HOME PARK CLOSURES

* * *

(b) Prior to issuing a closure notice pursuant to subsection (a) of this section, a park owner shall first ~~notify all mobile home owners of the park owner's~~ issue a notice of intent to sell in accordance with section 6242 of this title that discloses the potential closure of the park. However, if the park owner sends a notice of closure to the residents and leaseholders without first providing the mobile home owners with a notice of ~~sale~~ intent to sell under section 6242 that discloses the potential closure of the park, then the park owner must retain ownership of the land for five years after the date the closure notice was provided. If required, the park owner shall record the notice of the five-year restriction in the land records of the municipality in which the park is located. The park owner may apply to the commissioner for relief from the notice and holding requirements of this subsection if the commissioner determines that strict compliance is likely to cause undue hardship to the park owner or the leaseholders, or both. This relief shall not be unreasonably withheld.

* * *

(d) A park owner who gives notice of intent to sell pursuant to section 6242 of this title shall not give notice of closure until after:

(1) At least 45 days after giving notice of intent to sell.

(2) If applicable, the commissioner receives notice from the mobile home owners and the park owner that negotiations have ended following the ~~90-day~~ 120-day negotiation period provided in subdivision 6242(c)(1) of this title.

* * *

§ 6242. MOBILE HOME OWNERS' RIGHT TO NOTIFICATION PRIOR TO PARK SALE

(a) Content of notice. A park owner shall give to each mobile home owner and to the commissioner of the department of economic, housing and community ~~affairs~~ development notice by certified mail of his or her intention to sell the mobile home park. Nothing herein shall be construed to restrict the price at which the park owner offers the park for sale. The notice shall state all the following:

(1) That the park owner intends to sell the park.

(2) The price, terms, and conditions under which the park owner offers the park for sale.

(3) A list of the affected mobile home owners and the number of leaseholds held by each.

(4) The status of compliance with applicable statutes, regulations and permits, to the park owner's best knowledge, and the reasons for any noncompliance.

(5) That for 45 days following the notice the park owner shall not make a final unconditional acceptance of an offer to purchase the park and that if within the 45 days the park owner receives notice pursuant to subsection (c) of this section that a majority of the mobile home owners intend to consider purchase of the park, the park owner shall not make a final unconditional acceptance of an offer to purchase the park for an additional ~~90~~ 120 days, starting from the 46th day following notice, except one from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

(b) Resident intent to negotiate; timetable. The mobile home owners shall have 45 days following notice under subsection (a) of this section in which to determine whether they intend to consider purchase of the park through a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners. A majority of the mobile home owners shall be determined by one vote per leasehold and no mobile home owner shall have more than three votes or 30 percent of the aggregate park vote, whichever is less. During this 45-day period, the park owner shall not accept a final unconditional offer to purchase the park.

(c) Response to notice; required action. If the park owner receives no notice from the mobile home owners during the 45-day period or if the mobile home owners notify the park owner that they do not intend to consider purchase of the park, the park owner has no further restrictions regarding sale

of the park pursuant to this section. If during the 45-day period, the park owner receives notice in writing that a majority of the mobile home owners intend to consider purchase of the park then the park owner shall do all the following:

(1) Not accept a final unconditional offer to purchase from a party other than leaseholders for ~~90~~ 120 days following the 45-day period, a total of ~~135~~ 165 days following the notice from the leaseholders.

(2) Negotiate in good faith with the group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners concerning purchase of the park.

(3) Consider any offer to purchase from a group representing a majority of the mobile home owners or from a nonprofit corporation approved by a majority of the mobile home owners.

* * *

(f) Relief from additional notice requirement. ~~No additional notice pursuant to subsection (a) of this section shall be required if the sale is in compliance with either of the following~~ A notice of intent to sell issued pursuant to subsection (a) of this section shall be valid for a period of one year from the expiration of the 45-day period following the date of the notice, and a new notice shall not be required under subsection (a) if:

(1) The park owner completes a sale of the park within one year from the expiration of the 45-day period following the date of the notice and the sale price is either of the following:

(A) No ~~less than~~ more than five percent below the price for which the park was offered for sale pursuant to subsection (a) of this section.

(B) ~~Substantially higher than~~ More than five percent above the final written offer from a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners.

(2) The park owner has not completed a sale of the park but has entered into a binding purchase and sale agreement with a group representing a majority of the mobile home owners or a nonprofit corporation approved by a majority of the mobile home owners ~~with a closing date later than one year from~~ within one year from the expiration of the 45-day period following the date of the notice.

* * *

§ 6245. ILLEGAL EVICTIONS

(a) No park owner may ~~wilfuly~~ willfully cause, directly or indirectly, the interruption or termination of any utility service to a mobile home except for temporary interruptions for necessary repairs.

(b) No park owner may directly or indirectly deny a leaseholder access to and possession of ~~a mobile home~~ the leaseholder's leased premises, except through proper judicial process.

(c) No park owner may directly or indirectly deny a leaseholder access to and possession of the leaseholder's ~~rented or leased~~ mobile home and personal property, except through proper judicial process.

* * *

§ 6251. MOBILE HOME LOT RENT INCREASE; NOTICE; MEETING

(a) A mobile home park owner shall provide written notification on a form provided by the department to the commissioner and all the affected mobile home park leaseholders of any lot rent increase no later than 60 days before the effective date of the proposed increase. The notice shall include all the following:

(1) The amount of the proposed lot rent increase, including any amount of the increase that is attributable to a surcharge for any capital improvements of the mobile home park pursuant to subsection (b) of this section, the estimated cost~~, which includes interest,~~ of the capital improvements, and the proposed duration of the surcharge prorated in 12-month increments sufficient to recover the estimated cost of the capital improvements.

(2) The effective date of the increase.

(3) A copy of the mobile home park leaseholder's rights pursuant to this section and sections 6252 and 6253 of this title.

(4) ~~[Deleted.]~~ The percentage of increase from the current base lot rent.

* * *

§ 6254. REGISTRATION OF MOBILE HOME PARKS; REPORT

(a) No later than September 1 each year, each park owner shall register with the department on a form provided by the department. The form shall include the following information:

* * *

(8) The lot rent to be charged for each lot as ~~of the preceding~~ scheduled for October 1 of that year, and the effective date of that lot rent charge.

* * *

* * * Affordable Housing Tax Credit * * *

Sec. 3. 32 V.S.A. § 5930u(g) is amended to read:

(g) In any fiscal year, the allocating agency may award up to $400,000.00 in total first-year credit allocations to all applicants for rental housing projects; and may award up to ~~$100,000.00~~ $300,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed ~~$2,500.000.00~~ $3,500.000.00.

* * * DEHCD Study and Planning * * *

Sec. 4. DEHCD STUDIES; LONG-RANGE PLANNING FOR THE VIABILITY AND DISASTER RESILIENCY OF MOBILE HOME OWNERSHIP AND PARKS

(a) The department of economic, housing and community development shall, in collaboration with other organizations and interested stakeholders, develop a plan for the future viability and disaster resiliency of mobile home ownership and parks.

(b) The plan shall:

(1) With input from the agency of natural resources, identify parks vulnerable to natural hazards such as flooding and develop a strategy for improving their safety and resiliency through education, emergency planning, mitigation measures, reconfiguration, and relocation.

(2) Identify barriers to mobile home ownership including the availability of financing and mortgage insurance and recommend methods for the state to assist, including coordinating with USDA Rural Development to extend its pilot program under the section 502 direct loan and guarantee loan programs and working with public, private, and nonprofit entities to develop solutions.

(3) Address the potential loss of mobile home parks and affordability due to sale, closure, or natural disaster by recommending actions to encourage resident or nonprofit purchase and ownership and the creation of new mobile home parks or lots through technical assistance and planning guidance to municipalities and developers.

(4) Assess other housing designs as alternatives to mobile homes that are affordable when all related costs, such as siting, water and sewer, and energy use are taken into consideration.

Sec. 5. 20 V.S.A. § 2731(k) is added to read:

(k) Building codes. Pursuant to his or her authority under this section, the commissioner of public safety shall:

(1) Develop and maintain on the department website a graphic chart or grid depicting categories of construction, including new construction, major rehabilitation, change of use, and additions, and the respective building codes that apply to each category.

(2) Whenever practicable and appropriate, offer the opportunity to construction and design professionals to participate in division of fire safety staff training.

(3) Update building codes on three-year cycles, consistent with codes developed by code-writing authorities, to keep pace with technology, products, and design.

(4) Create a publicly accessible database of decisions that are decided on appeal to the commissioner.

(5) Apply the International Building Code (IBC) to new construction.

Sec. 6. 9 V.S.A. § 2461b(h) is added to read:

(h)(1) The owner of a propane storage tank shall anchor the tank or affix the tank to a structure or other fixture to ensure the safety of persons and property in the event of a flood or other natural disaster.

(2) In the event a propane storage tank becomes unsecured due to flood or other natural disaster, the owner of the tank shall be responsible for the recovery and, if applicable, appropriate disposal of the tank and its contents.

Sec. 7. 9 V.S.A. § 4503 is amended to read:

§ 4503. UNFAIR HOUSING PRACTICES

(a) It shall be unlawful for any person:

* * *

(12) To discriminate in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or except as otherwise provided by law.

* * *

Sec. 8. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

(A) No bylaw nor its application by an appropriate municipal panel under this chapter shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of this title or the effect of discriminating in the permitting of housing as specified in 9 V.S.A. § 4503.

* * *

* * * Allocation of Rental Housing Subsidies by State Entities (VSHA) * * *

Sec. 9. ADMINISTRATION OF RENTAL HOUSING SUBSIDIES; FINDINGS AND PURPOSE

The general assembly finds:

(1) Administration of rental housing subsidies in Vermont, including federal housing funds, is a public and essential governmental function to be focused primarily on assuring safe and decent housing for low and moderate income persons without undue regard for the generation of profit or surplus.

(2) In recent years, private entities, including nominally private entities controlled by public jurisdictions from other states, have sought contracts to administer allocations of federal rental subsidies throughout the United States.

(3) To the maximum extent permitted by applicable law, it is the purpose of Sec. 10 of this act to limit the administrative control of federal rental subsidies to state of Vermont public bodies.

Sec. 10. 24 V.S.A. § 4005(e) is added to read:

(e) Notwithstanding any provision of law, no person, domestic or foreign, shall be authorized to administer allocations of money under 42 U.S.C.A. § 1437a or 1437f or other federal statute authorizing rental subsidies for the benefit of persons of low or moderate income, except:

(1) a subcontractor of the state authority; or

(2) a state public body authorized by law to administer such allocations.

* * * Expedited Removal of Mobile Home by Municipality * * *

Sec. 11. 9 V.S.A. § 2608 is added to read:

§ 2608. MUNICIPAL ACTION FOR SALE OF ABANDONED MOBILE HOME

(a) In the alternative to the process for foreclosure of a tax lien on a mobile home pursuant to 32 V.S.A. chapter 133, a municipality shall have the authority to commence an action to sell at public auction an abandoned mobile home located within the municipality pursuant to this section.

(b) A municipality shall file a verified complaint in the civil division of the superior court for the county in which the municipality is located, which shall be entitled "In re: Abandoned Mobile Home of [name of owner]," and shall include the following information:

(1) The physical location and address of the mobile home.

(2) The name and last known mailing address of the owner of the mobile home.

(3) A description of the mobile home, including make, model, and serial number, if available.

(4) The names and addresses of creditors, holders of housing subsidy covenants, or others having an interest in the mobile home based on liens or notices of record in the municipality offices or the office of the secretary of state.

(5) The facts supporting the claim that the mobile home has been abandoned.

(6) The name of a person disinterested in the mobile home or of a municipality employee who will be responsible for the sale of the mobile home at a public auction.

(7) A statement of the amount of taxes, fees, and other charges due or which will become due to the municipality.

(8) If the mobile home is located on leased land, the name and address of the landowner.

(c) A municipality may request an order approving transfer of a mobile home which is unfit for human habitation to the municipality without a public sale by filing a verified complaint containing the information required in subsection (a) of this section and the facts supporting the claim that the mobile home is unfit for human habitation.

(d) When a verified complaint is filed under this section, the clerk of the civil division of the superior court shall set a hearing to be held at least 15 days but no later than 30 days after the filing of the complaint.

(e) Within five days after filing the verified complaint, the municipality shall post a copy of the verified complaint and order for hearing on the mobile home and send a copy of the verified complaint and order for hearing by certified mail, return receipt requested, to the mobile home owner's last known mailing address, to the landowner if the mobile home is located on leased land, and to all lien-holders of record.

(f) The municipality shall publish the verified complaint and order for hearing in a newspaper of general circulation in the municipality where the

mobile home is located. The notice shall be published no later than five calendar days before the date of hearing.

(g) If prior to or at the hearing any lien-holder certifies to the court that the lien-holder has paid to the municipality all taxes, charges, and fees due the municipality and will commence or has commenced proceedings to enforce the lien and will continue to pay municipal taxes, charges, and fees during the proceedings under this section, the court shall, upon confirmation of the representations of the lien-holder, stay the action under this section pending completion of the lien-holder's action.

(h) At the hearing, the municipality shall prove ownership of the mobile home; abandonment of the mobile home; the amount of taxes, fees, and other charges due the municipality; and the amount of attorney fees claimed. The municipality shall also prove compliance with the notice requirements of subsections (e) and (f) of this section. Whether a mobile home is abandoned shall be a question of fact determined by the court.

(i) If the court finds that the municipality has complied with subsection (h) of this section, the court shall enter an order approving the sale of the mobile home at a public auction to be held within 15 days of the date of the order. The municipality shall send the order by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The order shall require all the following:

(1) That the sale shall be conducted by the person identified in the verified complaint or some other person approved by the court.

(2) That notice of the sale shall be published in a newspaper of general circulation in the municipality where the mobile home is located and sent by first-class mail to the mobile home owner, to the landowner if the mobile home is located on leased land, and to all lien-holders of record. The notice of sale shall be published two times, at least five days apart with the second publication being no later than three calendar days before the date of sale.

(3) That the terms of sale provide for conveyance of the mobile home by real estate deed or by uniform mobile home bill of sale, as appropriate under this chapter, executed on behalf of the mobile home owner pursuant to the order of the court by the person authorized by the court, in "as is" condition, and free and clear of all liens and other encumbrances of record.

(4) A minimum bid established by the court sufficient to cover the total costs listed in subdivisions (7)(A)–(D) of this subsection. The mobile home shall be sold to the highest bidder over the minimum bid set by the court; provided, however, that if no bid meets or exceeds the minimum bid set by the court, the court shall order transfer of the mobile home to the municipality upon payment of costs due to the person who conducted the sale.

(5) The successful bidder, if other than the municipality:

(A) shall make full payment at the auction if the bid does not exceed $2,000.00; or

(B) if the bid exceeds $2,000.00, shall provide a nonrefundable deposit at the time of the auction of at least $2,000.00 or 25 percent of the bid, whichever is greater, and shall make full payment within three working days after the auction.

(6) A successful bidder, if other than the municipality, shall remove the mobile home from its current location within five working days after the auction unless the municipality permits the mobile home to remain on the site or permits removal of the mobile home at a later date. If the mobile home is located on leased land, the mobile home shall be removed within five days unless the landowner grants permission to the successful bidder, including the municipality, for the mobile home to remain on the leased land.

(7) The person who conducted the public sale shall report to the court the results of the sale, the proposed distribution of the proceeds of the sale, and the bank in which any excess proceeds are deposited and shall send a copy of the report to the mobile home owner, the municipality, the landowner if the mobile home is located on leased land, and all lien-holders of record by certified mail, return receipt requested, within three working days after the sale. Anyone claiming impropriety in the conduct of the sale may file an objection with the court within seven days after the sale. The filing of an objection shall not invalidate the sale or delay transfer of ownership of the abandoned mobile home. If an objection is filed and if the court finds impropriety in the conduct of the sale, the court may order distribution of the proceeds of the sale as is fair, taking into account the impropriety. If no objection is filed with the court, on the eighth day after the sale, the proceeds shall be distributed as follows:

(A) To the person conducting the sale for costs of the sale.

(B) To the municipality for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court.

(C) To the municipality for taxes, penalties, and interest owed in an amount approved by the court.

(D) To the landowner for unpaid lot rent if the mobile home is located on leased land.

(E) The balance to a bank account in the name of the mobile home municipality as trustee, for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(j) Notwithstanding provisions of this section and 10 V.S.A. § 6249 (sale of abandoned mobile home by park owner) to the contrary, if an action is commenced by a municipality pursuant to this section and by a mobile home park owner pursuant to 10 V.S.A. § 6249 for the sale of the same abandoned mobile home within 30 days of one another, the court shall consolidate the cases and shall distribute the proceeds of a sale as follows:

(1) To the person conducting the sale for costs of the sale.

(2) To the municipality and the park owner equitably in the discretion of the court:

(A) for court costs, publication and mailing costs, and attorney fees incurred in connection with the action in an amount approved by the court;

(B) for taxes, penalties, and interest owed the municipality in an amount approved by the court; and

(C) for rent and other charges owed to the park owner in an amount approved by the court.

(3) The balance to a bank account in the name of the mobile home municipality as trustee for the benefit of the mobile home owner and lien-holders of record, to be distributed pursuant to further order of the court.

(k) If a municipality requests an order approving transfer of a mobile home to the municipality without a public sale, the court shall approve that order if it finds that the municipality has complied with subsection (h) of this section and has proved that the mobile home is unfit for human habitation. In determining whether a mobile home is unfit for human habitation, the court shall consider whether the mobile home:

(1) contains functioning appliances and plumbing fixtures;

(2) contains safe and functioning electrical fixtures and wiring;

(3) contains a safe and functioning heating system;

(4) contains a weather-tight exterior closure;

(5) is structurally sound;

(6) is reasonably free of trash, debris, filth, and pests.

Sec. 12. 9 V.S.A. § 4462 is amended to read:

§ 4462. ABANDONMENT; UNCLAIMED PROPERTY

* * *

(d) Any personal property remaining in the dwelling unit or leased premises after the tenant has vacated may be disposed of by the landlord

without notice or liability to the tenant or owner of the personal property, provided that one of the following has occurred:

(1) The tenant provided actual notice to the landlord that the tenant has vacated the dwelling unit ~~or,~~ leased premises, or mobile home lot.

(2) The tenant has vacated the dwelling unit ~~or,~~ leased premises, or mobile home lot at the end of the rental agreement.

(3) Fifteen days have expired following service of a writ of possession pursuant to 10 V.S.A. chapter 153, 11 V.S.A. chapter 13, or 12 V.S.A. chapter 169.

Sec. 13. SALES AND USE TAX HOLIDAYS FOR MOBILE HOMES

(a) Notwithstanding the provisions of 32 V.S.A. § 233 and 24 V.S.A. § 138, no sales and use tax, local option sales tax, or property transfer tax shall be imposed or collected on sales to individuals for mobile homes purchased after April 1, 2011 to replace a mobile home that was damaged or destroyed as a result of flooding and storm damage that occurred after that date.

(b) Any resident of Vermont who purchased a mobile home after August 28, 2011 and prior to the effective date of this act, and the mobile home was purchased to replace a mobile home that was damaged or destroyed as a result of Tropical Storm Irene, shall be entitled to a reimbursement in the amount of any sales and use tax, local option sales tax, or property transfer tax paid.

(c) The department of taxes may establish standards and procedures necessary to implement this section. The department of taxes shall reimburse taxpayers that qualify under subsection (b) of this section.

Sec. 14. APPROPRIATIONS

(a) The amount of $100,000.00 is appropriated from the general fund to the department of economic, housing and community development as follows:

(1) $50,000.00 for a grant to the Champlain Valley Office of Economic Opportunity to increase its ability to provide start-up and ongoing technical assistance to mobile home park residents interested in cooperative ownership of their parks.

(2) $50,000.00 to increase department staff for long-range planning for the preservation and replacement of mobile home parks noticed for sale or closure or damaged by flooding.

(b) The amount of $50,000.00 is appropriated from the general fund to the Vermont housing and conservation board's project feasibility fund to conduct financial feasibility and infrastructure needs analyses of mobile home parks noticed for sale or closure or damaged by flooding.

(c) The amount of $500,000.00 is appropriated from the settlement funds due the state under the joint state–federal settlement of claims with the five largest mortgage servicers arising from mortgage foreclosure practices to the department of economic, housing and community development to develop and implement with the Champlain Housing Trust, the Central Vermont Community Land Trust, Gilman Housing Trust, NeighborWorks of Western Vermont, and Windham & Windsor Housing Trust, and other stakeholders a program to help finance the purchase, repair, refinance, and replacement of up to 100 individual mobile homes. The department shall coordinate with the Champlain Housing Trust and other stakeholders to secure at minimum an additional $1,800,000.00 in grant capital to help fund the program from a variety of public and private sources, including equity from the sale of Vermont affordable housing tax credits, the Vermont community development block grant program, the Vermont Community Foundation, and the Vermont disaster relief fund.

(d)(1) The amount of $2,500,000.00 is appropriated to the department of economic, housing and community development to fund the following activities related to mobile home parks that will be maintained as affordable housing for low income Vermonters on a perpetual basis:

(A) the purchase of mobile home parks, including purchase by resident-owned cooperatives;

(B) infrastructure improvements; and

(C) disaster recovery, including relocation or replacement of mobile home parks damaged by flooding.

(2) The amount appropriated pursuant to this subsection shall come from the following sources:

(A) $500,000.00 from the settlement funds due the state under the joint state–federal settlement of claims with the five largest mortgage servicers arising from mortgage foreclosure practices; and

(B) $2,000,000.00 in state capital appropriations.

Sec. 15. AUTHORITY TO ISSUE LETTER OF CONDEMNATION

(a) Because repairs to homes damaged in natural disasters must be done in accordance with local codes and ordinances, the Federal Emergency Management Agency (FEMA) recognizes that there may be reasons for a local authority to deem a home condemned.

(b) According to FEMA policy, the letter must come from the jurisdictional authority and the condemnation notice of demolition must be disaster-related. FEMA then reviews each notice on a case-by-case basis for approval of replacement assistance up to the maximum award.

(c) Accordingly, for purposes of complying with FEMA policies and procedures, any state or local person or entity empowered to condemn property by statute, rule, regulation, ordinance, or similar legal authority shall qualify as a jurisdictional authority with all the necessary rights and powers to declare property to be condemned, provide notice of condemnation and demolition to FEMA or any other entity, and take such other steps as are necessary to ensure Vermonters are eligible for receiving the maximum amount of state and federal recovery assistance otherwise available.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage, except that Sec. 15 (authority to issue letter of condemnation) of this act shall apply retroactively to January 1, 2011.

and that when so amended the bill ought to pass, and that after passage the title of the bill be amended to read: "An act relating to supporting mobile home ownership, strengthening mobile home parks, and preserving affordable housing"

(Committee vote: 4-0-1)

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

The Committee recommends that the bill be amended by striking out Secs. 3, 6 and 13 in their entirety and by renumbering the remaining sections to be numerically correct.

(Committee vote: 7-0-0)

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

The Committee recommends that the bill be amended by striking Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 to read as follows:

Sec. 14. PRIORITIES FOR MOBILE HOME INVESTMENTS

In the event that sources of funding are available for investments in securing mobile home infrastructure, expanding affordable ownership opportunities, and other activities consistent with the goals and purposes of this act, it is the intent of the general assembly to invest in the following priorities:

(1) Investment in the department of economic, housing and community development:

(A) for one or more grants to the Champlain Valley Office of Economic Opportunity to increase its ability to provide start-up and ongoing technical assistance to mobile home park residents interested in cooperative ownership of their parks.

(B) to increase department staff for long-range planning for the preservation and replacement of mobile home parks noticed for sale or closure or damaged by flooding.

(2) Investment in the Vermont housing and conservation board's project feasibility fund to conduct financial feasibility and infrastructure needs analyses of mobile home parks noticed for sale or closure or damaged by flooding.

(3) Investment in the department of economic, housing and community development to develop and implement with the Champlain Housing Trust, the Central Vermont Community Land Trust, Gilman Housing Trust, NeighborWorks of Western Vermont, Windham & Windsor Housing Trust, and other stakeholders a program to help finance the purchase, repair, refinance, and replacement of up to 100 individual mobile homes. The general assembly further recommends that the department coordinate with the Champlain Housing Trust and other stakeholders to secure additional grant capital to help fund the program from a variety of public and private sources.

(4) Investment in the department of economic, housing and community development to fund the following activities related to mobile home parks that will be maintained as affordable housing for low-income Vermonters on a perpetual basis:

(A) the purchase of mobile home parks, including purchase by resident-owned cooperatives;

(B) infrastructure improvements; and

(C) disaster recovery, including relocation or replacement of mobile home parks damaged by flooding.

(Committee vote: 5-0-2)

S. 142.

An act relating to pet merchants.

Reported favorably with recommendation of amendment by Senator White 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:

Sec. 1. 20 V.S.A. § 3681 is amended to read:

§ 3681. PERMIT

(a) ~~The owner or keeper of two or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes, except for his or her own use,~~ A person who sells, exchanges, or donates or offers to sell,

exchange, or donate for monetary consideration three or more litters of domestic pets or wolf-hybrids in a calendar year shall apply to the municipal clerk of the town or city in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the commissioner and pay the clerk a fee of ~~$10.00~~ $25.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, shall apply to the permit which shall be in addition to other permits required. A kennel permit shall expire on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder.

(b) A person possessing a kennel permit issued under this section must include the permit number in any form of advertising, including Internet advertising, a brochure, or a sign that announces the availability of an animal for sale or exchange. The person's name and kennel permit number must be provided to the person purchasing or otherwise receiving an animal.

(c) The legislative body of a municipality may assess a penalty against any person who violates subsection (b) of this section.

Sec. 2. 20 V.S.A. § 3682 is amended to read:

§ 3682. INSPECTION OF PREMISES

These premises may be inspected at any ~~reasonable~~ time between 9:00 a.m. and 5:00 p.m. in the presence of or with the consent of the owner by a law enforcement officer, a representative of the agency of agriculture, food and markets, or an officer or agent of ~~an~~ a Vermont incorporated humane society and a veterinarian licensed to practice in Vermont, designated by such officer, agent or agency.

(Committee vote: 4-0-1)

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 7-0-0)

S. 180.

An act relating to the universal service fund and establishment of a high-cost program.

Reported favorably with recommendation of amendment by Senator Cummings 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. FINDINGS AND PURPOSE

(a) The general assembly finds:

(1) Incumbent local exchange carriers (ILECs) are obligated to provide broad-based access to telephone services, even in areas that are high cost, sparsely populated, or filled with subscribers of limited means.

(2) Traditionally, ILECs were rewarded with an exclusive franchise in return for carrying out their regulatory responsibilities in unprofitable areas.

(3) However, with increased competition in the telecommunications field, particularly in profitable areas, ILECs have less of an opportunity to cover the costs of serving unprofitable areas.

(4) Vermont has a state universal service fund which is currently used to support the lifeline and enhanced 911 programs. Funds are generated by an end-user surcharge on all retail telecommunications service provided to a Vermont address.

(b) It is the purpose of this act to establish a new regulatory model under which ILECs can continue their costly responsibilities over wide areas and still have an opportunity to cover their costs, even in the presence of competitors.

* * * Universal Service Fund Studies * * *

Sec. 2. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST BASIC TELECOMMUNICATIONS SERVICE

(a) The general assembly intends that the universal service charge be used in the future as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. ~~In the future, and after this section has been amended by further act of legislation, payments may be made to reduce the cost of basic telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.~~

(b) The commissioner of public service, in conjunction with the public service board, shall conduct a study of the costs and other factors affecting the delivery of local exchange service by the incumbent local exchange carriers (the providers of last resort). The study shall ~~be conducted either as an independent inquiry or as part of a proceeding or docket affecting other matters~~ include an informal workshop process to be conducted by the board. Such process shall be noticed to the general public and structured to allow written and verbal comments by the general public, service providers, public officials, and others as determined by the board. The study shall:

(1) After considering information on how various factors affect the costs of providing telecommunications service in Vermont and elsewhere, estimate the current costs and estimate, on a forward-looking basis, the differential costs of providing local exchange service to various customer groups throughout Vermont.

(2) Estimate the relationship between basic telecommunications service charges and universal service, and the threshold level beyond which universal residential service is likely to be harmed.

(3) Estimate the relationship between basic telecommunications service charges and opportunities for uniform economic development throughout the state, and the threshold prices beyond which such opportunities may be adversely affected.

(4) Estimate the potential effects of local exchange competition on uniform and affordable basic telecommunications service charges in all parts of the state.

(5) Examine policy options by which the cost to customers may be managed so as not to jeopardize universal service and the uniform economic development opportunities, including at least the following:

(A) establishing a maximum price for basic telecommunications service, beyond which customers would have access, without regard to income, to credits or vouchers negotiable for local exchange service from a local exchange provider or competitive access provider;

(B) broadening eligibility for the lifeline program; and

(C) establishing a mechanism to adjust the level of support for higher cost customers over time to reflect legal rights, recover historic costs, and reflect the advantages of improved technology and increased efficiency.

(6) Examine the actions, if any, of the Federal Communications Commission (FCC) in revising its universal service fund, and the need, if any, for additional action in Vermont. In particular, the study shall examine the impact on Vermont services caused by the FCC's report and order released November 18, 2011, which, among other things, expands the federal universal service fund to include broadband deployment in unserved areas. Further, the study shall consider the potential impact of various legal challenges to the FCC action on the federal universal service fund.

(7) Propose mechanisms to support universal service and rural economic development while securing the benefits of telecommunications competition for Vermont households and businesses.

(8) Include an audit of the universal service fund to examine, among other things, the contributions made to the fund in terms of the categories of

telecommunications service providers covered as well as the specific services charged. In addition, the audit shall assess the disbursements made from the fund.

(9) Consider any other relevant issues that may arise during the course of the study.

(c) The results of the study, together with any plan for amending and distributing funds under this section, shall be submitted to the ~~general assembly~~ house committee on commerce and economic development and the senate committee on finance on or before ~~January 15, 1996~~ December 1, 2012.

(d) The commissioner of public service may contract with a consultant to conduct the study required by this section. Costs incurred in conducting the study shall be reimbursed from the state universal service fund up to $75,000.00.

(e) To the extent this study may require disclosure of confidential information by a telecommunications service provider, such confidential information shall be disclosed to a third party pursuant to a protective agreement. In no event shall the third party be a person or persons employed by a business competitor or whose primary duties engage them in business competition with a telecommunications service provider submitting the confidential information. The third party may be the consultant retained by the commissioner under subsection (d) of this section or may be another third party agreed upon by the commissioner and the telecommunications service providers. The third party shall be responsible for aggregating the information and, once aggregated, may publicly disclose such information consistent with the purposes of this section. The confidentiality requirements of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Sec. 3. CREATION OF ONE-YEAR HIGH-COST PROGRAM

(a) There is created a high-cost program under which the universal service charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. Payments shall be made to Vermont's incumbent local exchange carriers (ILECs) for the purpose of reducing the cost of providing basic local telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.

(b) Funds distributed under the high-cost program are intended to defray the cost an ILEC incurs in building and maintaining its network so that it stands ready to serve any customer in its service area, even those in the most remote areas of Vermont. In order to achieve this goal, funding shall not be

based upon the number of basic telecommunications services ordered, but rather upon the cost to serve any customer in that service area who may request basic local exchange service. This includes the costs of building and maintaining the entire network in each exchange in the applicable service area.

(c) The fiscal agent shall make distributions for the high-cost program to the ILECs, as required by this section. The percentage of funds distributed to each ILEC shall reflect the percentage of total access lines reported by each ILEC in its annual report to the public service board.

(d) Any funds in excess of $1,000,000.00 remaining in the Vermont universal service fund as of September 1, 2012 shall be distributed among all the ILECs in a manner determined by the commissioner of public service.

Sec. 4. STUDY ON THE STATE USF AND PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

(a) The commissioner of public service or designee, in consultation with the commissioner of taxes or designee, shall convene a work group to study issues related to application of the state's universal service charge established under 30 V.S.A. chapter 88 to prepaid wireless telecommunications services. The work group shall include representatives of prepaid wireless telecommunications service providers, Vermont retailers of prepaid wireless telecommunications services, consumers, the enhanced-911 program, and any other stakeholders identified by the commissioner. The study shall consider:

(1) the retail transactions subject to the charge;

(2) the amount of the charge;

(3) application of the charge to bundled telecommunications services;

(4) the effective date of any adjustments to the charge;

(5) billing and collection procedures, including:

(A) notice of charges to consumers; and

(B) various payment and collection methods, including payment and collection procedures similar to those used for the sales and use tax imposed under 32 V.S.A. chapter 233;

(6) the ability of retailers or the department of taxes, if applicable, to retain a percentage of the fees collected to offset collection and administration costs and, if so, the percentage which may be retained; and

(7) any other matter deemed relevant by the commissioner.

(b) The commissioner, on behalf of the work group established under subsection (a) of this section, shall report his or her findings and recommendations to the house committee on commerce and economic

development and the senate committee on finance not later than December 1, 2012. The report shall include draft legislation for consideration during the 2013 legislative session.

(c) It is the intent of the general assembly that the study authorized under this section shall not circumscribe any obligation which may be imposed on a wireless telecommunications service provider in pending or future proceedings before the public service board concerning designation as an eligible telecommunications carrier.

Sec. 5. EFFECTIVE DATE

(a) This act shall take effect on passage.

(b) Sec. 3 of this act (creation of high cost program) shall take effect on passage and shall be repealed on June 30, 2013.

(Committee vote: 5-0-2)

Reported favorably by Senator Illuzzi for the Committee on Appropriations.

(Committee vote: 5-0-2)

J.R.S. 11.

Joint resolution urging the United States Congress to propose an amendment to the United States Constitution for the states' consideration which provides that corporations are not persons under the laws of the United States or any of its jurisdictional subdivisions.

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

The Committee recommends that the joint resolution be amended by striking out all after the title and inserting in lieu thereof the following:

Whereas, the U.S. Bill of Rights provides certain inalienable rights to natural persons, and

Whereas, corporations are not mentioned in the U.S. Constitution, and

Whereas, corporations are legal entities that governments create, and the rights they enjoy under the U.S. Constitution should be more narrowly defined than the rights that are afforded to natural persons, and

Whereas, the decision to regulate corporate financial campaign contributions is one that historically Congress and the states have been constitutionally allowed to address, and

Whereas, in 1907, Congress enacted the Tillman Act prohibiting corporate financial contributions to federal election campaigns for public office, and

Whereas, in 2010, the U.S. Supreme Court in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (U.S. 2010), ruled that Congress and the states lacked the constitutional right to ban independent corporate expenditures to political campaigns for public office, and

Whereas, the U.S. Supreme Court in the *Citizens* decision relied on its previously issued opinion in the 1976 case *Buckley v. Valeo*, 424 U.S. 1 (U.S. 1976), in which it equated the spending of money for electing candidates to public office as speech, and

Whereas, the *Citizens* decision has allowed for the creation of super political action committees in election campaigns for public office that allow for unregulated campaign expenditures in unprecedented amounts, and

Whereas, as a result of the *Citizens* decision, Congress and the state legislatures were denied any legal authority to regulate independent corporate political expenditures, and

Whereas, a restoration of the guidelines established in the Bipartisan Campaign Reform Act of 2002 is imperative so that Congress and the state legislatures may exercise their historic authority to make their own decisions about whether to regulate corporate political expenditures, and

Whereas, this policy change will require that the U.S. Constitution be amended to authorize congressional or state regulation of individual and corporate financial participation in political campaigns, and

Whereas, on Vermont town meeting day, March 6, 2012, 64 Vermont towns and cities passed resolutions urging the Vermont congressional delegation and the U.S. Congress to propose legislative or congressional action to address the issues raised by *Citizens* including that money is not speech and corporations are not persons under the U.S. Constitution, and

Whereas, these resolutions, passed by towns on town meeting day, also urged the general assembly to pass a similar resolution directed at the Vermont congressional delegation, and

Whereas, U.S. Senator Tom Udall of New Mexico with 22 cosponsors has introduced Senate Joint Resolution 29, "proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections," that would give the Congress and the states the authority to regulate the raising and spending of moneys with respect to elections, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expresses its disagreement with the holdings of the U.S. Supreme Court in *Buckley* and in *Citizens* that money is speech and urges Congress to adopt Senate Joint Resolution 29, *and be it further*

Resolved: That the General Assembly urges Congress to consider the request of many Vermont cities and towns to propose a U.S. constitutional amendment for the state's consideration that provides that money is not speech and corporations are not persons under the U.S. Constitution and that also affirms the constitutional rights of natural persons, *and be it further*

Resolved: That the General Assembly does not support an amendment to the U.S. Constitution that would abridge the constitutional rights of any person or organization including freedom of religion or freedom of the press, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Congressional Delegation.

After adoption, the title of this resolution be amended to read:

Joint resolution urging the United States Congress to propose amendments to the United States Constitution for the states' consideration relating to contributions and expenditures intended to affect elections and relating to the rights of corporations.

(Committee vote: 4-1-0)

Favorable with Proposal of Amendment

H. 403.

An act relating to foreclosure of mortgages.

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

The Committee recommends that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 and Secs. 4, 5, and 6 to read as follows:

Sec. 3. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment and recording a copy of the complaint in the land records where the property lies within eight years after the rendition of the judgment, and not after.

Sec. 4. 12 V.S.A. § 2903(b) is amended to read:

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter and shall relate back to the date on which the original lien was first recorded if

a copy of the complaint to renew the judgment was recorded in the land records where the property lies within eight years after the rendition of the judgment.

Sec. 5. 27 V.S.A. § 612(b) is amended to read:

(b) A purchaser shall have the right to terminate a binding contract for the sale of real estate if, prior to closing, the purchaser determines and gives written notice to the seller that land development has occurred on the real estate without a required municipal land use permit or in violation of an existing municipal land use permit. Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain the required municipal land use permits or to comply with existing municipal land use permits. If the seller does not obtain the required municipal land use permits or comply with existing municipal land use permits, the purchaser may terminate the contract if, as an owner or occupant of the real estate, the purchaser may be subject to an enforcement action under ~~24 V.S.A. § 4496~~ 24 V.S.A. § 4454.

Sec. 6. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1 and 2 of this act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(b) This section and Secs. 3, 4, and 5 of this act shall take effect on passage.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for February 2, 2012, page 189.)

H. 765.

An act relating to the mental health needs of the corrections population.

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

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INDIVIDUALS WITH A SERIOUS FUNCTIONAL IMPAIRMENT INCARCERATED IN A CORRECTIONAL FACILITY

(a) For the purpose of identifying and assessing the needs of individuals with a serious functional impairment as defined in 28 V.S.A. § 906(1) who are incarcerated in a correctional facility, the secretary of human services shall establish on or before July 1, 2012 a work group, including representatives

appointed by the secretary of human services from the departments of corrections, of mental health, and of disabilities, aging, and independent living and including stakeholders. The work group shall:

(1) determine whether individuals with serious functional impairments are receiving appropriate programs and services while incarcerated in a correctional facility;

(2) consult with the members of the criminal justice community on ways to prevent initial incarceration and on ways to limit the length of incarceration for an individual with a serious functional impairment, as appropriate;

(3) work toward the successful reintegration into the community of an individual with serious functional impairment who has been incarcerated in a correctional facility;

(4) work toward reducing the recidivism rate among individuals with a serious functional impairment; and

(5) make long-term, systemic policy recommendations to the secretary of human services to create or improve mechanisms, programs, and services that benefit individuals with a serious functional impairment incarcerated in a correctional facility.

(b) On or before January 15, 2013, the secretary of human services shall issue a report to the general assembly recommending how to better address the needs of individuals with a serious functional impairment who are incarcerated in a correctional facility, based on the findings of the work group in the course of its duties as described in subsection (a) of this section. Prior to finalizing the report, the secretary shall obtain public input regarding the report and shall release a draft report to the public for public comment on or before December 15, 2012. At minimum, the report shall address the following:

(1) the prevalence of serious functional impairment among those members of the corrections population incarcerated in a correctional facility at the time the report is issued;

(2) the rate of recidivism among individuals with a serious functional impairment;

(3) the prevalence of psychotropic medication utilization by individuals in the mental health caseloads, including an analysis of the number of individuals with a serious functional impairment who possess a prescription for a psychotropic medication and whether that prescription was prescribed before or after the individual was incarcerated.

(4) the number of individuals incarcerated in a correctional facility with a serious functional impairment who are in need of mental health services that are not currently available to them; and

(5) opportunities to combine the department of mental health's expertise with that of the department of corrections to improve the mental health services for individuals with a serious functional impairment who are incarcerated in a correctional facility.

Sec. 2. INCARCERATED INDIVIDUALS AND MENTAL HEALTH

As a complement to the assessment conducted pursuant to Sec. 1 of this act, the commissioner of mental health shall ensure that information regarding incarcerated individuals with a mental illness or disorder as defined in 28 V.S.A. § 906(3) is collected and recorded separately, in addition to the other requirements of this act. The information collected shall include recidivism rates among this population. On or before January 15, 2013, the commissioner shall report this information and make recommendations to the house committee on corrections and institutions, the house committee on human services, the senate committee on health and welfare, and the senate committee on judiciary.

Sec. 3. TRAINING

On or before October 15, 2012, the departments of mental health, of disabilities, aging, and independent living, and of corrections, with input and participation from peer and advocacy organizations, shall review the department of corrections' training program for correctional officers as it relates to the Americans with Disabilities Act and to working with and identifying individuals with a serious functional impairment or a mental illness or disorder. The review shall determine if the training is gender-responsive and trauma-informed. No later than January 15, 2013, the commissioners of mental health and of corrections shall submit a report to the general assembly identifying the strengths, weaknesses, and opportunities for improvement in this training.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

(No House amendments.)

NEW BUSINESS

Favorable

H. 565.

An act relating to regulating licensed lenders and mortgage loan originators.

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 5-0-2)

(For House amendments, see House Journal of February 9, 2012, page 231.)

H. 613.

An act relating to governance of the Community High School of Vermont .

Reported favorably by Senator Doyle for the Committee on Education.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 22, 2012, page 797.)

Favorable with Recommendation of Amendment

S. 28.

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

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:

* * * Environmental Division, Superior Court * * *

Sec. 1. ENVIRONMENTAL DIVISION AMENDMENTS; PURPOSE

The purpose of Secs. 2 (environmental division; magistrate) and 3 (access to information) of this act, which enhance the environmental division of the superior court (the division), is to increase the speed and accessibility to the public of appeals before the division by reducing discovery, requiring parties to exchange relevant information before hearings, and adding a magistrate to help expedite proceedings in a manner that gives due consideration to the needs of pro se litigants and to supply the division with an additional judicial appointee who may decide noncomplex cases and, in complex matters, may make preliminary decisions and assist in early and rigorous case management. Secs. 2 and 3 of this act shall be applied consistently with this purpose.

Sec. 2. 4 V.S.A. § 1001 is amended to read:

§ 1001. ENVIRONMENTAL DIVISION

(a) The environmental division shall consist of two judges, each sitting alone, and one magistrate.

(b)(1) Two environmental judges shall be appointed to hear matters in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.

(2) An environmental magistrate shall be appointed to perform duties that relate solely to matters in the environmental division and that are authorized by rule or an environmental judge. An environmental magistrate may be so authorized to perform one or more of the following:

(A) Case management,

(B) Issuing a decision on a procedural issue that does not dispose of a matter. including issuance of a scheduling order and managing discovery.

(C) Determining whether appeals should be consolidated or coordinated pursuant to 10 V.S.A. § 8504(g).

(D) Determining whether a matter should be referred for alternative dispute resolution.

(E) Conducting alternative dispute resolution.

(F) Issuing a recommended decision on the merits of any matter subject to review and approval by an environmental judge. Prior to such review and approval, the recommended decision shall be served on all parties, and all adversely affected parties shall have an opportunity to file exceptions and present briefs and oral argument to the environmental judge on the recommended decision.

(G) Issuing a final decision on the merits of a matter that an environmental judge determines is not complex and does not involve questions of facts or law the determination of which is likely to have significant precedential effect.

(c) An environmental judge and an environmental magistrate shall be an attorney admitted to practice before the Vermont supreme court.

(1) An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior judge.

(2) An environmental magistrate:

(A) Shall be nominated, appointed, confirmed, and retained in the manner of a superior judge;

(B) Shall be an exempt employee of the judicial branch, subject to the code of judicial conduct;

(C) Shall devote full time to his or her duties; and

(D) Shall be compensated in the same manner as other magistrates in the judicial branch.

(d) An environmental judge and an environmental magistrate shall be appointed on April 1, for a term of six years or the unexpired portion thereof.

(e) Evidentiary proceedings in the environmental division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental ~~judge~~ division shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the ~~court~~ division may require a personal appearance for good cause.

(f) [Repealed.]

(g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental division and proceedings in it. In adopting these rules, the supreme court shall ensure that the rules provide for:

(1) expeditious proceedings that give due consideration to the needs of pro se litigants;

(2) the ability of the judge to hold pretrial conferences by telephone;

(3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and

(4) the appropriate use of site visits by the presiding judge or magistrate to assist the ~~court~~ division in rendering a decision.

Sec. 3. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

(a) In connection with ~~any~~ evidentiary proceedings under 10 V.S.A. chapter 201 ~~of Title 10~~ (environmental law enforcement) or 220 (consolidated environmental appeals), each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the environmental division deems necessary, in its sole discretion, to a fair and full determination of the proceeding.

(b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which ~~is~~ the environmental division deems necessary, in its sole discretion, for a full and fair determination of the proceeding.

* * * Act 250; District Commissioners; Ethical Standards * * *

Sec. 4. 10 V.S.A. § 6026 is amended to read:

§ 6026. DISTRICT COMMISSIONERS

* * *

(c) Members shall be removable for cause only, except the ~~chairman~~ chair who shall serve at the pleasure of the governor.

* * *

(e) The chair and members of a district commission shall comply with the following ethical standards:

(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

(2) The chair and each member of a district commission shall conduct the affairs of his or her office in such a manner as to instill public trust and confidence and shall take all reasonable steps to avoid any action or circumstance that might result in any one of the following:

(A) Undermining his or her independence or impartiality of action.

(B) Taking official action on the basis of unfair considerations.

(C) Giving preferential treatment to any private interest on the basis of unfair considerations.

(D) Giving preferential treatment to any family member or member of his or her household.

(E) Using his or her office for the advancement of personal interest or to secure special privileges or exemptions.

(F) Adversely affecting the confidence of the public in the integrity of the district commission.

(f) As soon as practicable after grounds become known, a party may move to disqualify a district commissioner from a particular matter before the district commission.

(1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.

(2) On receipt of the motion, the district commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the

motion to the chair of the board. The chair of the board may disqualify the district commissioner from the matter before the district commission if, on review of the motion, the chair determines that such disqualification is necessary to ensure compliance with subsection (e) (ethical standards) of this section.

(3) On disqualification of a district commissioner under this subsection, the chair of the board shall assign another district commissioner to take the place of the disqualified commissioner. The chair shall consider making such an assignment from among the members of the same district commission before assigning a member of another district commission.

(g) For one year after leaving office, a former appointee to a district commission shall not, for pecuniary gain:

(1) Be an advocate on any matter before the district commission to which he or she was appointed; or

(2) Be an advocate before any other public body, or the general assembly or its committees, regarding any matter in which, while an appointee, he or she exercised any official responsibility or participated personally and substantively.

* * * Party Status; Standing to Appeal * * *

Sec. 5. PARTY STATUS AMENDMENTS; PURPOSE

The purpose of Secs. 6 (party status) and 7 (person aggrieved) of this act is to correct the overly rigorous application of existing standards for party status and standing to appeal exemplified by the decision of *In re Pion Sand and Gravel*, No. 245-12-09 Vtec (July 2, 2010), and to assure that future decisions properly apply these standards. To determine standing, the Vermont supreme court has applied an analysis used by the federal courts under Article III of the United States Constitution. *Parker v. Milton*, 169 Vt. 74 (1998). In addition, Vermont statutes establish who may be a party. For the purpose of 10 V.S.A. §§ 6085(c)(1)(E) (party status; adjoining property owner; other persons) and 8502(7) (person aggrieved), establishing status as a party or "person aggrieved" is distinct from a merits determination. A person need not prove the merits of a claim in order to participate or appeal, but rather need only demonstrate a reasonable possibility of injury to a particularized interest. The subdivisions amended in Secs. 6 and 7 of this act shall be applied consistently with this purpose.

Sec. 6. 10 V.S.A. § 6085(c) is amended to read:

(c)(1) Party status. In proceedings before the district commissions, the following persons shall be entitled to party status:

* * *

(E) Any adjoining property owner or other person who ~~has~~ alleges an injury to a particularized interest protected by this chapter that may be ~~affected by an act or decision by a district commission~~ attributable to a proposed development or subdivision. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

Sec. 7. 10 V.S.A. § 8502(7) is amended to read:

(7) "Person aggrieved" means a person who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by a district coordinator, district commission, the secretary, or the environmental division that can be redressed by the environmental division or the supreme court. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

* * * Recorded Hearings; Pilot Project; Act 250 * * *

Sec. 8. ON THE RECORD PILOT; FINDINGS; PURPOSE

(a) The purpose of Secs. 9 (appeals on the record) and 10 (prospective repeal; report) of this act is to establish a pilot project to test the use of recorded hearings by the Act 250 district commissions that, on appeal to the environmental division, will be subject to a review on the record (OTR) rather than a de novo hearing.

(b) There is disagreement on the use of OTR for appeals to the environmental division from decisions of the district commissions. On the one hand, proponents of OTR argue that, in the case of Act 250, OTR will ensure the primacy of the district commissions in making the decisions and, in cases that are likely to be appealed, avoid duplicative expenditure of time and resources resulting from presenting, on appeal, expert and witness testimony and other evidence already presented. Proponents also argue that OTR enhances citizen participation because a record preserves citizen input before the district commissions and the district commissions are more accessible to citizens than a court. On the other hand, skeptics of OTR argue that it will result in an overly formal district commission process that will harm citizen participation and increase the cost and time of all district commission proceedings in order to benefit those that are appealed.

(c) The pilot project authorized by this act is intended to test whether OTR can be implemented in a manner that results in the benefits asserted by proponents without the negative impacts raised by skeptics. To this end, it is important that district commissions participating in the project limit recorded proceedings to matters that are likely to be appealed, assure that recorded proceedings are run in the same informal and citizen-friendly manner as other

district commission proceedings, make all efforts to resolve and narrow issues for hearing, and assure adequate time and information for all parties to have a fair opportunity to prepare for the hearing.

Sec. 9. 10 V.S.A. § 6085a is added to read:

§ 6085a. APPEALS ON THE RECORD

(a) The districts no. 1, 4, and 5 environmental commissions may hold on-the-record hearings on the motion of any party or on its own motion. Any motion or decision to hold on-the-record hearings shall be made as early as possible during the course of an application and prior to convening a hearing on the merits. Notwithstanding subdivision 6001(4) of this title, for the purpose of this section, "district commission" shall mean the district no. 1, 4, or 5 environmental commission.

(b) The district commission shall schedule a prehearing conference in each matter in which on-the-record hearings may be held to:

(1) determine whether on-the-record hearings shall be held;

(2) narrow and specify all issues for hearing;

(3) establish a fair and adequate schedule for all parties to prepare submissions of information; and

(4) establish a schedule for and the order of a hearing.

(c) The district commission may hold on-the-record hearings if it determines that:

(1) the application raises issues that are likely to be contested and appealed;

(2) on-the-record hearings are likely to result in significant cost and time savings;

(3) on-the-record hearings would assure complete information and argument for the district commission's consideration;

(4) on-the-record hearings will not unnecessarily burden the parties; and

(5) on-the-record hearings will not significantly deter citizen participation and the ability of parties to participate pro se.

(d) In a case in which a district commission decides to hold on-the-record hearings:

(1) The district commission may request that the parties engage in alternative dispute resolution in an effort to resolve or narrow issues before the district commission.

(2) The district commission shall assure that all parties and the district commission have adequate information in sufficient time to address issues before the district commission.

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names and addresses of the party's witnesses.

(iv) Summaries of all proposed testimony.

(B) The district commission may require each participating party to provide the district commission and all other parties with one or more of the following:

(i) Prefiled testimony.

(ii) Memoranda concerning any issue in controversy.

(iii) Particular information that a party may request by written questions.

(iv) Any other information that the commission deems necessary to a fair and full determination of the proceeding.

(C) The provisions of this subdivision (2) shall be in addition to the provisions of 3 V.S.A. §§ 809, 809a, and 809b.

(3) The district commission shall make every reasonable effort to maintain the procedural informality characteristic of district commission proceedings that are not on-the-record. There shall be flexibility in allowing the introduction of evidence. The district commission shall ensure that all hearings, conferences, and requirements for prehearing submissions are in keeping with the citizen-run and citizen-served process under this chapter, and due consideration and respect shall be given to the needs of all applicants, parties, and pro se parties.

(e) The district commission shall cause on-the-record hearings to be recorded by video. Such recordings shall be at the expense of the board. The board shall provide training and education opportunities, and legal counsel as

appropriate, to enable district commissioners to preside successfully at on-the-record hearings.

(f) Notwithstanding sections 6089 and 8504 of this title, there shall be no appeal of a district commission's decision on whether to hold on-the-record hearings.

(g) Notwithstanding subsection 8504(h) of this title, in a matter in which a district commission has elected to hold on the record hearings under this section, the appeal of a decision of the district commission shall be reviewed on the record prepared by the commission. In such an appeal:

(1) The record shall consist of the video recording of the hearing and all documents and materials reviewed or considered by the district commission. The district commission shall forward the record to the environmental division within 20 days of the date the district commission receives the notice of appeal.

(2) The appellant shall bear the burden to demonstrate that the district commission committed reversible error.

(3) No objection that has not been urged before the district commission may be considered by the environmental division, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the district commission with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(5) The environmental division may reverse district commission conclusions or decisions only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Sec. 10. PROSPECTIVE REPEAL; REPORT

(a) 10 V.S.A. § 6085a (appeals on the record) shall be repealed on July 1, 2016, except that the section shall remain in effect for an application for a permit under 10 V.S.A. chapter 151 if prior to that date:

(1) The application was filed with the district no. 1, 4, or 5 environmental commission and determined to be complete; and

(2) With respect to the application, a motion for on-the-record hearings was filed or the district commission determined to hold on-the-record hearings under that section.

(b) With respect to the implementation of 10 V.S.A. § 6085a (appeals on the record), the natural resources board shall submit annual reports by January 15 of each year that 10 V.S.A. § 6085a is in effect. In addition, the

natural resources board shall submit an evaluation report by January 15, 2014 and a further evaluation report by January 15, 2016. The evaluation report shall be combined with the annual report for the same year.

(1) Each report shall be submitted to the house committee on fish, wildlife and water resources and the house and senate committees on judiciary and on natural resources and energy.

(2) The evaluation reports shall provide a quantitative and qualitative assessment of the use of on-the-record hearings, including the timeliness and manageability of the overall process, any effects on public participation, party feedback, any additional resource demands or efficiencies, and whether to incorporate or make more use of alternative dispute resolution methods, including intervenor funding, community stakeholder process, and mediation.

(3) The annual reports shall detail the range of projects for which there were on-the-record hearings, the districts in which the hearings were held, the time required and the outcome of completed commission hearings, whether appeals were taken, and if so, by which party, and the time required for the outcome of appellate proceedings before the environmental division.

Sec. 11. AGENCY OF NATURAL RESOURCES; RECORD REVIEW; REPORT

On or before January 15, 2013, the secretary of natural resources shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy on how the secretary might implement on-the-record (OTR) appeals of acts or decisions of the secretary and on affording deference on appeal to those acts or decisions. Such report shall:

(1) Provide data on the number of appeals from those acts or decisions during the preceding three years that went to hearing on the merits and the amount of staff time necessitated by each such appeal.

(2) Detail the changes that the secretary would propose or deem necessary within the agency of natural resources to effect OTR appeals such as revisions to notice requirements or conduct of hearings, preparation of the record, or establishment of internal administrative hearings.

(3) Set out what specific standards of deference, if any, the secretary proposes should apply on appeal of his or her acts or decisions; what internal changes to the agency, if any, should be implemented to support use of those standards; and the extent to which OTR appeals are necessary to effecting one or more of the proposed standards.

(4) Provide the secretary's recommendations and reasons for those recommendations.

Sec. 12. NATURAL RESOURCES BOARD; REPORT; CLIMATE CHANGE; SPRAWL; CUMULATIVE IMPACTS

On or before January 15, 2013, the chair of the natural resources board shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy with recommendations for improving the provisions of and process under 10 V.S.A. chapter 151 (Act 250) with respect to: the issue of climate change due to anthropogenic global warming; preservation of Vermont's settlement pattern of concentrated settlements surrounded by rural countryside and prevention of sprawl and the related loss of agricultural soils and forestland; and enhancement of the ability of Act 250 to address the cumulative effects of development over time. Prior to submitting this report, the chair shall consult with other state permitting officials, including representatives of the agencies of agriculture, food and markets, of commerce and community development, of natural resources, and of transportation; municipal permitting officials; and members of the public through public meetings, use of the Internet, and other forms of outreach.

Sec. 13. JUDICIARY POSITION; APPROPRIATION

For the purpose of Sec. 2 of this act (environmental division; magistrate):

(1) The position of environmental magistrate is created within the judicial branch.

(2) For fiscal year 2013, the sum of $125,000.00 is appropriated to the judiciary from the general fund.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 1, 3–8, and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Secs. 2 (environmental division; magistrate) and 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

and that after passage the title of the bill be amended to read: "An act relating to the permit process for protecting the environment"

(Committee vote: 3-2-0)

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

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By striking out Secs. 1 (environmental division amendments; purpose) and 2 (environmental division) in their entirety and inserting in lieu thereof: Secs. 1 and 2. [Deleted.]

Second: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subdivision (d)(2), by striking out subdivision (A) and inserting in lieu thereof a new subdivision (A) to read as follows:

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, expert reports including the basis and reasons for each opinion, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names, addresses, and telephone numbers of the party's witnesses.

(iv) Fair and accurate summaries of all proposed testimony.

(v) The curriculum vitae of each expert witness, including a list of all other cases in which, during the previous four years, the witness testified as an expert.

Third: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subsection (d), after subdivision (3), by inserting a new subdivision to be numbered subdivision (4) to read as follows:

(4) The district coordinator for the district commission shall provide pro se parties with reasonable assistance on procedure before the district commission.

Fourth: By striking out Secs. 13 (judiciary position; appropriation) and 14 (effective dates; implementation) in their entirety and inserting in lieu thereof:

Sec. 13. JUDICIARY POSITION; APPROPRIATION

The establishment of one new exempt position in the judicial branch of state government—environmental division staff attorney—is authorized in fiscal

year 2013. This position shall be converted from an existing law clerk position within the judicial branch. The job duties of the environmental division staff attorney shall be within the environmental division of the superior court and shall include: researching legal issues; drafting legal memoranda; screening and management of division caseload with special attention to complex cases and division backlogs; and supervising law clerks and interns. For the purpose of this section, the sum of $60,000.00 is appropriated to the judiciary from the general fund for fiscal year 2013.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 3–8 and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Sec. 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

(Committee vote: 5-0-2)

Favorable with Proposal of Amendment

H. 412.

An act relating to harassment and bullying in educational settings.

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

The Committee recommends that the Senate propose to the House that after passage of the bill, the title be amended to read:

An act relating to harassment in educational settings

(Committee vote: 3-2-0)

(For House amendments, see House Journal for March 20, 2012, page 741.)

H. 459.

An act relating to approval of amendments to the charter of the town of Brattleboro.

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

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, in § 2.4 (representative town meeting), in subdivision (a)(2), by striking out the fifth sentence which reads, "The town clerk and town treasurer shall be nonvoting ex officio members if appointed by the town manager."

Second: In Sec. 2, in § 3.2 (initiative), in subdivision (1)(B), at the end of the final sentence before the period, by striking out ", unless it is deemed illegal or unconstitutional by the body, in consultation with the town attorney"

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 20, 2012, page 733.)

H. 758.

An act relating to divorce and dissolution proceedings.

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

The Committee recommends that the Senate propose to the House to amend the bill by adding Sec. 5a to read as follows:

Sec. 5a. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

* * *

(b)(2) Prior to the entry of any divorce or annulment proceeding in the superior court, there shall be paid to the clerk of the court for the benefit of the state a fee of $250.00 in lieu of all other fees not otherwise set forth in this section~~; however, if~~. If the divorce or annulment complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be $75.00 if one or both of the parties are residents, and $150.00 if neither party is a resident.

* * *

(Committee vote: 4-0-1)

Reported favorably by Senator McCormack for the Committee on Finance.

(Committee vote: 7-0-0)

PROPOSAL OF AMENDMENT TO H. 758 TO BE OFFERED BY SENATOR SNELLING ON BEHALF OF THE COMMITTEE ON JUDICIARY

Senator Snelling, on behalf of the Committee on Judiciary, moves that the Senate propose to the House to amend the bill as follows:

First: In Sec. 4, 15 V.S.A. § 1206, in subdivision (d)(1), after the words "parties to a civil union" by adding the words certified in Vermont

Second: In Sec. 5, 18 V.S.A. § 5131, in subdivision (a)(4)(A), in the first sentence, by striking the word "solemnized" and inserting in lieu thereof the word certified

NOTICE CALENDAR

Second Reading

Favorable

H. 760.

An act relating to lowering to 16 the age of consent for blood donation.

Reported favorably by Senator Mullin for the Committee on Health and Welfare.

(Committee vote: 3-0-2)

Favorable with Recommendation of Amendment

S. 233.

An act relating to gradually increasing the mandatory age of school attendance.

Reported favorably with recommendation of amendment by Senator Lyons 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:

* * * Legal School Age * * *

Sec. 1. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

~~A~~ (a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and 16 years, 183 days shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend; ~~or~~

(2) ~~has completed the tenth grade; or~~ has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

(b) A person having the control of a child who is enrolled in a home study program for the academic year in which the child is 15 years old shall not be subject to the provisions of subsection (a) of this section when the child is 16 years old or older.

Sec. 2. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and ~~16~~ 17 years~~, 183 days~~ shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

Sec. 3. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and 17 years, 183 days shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

Sec. 4. 16 V.S.A. § 1121(a) is amended to read:

(a) Except as provided in subsection (b) of this section, a person having the control of a child between the ages of six and ~~17~~ 18 years~~, 183 days~~ shall cause the child to attend a public school, an approved or recognized independent school, an approved education program, or a home study program for the full number of days for which that school is held, unless the child:

(1) is mentally or physically unable so to attend;

(2) has completed all requirements necessary for graduation from secondary school;

(3) is excused by the superintendent or a majority of the school directors as provided in this chapter; or

(4) is enrolled in and attending a postsecondary school, as defined in subdivision 176(b)(1) of this title, which is approved or accredited in Vermont or another state.

* * * Related Provisions * * *

Sec. 5. 16 V.S.A. § 1121a is added to read:

§ 1121a. PUPILS WHO ARE 16 YEARS OLD AND OLDER

(a) A child who is at least 16 years old but is younger than the legal school age established in section 1121 of this title and who is not subject to the exceptions set out in subdivisions (a)(1)–(4) or subsection (b) of that section may terminate his or her secondary education in a public school, an approved or recognized independent school, or an approved education program if the child and at least one of the child's parents or the child's legal guardian personally appear before the superintendent to sign a notice of withdrawal. The notice shall include a statement signed by the student, the parent or guardian, and the principal or headmaster of the school in which the child is enrolled that the child and the parent or guardian attended a final counseling session with the principal, headmaster, or school guidance counselor that included a discussion of alternative educational opportunities available to the child, including workforce development programs eligible to receive funding from the department of labor, and other services available to support the child, including Linking Learning to Life, Inc., Spectrum Youth and Family Services, Inc., Vermont Youth Build, and the Vermont Youth Conservation Corps, Inc.

(b) A school district shall contact each child who has voluntarily withdrawn from school pursuant to subsection (a) of this section within three months after the date of withdrawal to encourage the child to enroll in a public school, an approved or recognized independent school, a home study program, an approved education program, or a workforce development program or to pursue some other alternative educational or training opportunity.

(c) The departments of labor and of education shall publish and update at least annually a list of alternative education and workforce development programs under their respective jurisdictions that would be available to a student who has not completed secondary school.

Sec. 6. 16 V.S.A. § 1122 is amended to read:

§ 1122. PUPILS ~~OVER 16~~ WHO EXCEED THE LEGAL SCHOOL AGE

A person having the control of a child ~~over 16 years of~~ who exceeds the legal school age as established in section 1121 of this title who allows the child to become enrolled in a public school shall cause the child to attend the school continually for the full number of the school days of the term in which he or she is enrolled, unless the child is mentally or physically unable to continue, or is excused in writing by the superintendent or a majority of the school directors. In case of ~~such~~ enrollment, the person, and the teacher, child, superintendent, and school directors shall be under the laws and subject to the penalties relating to the attendance of children ~~between the ages of six and 16 years~~ of legal school age.

Sec. 7. 16 V.S.A. § 1126 is amended to read:

§ 1126. FAILURE TO ATTEND; NOTICE BY TEACHER

When a pupil ~~between the ages of six and 16 years~~ of legal school age, as established in section 1121 of this title, who is not excused or exempted from school attendance~~,~~ fails to enter school at the beginning ~~thereof~~ of the academic year, or being enrolled, fails to continue to attend ~~the same~~, and when a pupil who ~~has become 16 years of~~ exceeds the legal school age becomes enrolled in a public school and fails to attend, the teacher or principal shall forthwith notify the superintendent or school directors, and the truant officer, unless the teacher or principal is satisfied upon information that the pupil is absent on account of sickness.

Sec. 8. 16 V.S.A. § 1128(a) is amended to read:

(a) A superintendent may and the truant officer shall stop a child ~~between the ages of six and 16 years or a child 16 years of age or over and~~ of legal school age or a child who exceeds the legal school age but is enrolled in public school, wherever found during school hours, and shall, unless ~~such~~ the child is excused or exempted from school attendance, take the child to the school which she or he should attend.

Sec. 9. 16 V.S.A. § 1123(c) is amended to read:

(c) ~~The superintendent with the consent of a majority of the school board of the town in which the pupil resides, may excuse, in writing, a pupil who has reached the age of fifteen years and has completed the work required in the first six years of the elementary school course from further school attendance if~~

~~his services are needed for the support of those dependent upon him, or for any other sufficient reason.~~ [Repealed.]

* * * Human Services * * *

Sec. 10. 33 V.S.A. § 5102(3) is amended to read:

(3) "Child in need of care or supervision (CHINS)" means a child who:

* * *

(D) is under the age of 16 and is habitually and without justification truant from compulsory school attendance.

* * * Flexible Pathways to Graduation; Dual Enrollment * * *

Sec. 11. 16 V.S.A. chapter 23, subchapter 6 is amended to read:

Subchapter 6. Flexible Pathways to Secondary School Completion; Adult Education and Literacy

§ 1049. ~~PROGRAMS~~ FLEXIBLE PATHWAYS; POLICY; INITIATIVE; GUIDELINES; DEFINITIONS

~~(a) The commissioner of education may provide programs designed to fit the individual needs and circumstances of adult students. Programs authorized under this section shall give priority to those adult persons with the lowest levels of literacy skills.~~

~~(b)(1) Fees for general educational development shall be $3.00 for a transcript.~~

~~(2) The adult diploma program (ADP) means an assessment process administered by the Vermont department of education through which an adult can receive a local high school diploma granted by one of the program's participating high schools.~~

~~(3) General educational development (GED) means a testing program administered jointly by the Vermont department of education, the GED testing service, and approved local testing centers through which an adult can receive a secondary school equivalency certificate based on successful completion of the tests of general educational development.~~

~~(c) Fees collected under this section shall be credited to a special fund established and managed pursuant to chapter 7, subchapter 5 of Title 32, and shall be available to the department to offset the costs of providing those services.~~

(a) Policy. It is the policy of the state:

(1) to take all necessary measures to increase the Vermont secondary school completion rate to 100 percent;

(2) to promote opportunities for every Vermont student to have high-quality educational experiences; and

(3) to create opportunities for every Vermont student to achieve career and college readiness while respecting diverse student goals and personal learning styles and abilities.

(b) Flexible pathways initiative. There is created within the department a flexible pathways initiative:

(1) to promote opportunities for Vermont students to complete secondary school and achieve career and college readiness through high-quality educational experiences that acknowledge individual goals, learning styles, and abilities; and

(2) to encourage and support the creativity of school districts as they develop or expand high-quality alternative educational experiences that advance the policies set forth in subsection (a) of this section.

(c) Flexible pathways guidance. The commissioner of education shall develop, publish, and regularly update guidance, in the form of technical assistance, sharing of best practices, legal interpretations, and other support, designed to encourage and assist school districts:

(1) to identify and support elementary and secondary students who require additional assistance to succeed in school, including individual students identified under subsection 2902(c) of this title, or who would otherwise benefit from flexible pathways to graduation;

(2) to encourage movement toward development of a personalized learning plan by every student, in consultation with a representative of the school and the student's parents or legal guardian;

(3) to implement strategies and flexible pathways components such as:

(A) the provision of targeted assistance, including individual tutoring, evidence-based literacy instruction, alternative and extended scheduling, and the provision of a variety of opportunities to earn credits or demonstrate proficiency necessary to earn a high school diploma;

(B) the assignment of one or more adults from within the school community to provide continuity to the student;

(C) the opportunity to acquire knowledge and skills through applied or work-based learning opportunities, including those that foster appropriate social interactions with adults and other students;

(D) the opportunity to participate in dual enrollment courses with tutorial support provided as needed;

(E) assessments that allow the student to demonstrate proficiency by applying his or her knowledge and skills to tasks that are of interest to that student; and

(4) to oversee implementation of publicly funded components of flexible pathways established in this subchapter, including:

(A) the high school completion program as set forth in section 1049a:

(B) the dual enrollment program as set forth in section 1049b;

(C) other innovative components as set forth in section 1049c; and

(D) the adult diploma and general educational development programs as set forth in section 1049d.

(d) Definitions. In this title:

(1) "Approved provider" means an entity approved by the commissioner to provide educational services that may be awarded credits or used to determine proficiency necessary for a high school diploma.

(2) "Career and college readiness" means the ability to enter the workforce or pursue postsecondary education or training without the need for remediation.

(3) "Contracting agency" means an entity that enters into a contract with the department to provide "flexible pathways to graduation" services itself or in conjunction with one or more approved providers in Vermont.

(4) "Dual enrollment" means enrollment by a secondary student in a course offered by an accredited postsecondary institution as defined in section 913 of this title and for which, upon successful completion of the course, the student will receive:

(A) credit toward graduation from the secondary school in which the student is enrolled; and

(B) postsecondary credit from the institution that offered the course if the course is a credit-bearing course at that institution.

(5) "Flexible pathways to graduation" means any combination of high-quality academic and experiential components leading to secondary school completion and career and college readiness.

(6) "Personalized learning plan" means a written document developed by a student, a representative of the school, and, if the student is a minor, the student's parents or legal guardian that describes a flexible pathway to graduation that is unique to the individual student. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma and may describe educational services to be provided by a public

school, an approved independent school, an approved provider, a contracting agency, or a combination of these.

(e) Other initiatives. Nothing in this subchapter shall be construed as limiting the authority of any school district to develop or continue to provide alternative educational opportunities for its students that are otherwise permitted, including participation in dual enrollment programs with out-of-state postsecondary institutions or the provision of advanced placement courses.

(f) Scope. No individual entitlement or private right of action is created by this section.

§ 1049a. HIGH SCHOOL COMPLETION PROGRAM

(a) ~~In this section:~~

~~(1) "Graduation education plan" means a written plan leading to a high school diploma for a person who is 16 to 22 years of age and has not received a high school diploma, who may or may not be enrolled in a public or approved independent school. The plan shall define the scope and rigor of services necessary for the student to attain a high school diploma, and may describe educational services to be provided by a public high school, an approved independent high school, an approved provider, or a combination of these.~~

~~(2) "Approved provider" means an entity approved by the commissioner to provide educational services which may be counted for credit toward a high school diploma.~~

~~(3) "Contracting agency" means an agency that has entered into a contract with the department of education to provide adult education services in Vermont.~~ There is created a high school completion program to be a potential component of a flexible pathway for any student who is at least 16 years old, who has not received a high school diploma, and who may or may not be enrolled in a public or approved independent school.

(b) If a person who wishes to work on a ~~graduation education~~ personalized learning plan leading to graduation through the high school completion program is not enrolled in a public or approved independent school, then the commissioner shall assign the prospective student to a high school district, which shall be the district of residence whenever possible. The school district in which a student is enrolled or to which a non-enrolled student is assigned shall work with the contracting agency and the student to develop a ~~graduation education~~ personalized learning plan. The school district shall award a high school diploma upon successful completion of the plan.

(c) The commissioner shall reimburse, and net cash payments where possible, a school district that has agreed to a ~~graduation education~~ personalized learning plan under this section in an amount:

(1) established by the commissioner for development of the ~~graduation education~~ personalized learning plan and for other educational services typically provided by the assigned district or an approved independent school pursuant to the plan, such as counseling, health services, participation in cocurricular activities, and participation in academic or other courses, provided this amount shall not be available to a district that provides services under this section to an enrolled student; and

(2) negotiated by the commissioner and the contracting agency, with the approved provider, for services and outcomes purchased from the approved provider on behalf of the student pursuant to the ~~graduation education~~ personalized learning plan.

§ 1049b. DUAL ENROLLMENT PROGRAM

(a) Program created. There is created a statewide dual enrollment program to be a potential component of a student's flexible pathway and through which a Vermont secondary student who is enrolled in a Vermont public school or a Vermont approved independent school at public expense or who is assigned to a public school through the high school completion program may enroll in up to four postsecondary courses for which the program shall pay tuition.

(b) Courses. The dual enrollment program shall include college courses offered on the campus of an accredited postsecondary institution and college courses offered by an accredited postsecondary institution on the campus of a secondary school. The program may include online college courses or components. Provided, however, a personalized learning plan that includes a dual enrollment course offered by an accredited postsecondary institution that is not approved pursuant to section 176 or 176a of this title shall be submitted to the program manager for review prior to enrollment in the course. The program manager may approve enrollment if it determines that the institution meets quality standards established by the manager or state board rule, that the student does not have access to the same or a comparable course offered by an institution approved pursuant to section 176 or 176a of this title, and that enrollment is in the best interest of the student. A student may appeal a decision of the program manager to the commissioner, whose decision shall be final.

(c) Postsecondary institutions.

(1) Vermont's public postsecondary institutions shall work together to ensure that dual enrollment opportunities are available throughout the state. Other nonprofit accredited postsecondary institutions may participate in the

dual enrollment program pursuant to criteria established by this section, the state board, and the program manager.

(2) Each participating postsecondary institution shall:

(A) define how it will determine whether a student is sufficiently prepared to succeed academically in a dual enrollment course;

(B) develop the curriculum and select instructors for dual enrollment courses;

(C) maintain the postsecondary academic record of each participating student and provide transcripts on request;

(D) agree to accept as full payment for a dual enrollment course the tuition set forth in subsection (f) of this section; and

(E) to the extent permitted under the Family Educational Rights and Privacy Act, collect and send data related to student participation and success to the student's secondary school and the commissioner.

(d) Secondary schools. A public secondary school, regional technical center as defined in section 1522 of this title, and approved independent secondary school that receives publicly funded tuition dollars shall:

(1) provide access for eligible students to participate in dual enrollment courses offered on the campus of the secondary school;

(2) accept postsecondary credit awarded for dual enrollment courses as meeting secondary school graduation requirements;

(3) collect enrollment data as prescribed by the department for longitudinal review and evaluation;

(4) identify and provide necessary support for participating students and continue to provide services for students with disabilities; and

(5) provide support for a seamless transition to postsecondary enrollment upon graduation.

(e) Students.

(1) A Vermont resident in any flexible pathway who has completed grade 10 but has not received a high school diploma is eligible to participate in the dual enrollment program if:

(A) the student is enrolled in a Vermont public school or a Vermont approved independent school at public expense or is assigned to a public school through the high school completion program;

(B) dual enrollment is an element included within the student's personalized learning plan; and

(C) the secondary school and the postsecondary institution have determined that the student is sufficiently prepared to succeed in a dual enrollment course, which can be determined in part by the assessment tool or tools identified by the participating postsecondary institution.

(2) An eligible student may enroll in up to four dual enrollment courses prior to completion of secondary school for which the dual enrollment program will pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

(3) A student's personalized learning plan shall include provisions for support services, including transitional support for students with disabilities and including academic, emotional, and other support services as appropriate.

(f) Tuition.

(1) For any course for which the postsecondary institution pays the instructor, the commissioner shall reimburse a secondary school district the full amount of tuition paid to the postsecondary institution, which shall not exceed the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(2) For any course that is taught by an instructor who is paid as part of employment by a secondary school, the commissioner shall reimburse a secondary school district the full amount of tuition paid to the postsecondary institution, which shall not exceed 50 percent of the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(g) Program management**.** The department shall manage or may contract for the management of the dual enrollment program in Vermont by:

(1) coordinating secondary and postsecondary partners to ensure success of the programs, including assisting partners to develop memoranda of understanding;

(2) marketing of the dual enrollment program to students and their families throughout the state;

(3) evaluating all aspects of the dual enrollment program;

(4) coordinating with secondary and postsecondary partners to understand and define student academic readiness;

(5) assessing what is needed to support student success;

(6) reviewing program costs;

(7) managing distribution of tuition funds;

(8) coordinating the use of technology to ensure access and coordination of the program;

(9) ensuring overall quality and accountability;

(10) convening regular meetings of interested parties to explore and develop improved student support services; and

(11) performing other necessary or related duties.

(h) Annually in January, the commissioner and program manager shall report to the house and senate committees on education regarding the dual enrollment program, including data relating to student demographics, levels of participation, and program success.

§ 1049c. INNOVATIVE COMPONENTS OF FLEXIBLE PATHWAYS

(a) The commissioner may use sums appropriated for the high school completion program to support other innovative components of a flexible pathway that are available to a student instead of or in addition to the high school completion program by reimbursing or awarding grants to Vermont public schools, Vermont career and technical education centers, Vermont supervisory unions, approved providers, and contracting agencies for activities that create opportunities for Vermont students to have high-quality educational experiences and achieve career and college readiness while respecting diverse student goals and personal learning styles and abilities, including:

(1) implementation of innovative, comprehensive programs offered by and within a school; and

(2) implementation of innovative, comprehensive programs offered through the school by entities other than the school or offered at a location other than the school campus, including work-based learning, virtual or blended learning, career and technical education, dual enrollment, and programs operated by the Vermont Youth Conservation Corps, Inc.

(b) Money awarded by the commissioner under this section shall be pursuant to criteria established in rule by the state board.

§ 1049d. ADULT DIPLOMA PROGRAM; GENERAL EDUCATIONAL DEVELOPMENT PROGRAM

(a) The department shall maintain an adult diploma program ("ADP"), which shall be an assessment process administered by the department through which an individual who is at least 20 years old can receive a local high school diploma granted by one of the program's participating high schools.

(b) The department shall maintain a general educational development ("GED") program, which it shall administer jointly with the GED testing service and approved local testing centers and through which an individual who is at least 16 years old and who is not enrolled in secondary school can

receive a secondary school equivalency certificate based on successful completion of the GED tests.

(c) The commissioner of education may provide additional programs designed to address the individual needs and circumstances of adult students, particularly students with the lowest levels of literacy skills.

Sec. 12. APPROPRIATION

The sum of $1,200,000.00 is appropriated from the education fund in fiscal year 2013 to be used for the purposes of paying tuition under Sec. 11, 16 V.S.A. §§ 1049b (dual enrollment) of this act.

Sec. 13. EFFECTIVE DATES

(a) Sec. 1 of this act shall take effect on July 1, 2013, but shall not apply to a child who lawfully stopped attending school prior to that date.

(b) Sec. 2 of this act shall take effect on July 1, 2014, but shall not apply to a child who lawfully stopped attending school prior to that date.

(c) Sec. 3 of this act shall take effect on July 1, 2015, but shall not apply to a child who lawfully stopped attending school prior to that date.

(d) Sec. 4 of this act shall take effect on July 1, 2016, but shall not apply to a child who lawfully stopped attending school prior to that date.

(e) This section and Secs. 5 through 12 of this act shall take effect on July 1, 2012.

(f) The commissioner of education shall ensure that both new and updated guidance documents required by this act are published no later than July 1, 2012.

and that after passage the title of the bill be amended to read: "An act relating to the mandatory age of school attendance and creating flexible pathways to high school completion"

(Committee vote: 5-0-0)

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

The Committee recommends that the bill be amended as follows:

First: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a) Program created. There is created a statewide dual enrollment program to be a potential component of a student's flexible pathway and through which a Vermont secondary student who is enrolled in a Vermont public school or a

Vermont-approved independent school at public expense or who is assigned to a public school through the high school completion program may enroll in postsecondary courses for which neither the student nor the student's parent or guardian shall be required to pay tuition.

Second: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, § 1049b, in subsection (e), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) Subject to available funding, an eligible student may enroll in up to four dual enrollment courses prior to completion of secondary school for which neither the student nor the student's parent or guardian shall be required to pay tuition. A student may enroll in courses offered while secondary school is in session and during the summer.

Third: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, in § 1049b, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read:

(f) Tuition.

(1) For any course for which the postsecondary institution pays the instructor, tuition shall not exceed the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

(2) For any course that is taught by an instructor who is paid as part of employment by a secondary school, tuition shall not exceed 50 percent of the Community College of Vermont tuition rate charged at the time the dual enrollment course is offered.

Fourth: In Sec. 11, 16 V.S.A. chapter 23, subchapter 6, by striking out § 1049c (innovative components of flexible pathways) in its entirety, redesignating § 1049d as § 1049c, and inserting a new § 1049d to read:

§ 1049d. REPORT

Notwithstanding provisions of 2 V.S.A. § 20(d) to the contrary, the prekindergarten–16 council created in section 2905 of this title shall report annually in January to the senate and house committees on appropriations and on education, the senate committee on finance, and the house committee on ways and means regarding the flexible pathways initiative and its potential components as set forth in this subchapter 6, including detailed data regarding and analysis of:

(1) the annual expenditures from the education fund for dual enrollment courses and other alternative programs under this subchapter, including a breakdown of the amount spent for each program statewide and by each participating secondary school;

(2) the annual number of students accessing dual enrollment and alternative programs, including a breakdown by secondary school of:

(A) the total number of students eligible to participate;

(B) the number of students accessing each program;

(C) the per-student tuition and other costs paid for each program;

(3) the geographic areas of the state that are underserved or unable to access dual enrollment programs and each other type of alternative program; and

(4) whether participation in dual enrollment and other alternative programs has improved high school completion rates, student aspiration, college and career readiness, and completion of college or other postsecondary education or training.

Fifth: By striking out Sec. 12 (appropriation) in its entirety and inserting in lieu thereof a new Sec. 12 to read:

Sec. 12. 16 V.S.A. § 2885(c) and (g) are amended to read:

(c) In August of each fiscal year~~, beginning in the year 2000~~, the state treasurer shall withdraw and divide an amount equal to five percent of the assets equally among the University of Vermont, the Vermont ~~state colleges~~ State Colleges, and the Vermont ~~student assistance corporation~~ Student Assistance Corporation. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to five percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. The University of Vermont and the Vermont ~~state colleges~~ State Colleges shall use the funds to provide nonloan financial aid to Vermont students attending their institutions; the Vermont ~~student assistance corporation~~ Student Assistance Corporation shall use the funds to provide nonloan financial aid to Vermont students attending a Vermont postsecondary institution. For purposes of this section, "nonloan financial aid" includes tuition paid for financially needy Vermont students and Vermont students whose parents have not pursued higher education for:

(1) early college and dual enrollment programs; and

(2) Science, Technology, Engineering, and Mathematics ("STEM") programs.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from

the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January. In addition, in November of each year, the three entities shall report to the joint fiscal committee regarding expenditures made in connection with early college, dual enrollment, and STEM programs.

(Committee vote: 6-0-1)

Favorable with Proposal of Amendment

H. 761.

An act relating to executive branch fees, including motor vehicle and fish and wildlife fees.

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

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By adding an internal caption and Sec. 2a to read:

* * * Motor vehicle racing * * *

Sec. 2a. 26 V.S.A. § 4806 is amended to read:

§ 4806. FEES; DISPOSITIONS

(a) Notwithstanding the fee provisions of 3 V.S.A. § 125, applicants and persons regulated under this chapter shall pay the following fees:

(1) Annual event permit applications:

(A) Auto racing $ 800.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 500.00;

(2) Unlimited event permit applications:

(A) Auto racing $ 1,250.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 1,250.00;

(3) Single event permit applications:

(A) Auto racing $ 500.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 500.00;

(4) Annual event permit biennial ~~renewal~~ renewals:

(A) Auto racing $ 500.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 500.00;

(5) Unlimited event permit biennial ~~renewal~~ renewals:

(A) Auto racing $ 2,500.00;

(B) Go-cart, snowmobile, or motorcycle racing $ 2,500.00.

(b) A municipality where a race is to be held may charge an additional fee, not to exceed the municipality's costs associated with the race.

(c) A single event permit shall authorize any number of events within a 10-day period in the same location and on the same racing track. An annual-event permit shall authorize any number of events within two 10-day periods in consecutive years and may be renewed every two years.

(d) Notwithstanding the provisions of subsection (a) of this section, a person in good standing incorporated or authorized to transact business as a nonprofit corporation under Title 11B shall pay a fee of $100.00 for an annual event permit application under subdivisions (a)(1)(A) and (B) of this section; an annual event permit biennial renewal under subdivisions (a)(4)(A) and (B); or for any five events within a one-year period.

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

Sec. 7. REPEAL

18 V.S.A. § 4463 (regarding salvage food facility license) is repealed.

Third: By adding a new Sec. 35a to read:

Sec. 35a. 10 V.S.A. § 4255 is amended to read:

§ 4255. LICENSE FEES

(a) Vermont residents may apply for licenses on forms provided by the commissioner. Fees for each license shall be:

* * *

(4) Big game licenses (all require a hunting license)

* * *

(G) ~~second~~ additional bear tag $5.00

* * *

(l) If the board determines that it is in the interest of bear management, it may authorize the department to issue ~~a second bear tag for the taking of bear~~ bear tags in addition to ~~that~~ those allowed by a hunting license issued under this chapter.

(Committee vote: 7-0-0)

(No House amendments.)

H. 770.

An act relating to the state's transportation program.

Reported favorably with recommendation of proposal of amendment by Senator Mazza for the Committee on Transportation.

The Committee recommends that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2013 transportation program appended to the agency of transportation's proposed fiscal year 2013 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

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

(1) "Agency" means the agency of transportation.

(2) "Secretary" means the secretary of transportation.

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

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

* * * Program Development Funding Sources * * *

Sec. 2. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

(1) Among eligible projects selected in the secretary's discretion, the secretary shall reduce project spending authority in the total amount of $502,437.00 in transportation funds and $25,000.00 in federal funds, and

increase project spending authority in the total amount of $484,745.00 in TIB funds.

* * * Program Development – Paving * * *

Sec. 3. PORTABLE HOT MIX PLANT

(a) A new project is added to the development and evaluation list of the program development – paving program within the fiscal year 2013 transportation program for the acquisition of a portable hot mix plant.

(b) As soon as practicable, the secretary shall study the feasibility and evaluate the costs and benefits of acquiring a portable hot mix plant, and necessary associated equipment, for use on paving projects throughout the state.

(c) If the secretary determines that use of a portable hot mix plant for paving projects is feasible and that the cost savings expected to result from its acquisition are projected to exceed the capital and operating costs of the plant, the secretary may spend transportation funds and, if eligible for federal funding, federal funds, totaling up to $4,000,000.00 from within the fiscal year 2013 program development appropriation (8100001100) for acquisition of the portable hot mix plant and necessary associated equipment, provided that such expenditure does not delay other programmed expenditures.

(d) Prior to any acquisition under the authority of subsection (c) of this section, the secretary shall notify the house and senate committees on transportation if the general assembly is in session, and if not in session, the joint transportation oversight committee, of his or her intention to take such action.

* * * Program Development – Roadway * * *

Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

The following project is added to the development and evaluation list of the program development – roadway program within the fiscal year 2012 transportation program:

CIRC Alternatives – Phase 1 Alternative Projects.

* * * Program Development – State Highway Bridge * * *

Sec. 5. PROGRAM DEVELOPMENT – STATE HIGHWAY BRIDGE

(a) The STP SCTT(1) – Townshend – State-owned Historic Sites – Scott Covered Bridge project is added to the fiscal year 2013 transportation program – program development – state highway bridge development and evaluation (D&E) list.

(b) Funds may be expended on the project as necessary from authorized statewide – state highway bridges D&E spending, provided the expenditure does not delay other programmed D&E expenditures.

* * * Vermont Local Roads * * *

Sec. 6. TOWN HIGHWAY VERMONT LOCAL ROADS

Authorized spending on the Vermont local roads program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	375,000	400,000	25,000
Total	375,000	400,000	25,000
Sources of funds			
State	235,000	235,000	0
Federal	140,000	165,000	25,000
Total	375,000	400,000	25,000

* * * State Aid for Federal and Nonfederal Disasters * * *

Sec. 7. STATE AID FOR NONFEDERAL DISASTERS

FY13	As Proposed	As Amended	Change
Grants	4,750,000	1,150,000	-3,600,000
Total	4,750,000	1,150,000	-3,600,000
Sources of funds			
State	1,550,000	1,150,000	-400,000
Federal	3,200,000	0	-3,200,000
Total	4,750,000	1,150,000	-3,600,000

Sec. 8. STATE AID FOR FEDERAL DISASTERS

FY13	As Proposed	As Amended	Change
Grants	0	3,600,000	3,600,000
Total	0	3,600,000	3,600,000
Sources of funds			
State	0	400,000	400,000
Federal	0	3,200,000	3,200,000
Total	0	3,600,000	3,600,000

Sec. 9. TOWN HIGHWAY STRUCTURES

Authorized spending on the town highway structures program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	5,833,500	6,333,500	500,000

Total	5,833,500	6,333,500	500,000
Sources of funds			
State	5,833,500	6,333,500	500,000
Federal	0	0	0
Total	5,833,500	6,333,500	500,000

Sec. 10. TOWN HIGHWAY AID

Authorized spending on the town highway aid program is amended to read:

FY13	As Proposed	As Amended	Change
Grants	26,482,744	25,982,744	-500,000
Total	26,482,744	25,982,744	-500,000
Sources of funds			
State	26,482,744	25,982,744	-500,000
Federal	0	0	0
Total	26,482,744	25,982,744	-500,000

* * * Rail * * *

Sec. 11. RAIL

The following modifications are made to the rail program:

(1) The "Rutland–Burlington crossings project" is renamed the "Rutland–Burlington rail and crossings project," and the scope of the project is amended to include the installation of continuously welded rail.

(2) Spending authority for the Pittsford Bridge 219 project (HPP ABRB(9)) is amended to read:

FY13	As Proposed	As Amended	Change
PE	0	0	0
Construction	6,600,000	1,500,000	-5,100,000
Total	6,600,000	1,500,000	-5,100,000
Sources of funds			
State	0	0	0
TIB	1,320,000	300,000	-1,020,000
Federal	5,280,000	1,200,000	-4,080,000
Local	0	0	0
Total	6,600,000	1,500,000	-5,100,000

(3) Spending authority for the Rutland–Burlington rail and crossings project is amended to read:

FY13	As Proposed	As Amended	Change
PE	600,000	600,000	0
Construction	900,000	6,000,000	5,100,000

Total	1,500,000	6,600,000	5,100,000
Sources of funds			
State	300,000	300,000	0
TIB	0	1,020,000	1,020,000
Federal	1,200,000	5,280,000	4,080,000
Local	0	0	0
Total	1,500,000	6,600,000	5,100,000

Sec. 12. RUTLAND–BURLINGTON RAIL AND CROSSINGS PROJECT

The "Rutland–Burlington rail and crossings project" is added to the fiscal year 2012 transportation program – rail program. The project includes the installation of continuously welded rail and the reconstruction of several rail-highway grade crossings along the Vermont Railway line between Rutland and Burlington.

Sec. 13. PURCHASE OF RAIL BRIDGE INSPECTION VEHICLE

(a) A new project is added to the fiscal year 2012 and 2013 transportation program – rail programs for the purchase of a servi-lift rail bridge inspection vehicle ("inspection vehicle").

(b) Notwithstanding the authorized program spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to purchase an inspection vehicle using any federal grant funds received for its purchase.

(c) If a federal grant for the purchase of the inspection vehicle is not received or is not pending, notwithstanding the authorized project or activity spending within the fiscal year 2012 and 2013 transportation program – rail programs, the secretary is authorized to use up to a total of $500,000.00 in transportation funds appropriated to the rail program for the purchase of the inspection vehicle, provided that the purchase does not delay the work schedule of a project or activity programmed in the fiscal year 2012 or 2013 rail programs.

(d) The agency shall promptly report any action taken under the authority granted in subsection (b) or (c) of this section to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session and, when the general assembly is not in session, to the joint transportation oversight committee.

Sec. 14. ANTICIPATION OF FEDERAL RECEIPTS – RAIL PROGRAM

As authorized by 32 V.S.A. § 510, the secretary, with the prior approval of the commissioner of finance and management, may anticipate federal receipts into the transportation – rail program.

* * * Transportation Buildings * * *

Sec. 15. TRANSPORTATION BUILDINGS

The following modifications are made to the transportation buildings program:

(1) Spending authority for the Mendon District 3/Southwest Regional Construction Office Building project is amended to read:

FY13	As Proposed	As Amended	Change
PE	50,000	0	-50,000
Construction	150,000	0	-150,000
Total	200,000	0	-200,000
Sources of funds			
State	200,000	0	-200,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	200,000	0	-200,000

(2) Spending authority for the Statewide – Brine-Making Facilities project is amended to read:

FY13	As Proposed	As Amended	Change
PE	3,000	3,000	0
Construction	0	80,000	80,000
Total	3,000	83,000	80,000
Sources of funds			
State	3,000	83,000	80,000
TIB	0	0	0
Federal	0	0	0
Local	0	0	0
Total	3,000	83,000	80,000

(3) Spending authority for the Middlebury – Design, Permit, and Construct 1–Bay Addition project is amended to read:

FY13	As Proposed	As Amended	Change
PE	5,000	0	-5,000
Construction	175,000	0	-175,000
Total	180,000	0	-180,000
Sources of funds			
State	180,000	0	-180,000
TIB	0	0	0
Federal	0	0	0

Local	0	0	0
Total	180,000	0	-180,000

Sec. 16. VTRANS TRAINING CENTER FACILITY; PROGRAM NAME

(1) The "VTrans Learning Campus" project within the fiscal year 2013 transportation buildings program is renamed the "VTrans Training Center" project, and the scope of the project is amended to read, "Renovation of existing materials & research building for use by the VTrans Training Center and the traffic research section."

(2) The agency shall rename the VTrans Learning Campus program to be the VTrans Training Center program.

* * * Public Transit * * *

Sec. 17. PUBLIC TRANSIT

The scope of the Public Transit – Statewide Capital project is amended to include the construction of transit facilities.

Sec. 18. 24 V.S.A. § 5094 is added to read:

§ 5094. POWERS OF SECRETARY OF TRANSPORTATION

On behalf of the state and to carry out the purposes of this chapter and 19 V.S.A. § 10f, the secretary of transportation may:

(1) Execute and file an application with the Federal Transit Administration for federal assistance authorized by Titles 23 and 49 of the United States Code or other federal law.

(2) Execute and file certifications, assurances, or other documents the Federal Transit Administration may require before awarding a federal assistance grant or cooperative agreement.

(3) Execute grant and cooperative agreements with the Federal Transit Administration.

* * * Fiscal Year 2013 Transportation Infrastructure Bonds * * *

Sec. 19. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

Pursuant to 32 V.S.A. § 972, the state treasurer is authorized to issue transportation infrastructure bonds up to a total amount of $11,500,000.00 for the purpose of funding:

(1) the spending authorized in Sec. 20 of this act;

(2) a debt service reserve to support the successful issuance of transportation infrastructure bonds; and

(3) the cost of preparing, issuing, and marketing the bonds as authorized under 32 V.S.A. § 975.

Sec. 20. TRANSPORTATION INFRASTRUCTURE BONDS; SPENDING AUTHORITY

The amount of $10,000,000.00 from the issuance of transportation infrastructure bonds is authorized for expenditure in fiscal year 2013 on eligible projects as defined in 32 V.S.A. § 972(d) in the state's fiscal year 2013 transportation program as follows:

(1) $9,000,000.00 on projects in program development.

(2) $1,000,000.00 on projects in the town highway bridge program.

* * * Agency of Transportation Positions * * *

Sec. 21. AGENCY OF TRANSPORTATION POSITIONS

(a) The agency may establish 17 new limited service positions related to the response to Tropical Storm Irene and the spring 2011 flooding. This authority shall expire on June 30, 2014, and the positions shall terminate by June 30, 2014.

(b) The establishment of three new permanent classified positions is authorized in the agency of transportation – rail program.

(c) The establishment of three new permanent classified positions is authorized in the agency of transportation – program development program.

(d) The positions authorized in this section are not subject to the restriction in Sec. A.108 of No. 63 of the Acts of 2011, and are in addition to the positions authorized in Sec. 87(e) of No. 75 of the Acts of the 2011 Adj. Sess. (2012).

* * * Central Garage * * *

Sec. 22. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2013, the amount of $1,120,000.00 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

* * * Relinquishment of State Highway Segment to Municipal Control * * *

Sec. 23. RELINQUISHMENT OF VERMONT ROUTE 207 EXTENSION IN THE TOWN OF ST. ALBANS

(a) Pursuant to 19 V.S.A. § 15(2), the general assembly approves the secretary of transportation to enter into an agreement with the town of St. Albans to relinquish to the town's jurisdiction a segment of state highway right-of-way in the town of St. Albans which has not been constructed to be a

traveled road, and which was to be known as the Vermont Route 207 Extension. This authority shall expire on June 30, 2022. The segment authorized to be relinquished measures approximately 1.7 acres, is approximately 160 feet in width, and starts at a point 200 feet west of the intersection of the U.S. Route 7/Vermont Route 207 centerline of highway project S0297(2), and continues westerly for 463 feet.

(b) Following relinquishment, the former state highway segment shall become a town highway and shall retain its limited access designation under 19 V.S.A. chapter 17 (limited access facilities).

(c) Following relinquishment, the state of Vermont shall retain ownership of the underlying fee interest in the former state highway segment. The town of St. Albans shall not sell or abandon any portion of the relinquishment area or allow any encroachments within the relinquishment area without the written permission of the agency of transportation.

* * * Enhancement Grant Program Priorities * * *

Sec. 24. ENHANCEMENT GRANT PROGRAM PRIORITIES

In addition to the priorities for salt and sand shed projects and bicycle or pedestrian facility projects specified in 19 V.S.A. § 38(g), in evaluating applications for enhancement grants in fiscal years 2013, 2014, and 2015, the transportation enhancement grant committee shall give preferential weighting to projects involving a municipality implementing eligible environmental mitigation projects under a river corridor plan that has been adopted by the agency of natural resources as part of a basin plan, under a municipal plan adopted pursuant to 24 V.S.A. § 4385, or under a mitigation plan adopted by the municipality and approved by the Federal Emergency Management Agency. The degree of preferential weighting afforded shall be in the complete discretion of the transportation enhancement grant committee.

* * * State Aid for Town Highways * * *

Sec. 25. 19 V.S.A. § 306(e) and (f) are amended to read:

(e) State aid for town highway structures.

(1) There shall be an annual appropriation for grants to municipalities for maintenance~~,~~ (including actions to extend life expectancy~~,~~) and for construction of bridges~~,~~ and culverts~~, and~~; for maintenance and construction of other structures, including causeways and retaining walls, intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways; and for alternatives that eliminate the need for a bridge, culvert, or other structure, such as the construction or reconstruction of a highway, the purchase of parcels of land that would be landlocked by closure of a bridge, the payment of

damages for loss of highway access, and the substitution of other means of access.

(2) Each fiscal year, the agency shall approve qualifying projects with a total estimated state share cost of $5,833,500.00 at a minimum as new grants. The agency's proposed appropriation for the program shall take into account the estimated amount of qualifying invoices submitted to the agency with respect to project grants approved in prior years but not yet completed as well as with respect to new project grants to be approved in the fiscal year. In a given fiscal year, should expenditures in the town highway structures program exceed the amount appropriated, the agency shall advise the governor of the need to request a supplemental appropriation from the general assembly to fund the additional project cost, provided that the agency has previously committed to completing those projects.

(3) Funds received as grants for state aid for town highway structures may be used by a municipality to satisfy a portion of the matching requirements for federal earmarks, subject to subsection 309b(c) of this title.

(f) ~~[Deleted.]~~ State aid for federal disasters.

(1) Towns receiving assistance under the Federal Highway Administration's emergency relief program for federal-aid highways shall be eligible for state aid when a nonfederal match is required. Eligibility for aid under this subsection shall be subject to the following criteria:

(A) Towns shall be responsible for up to 10 percent of the total eligible project costs.

(B) For towns that have adopted road and bridge standards, eligibility for reimbursement for repair or replacement of infrastructure shall be to those standards. For towns that have not adopted these standards, eligibility for reimbursement for repair or replacement of infrastructure shall be limited to the specifications of the infrastructure that preexisted the emergency event; however, the repair or replacement shall be to standards approved by the agency.

(C) Such additional criteria as may be adopted by the agency through rulemaking under 3 V.S.A. chapter 25.

(2) Notwithstanding 32 V.S.A. § 706 and the limits on authorized program spending in an approved transportation program, the secretary may transfer appropriations between the program created in this subsection and the state aid for nonfederal disasters program created in subsection (d) of this section.

* * * Town Highway Bridges; Local Match * * *

Sec. 26. 19 V.S.A. § 309a is amended to read:

§ 309a. LOCAL HIGHWAY WORK; UNIFORM LOCAL SHARE; EXCEPTIONS

(a) Except as provided in subsection (b) or (c) of this section or in sections 309b and 309c of this title, in any case of highway or bridge construction in which a federal/state/local or state/local funding match is authorized, the municipality's share shall be ten percent of the project costs.

(b) This section shall not apply to:

(1) ~~any project phase, preliminary engineering, right-of-way acquisition or construction, which was included in the transportation construction program submitted by the agency in February 1987 and approved by the general assembly in Act No. 91 of the Acts of 1987~~ any bridge replacement project in the town highway bridge program during the construction of which the municipality closes the bridge and does not construct a temporary bridge for the duration of the project, in which event the local match shall cover five percent of the project costs; ~~or~~

(2) any project phase for which a municipality already has provided for payment of its share by issuing bonds or funding a reserve established under a capital improvement plan; ~~or~~

(3) any project on a town highway for which the general assembly has authorized a different federal/state/local funding match; and any project which serves an "economic growth center" as defined in 23 U.S.C. § 143, and for which the general assembly has authorized a different federal/state/local funding match;

(4) any project involving a bridge, including the approaches to a bridge, that extends between this state and an adjacent state;

(5) any bridge or roadway project involving a local financial share in which the municipality, after its review of the conceptual project plans, chooses not to proceed with the proposed project; in such circumstances, the agency shall pay 100 percent of the project costs incurred through the date it receives such notification from the municipality;

(6) any project where, by the mutual agreement of the municipality and agency, rehabilitation of an existing bridge is the preferred alternative, in which case the agency shall use the appropriate combination of state and federal funding to pay either 95 percent of the cost of rehabilitation, or 97.5 percent if the municipality closes the bridge and does not construct a temporary bridge for the duration of the project; or

(7) any project or portion of a project involving a structure that is part of the historic bridge program, where the agency shall use the appropriate combination of state and federal funding to pay 100 percent of the cost of rehabilitation.

* * *

* * * Tendering Payment in Condemnation Matters * * *

Sec. 27. 19 V.S.A. § 512 is amended to read:

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

(a) Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken. Within 30 days of the board's order, the agency shall file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the person, and pay or tender the award to each person entitled. If an interested person has not provided the agency identification information necessary to process payment of the award, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered for the purposes of this subsection when the agency pays the award into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information. A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.

* * *

* * * Van Pool Program within State Infrastructure Bank * * *

Sec. 28. REPEAL

10 V.S.A. § 280g(a)(10) and (d) (state infrastructure bank van pool loan program) are repealed.

* * * Elimination, Modification, and Retention of Reports * * *

Sec. 29. ELIMINATION OF REPORTS

10 V.S.A. § 445(b) (report regarding expenditures and income relating to Vermont trails system); 19 V.S.A. § 10e(c) (rail report); 19 V.S.A. § 10g(d)(1) (analysis of state's commitment to transportation projects); 19 V.S.A. § 10g(d)(2) (agency's plan to bring resources and cost into balance); 19 V.S.A. § 317(f) (report regarding the classification, number, and location of historic

bridges); 32 V.S.A. § 706(4) (report of transfers of appropriations to cover federally reimbursable construction projects); and Sec. 50 of No. 175 of the Acts of the 2005 Adj. Sess. (2006), as amended by Sec. 61 of No. 164 of the Acts of the 2007 Adj. Sess. (2008) (report on general condition of town assets in the bridge and culvert database), are repealed.

Sec. 30. 19 V.S.A. § 12b(d) is amended to read:

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

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

~~(B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of $500,000.00 or more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.~~

~~(2) In addition, with respect to the July meeting of the joint fiscal committee, the secretary's report shall discuss the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.~~ If and when applicable, the secretary shall submit electronically to the joint fiscal office for distribution to members of the joint transportation oversight committee a report summarizing any plans or actions taken to delay project schedules as a result of:

(1) a generalized increase in bids relative to project estimates;

(2) changes in the consensus revenue forecast of the transportation fund or transportation infrastructure bond fund; or

(3) changes in the availability of federal funds.

Sec. 31. 23 V.S.A. § 304b(a) is amended to read:

(a) The commissioner shall, upon application, issue conservation registration plates for use only on vehicles registered at the pleasure car rate

~~and~~, on trucks registered for less than 26,001 pounds, and on vehicles registered to state agencies under section 376 of this title ~~and~~, but excluding vehicles registered under the International Registration Plan. Plates so acquired shall be mounted on the front and rear of the vehicle. The commissioner of motor vehicles and the commissioner of fish and wildlife shall determine the graphic design of the special plates in a manner which serves to enhance the public awareness of the state's interest in restoring and protecting its wildlife and major watershed areas. The commissioner of motor vehicles and the commissioner of fish and wildlife may alter the graphic design of these special plates provided that plates in use at the time of a design alteration shall remain valid subject to the operator's payment of the annual registration fee. Applicants shall apply on forms prescribed by the commissioner and shall pay an initial fee of $23.00 in addition to the annual fee for registration. In following years, in addition to the annual registration fee, the holder of a conservation plate shall pay a renewal fee of $23.00. The commissioner ~~shall~~ may adopt rules under 3 V.S.A. chapter 25 to implement the provisions of this subsection. ~~The commissioner of motor vehicles and the commissioner of fish and wildlife shall annually submit to the members of the house committees on transportation and fish, wildlife and water resources, and the members of the senate committees on transportation and natural resources and energy a report detailing, over a three-year period, the revenue generated, the number of new conservation plates sold and the number of renewals, and recommendations for program enhancements.~~

Sec. 32. 24 V.S.A. § 5083(b) is amended to read:

(b) The ~~public transit advisory council~~ agency of transportation shall ~~annually~~ evaluate ~~existing services based on the goals established in subsection (a) of this section. Proposals~~ proposals for new public transit service ~~shall be evaluated~~ submitted by providers in response to a notice of funding availability, by examining feasibility studies submitted by providers. ~~These~~ The feasibility studies shall address criteria set forth in the most recent public transit policy plan ~~of January 15, 2000~~.

Sec. 33. 19 V.S.A. § 42 is added to read:

§ 42. REPORTS PRESERVED

Notwithstanding 2 V.S.A. § 20(d), the reports or reporting requirements of sections 7(k), 10b(d), 10c(k), 10c(l), 10g, 11f(i), 12a, 12b(d), and 38(e)(2) of this title shall be preserved absent specific action by the general assembly repealing the reports or reporting requirements.

Sec. 34. 24 V.S.A. § 5092 is amended to read:

§ 5092. REPORTS

The agency of transportation, in cooperation with the public transit advisory council, shall develop an annual report of financial and performance data of all public transit systems that receive operating subsidies in any form from the state or federal government, including but not limited to subsidies related to the elders and persons with disabilities transportation program for service and capital equipment. Financial and performance data on the elders and persons with disabilities transportation program shall be a separate category in the report. The report shall be modeled on the Federal Transit Administration's national transit database program with such modifications as appropriate for the various services and guidance found in the most current state policy plan. The report shall describe any action taken by the agency pursuant to contractual authority to terminate funding for routes or to request service changes for failure to meet performance standards. The ~~report~~ agency shall ~~be available~~ deliver the report to the general assembly by January 15 of each year. Notwithstanding 2 V.S.A. § 20(d), this annual report shall be produced indefinitely absent specific action by the general assembly repealing the report.

* * * Technical Corrections * * *

Sec. 35. 5 V.S.A. § 3403 is amended to read:

§ 3403. ACQUISITION AND MODERNIZATION

(a) The agency of transportation, as agent for the state, and with the specific prior approval of the general assembly, is authorized to acquire by purchase or condemnation, after the approval of the ~~Interstate Commerce Commission~~ Surface Transportation Board, if necessary, any portion or portions of the line of any railroad directly affecting the state, including rails and ties, rights-of-way, land, buildings, appurtenances, and other facilities required for the operation of the line or to facilitate its sale or lease for continued operation. This action may be taken in concert with another state or states as necessary to insure continued railroad service in this state.

* * *

Sec. 36. 5 V.S.A. § 3404 is amended to read:

§ 3404. RIGHT OF FIRST REFUSAL

(a) All railroad operating properties within the state offered for sale by a railroad, other than to another railroad for continued operation, shall also be offered to the state of Vermont. The offer shall be made in writing and shall be sent by certified mail to the agency. The offer shall include a map and a description of the property, the price, if available, a description of the present and past railroad use of the property, and any terms, reservations, or conditions

the railroad proposes to include as part of the sale. Within 365 days, less any period of time that has elapsed because of the pendency of abandonment proceedings before the ~~Interstate Commerce Commission~~ Surface Transportation Board or the imposition of public use conditions under 49 U.S.C. § 10905, the agency shall accept or reject the offer. If the agency either rejects or fails to accept the offer in a timely manner, the state's preferential right under this section shall terminate, but in no event shall the railroad offer to sell the property, or any portion of it, to any other person on terms more favorable than the final terms offered to the agency.

* * *

* * * Copies of Municipal Reports* * *

Sec. 37. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

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

* * * Transportation Funding and Expenditures * * *

Sec. 38. TRAFFIC SAFETY ENFORCEMENT COSTS

The joint fiscal office, in consultation with the commissioner of public safety or designee, shall analyze and estimate the costs incurred by the state in enforcing the state's traffic safety laws, and study how these state police costs could be apportioned between the general fund and the transportation fund. The joint fiscal office shall submit a report of its findings to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 39. ALTERNATIVE FUEL VEHICLES; USER PAY PRINCIPLE

The secretary of transportation or designee, in consultation with the commissioner of motor vehicles, commissioner of taxes, and commissioner of public service or their designees, shall analyze options for user fees and fee collection mechanisms for motor vehicles that use energy sources not currently taxed so as to contribute to the transportation fund. The secretary shall submit a report of his or her findings, and of options for user fees and fee collection

mechanisms, to the joint transportation oversight committee and the joint fiscal committee prior to the joint fiscal committee's November 2012 meeting.

Sec. 40. COMMISSION ON TRANSPORTATION FUNDING

(a) Findings.

(1) Annual gasoline and diesel tax revenues are currently at the same level generated in 1999–2000, while vehicle miles traveled and consequent wear and tear on the state's highway system has increased by 13.2 percent.

(2) As fuel efficiency continues to improve and vehicles using fuel sources not taxed so as to contribute to the transportation fund become more common, the gap between the payments collected from system users and the wear and tear users impose on the system will continue to grow.

(3) New revenue sources and consistent revenue streams will be needed to sustain Vermont's transportation infrastructure and support economic prosperity.

(b) Composition of commission. A commission composed of three members is established. The speaker of the house, the senate committee on committees, and the governor shall each appoint one member as soon as possible after the effective date of this act. The commission members shall promptly elect a chair.

(c) Purpose and charge. The commission shall:

(1) estimate transportation and TIB fund revenues over a five-year time horizon starting in fiscal year 2014, taking into account motor vehicle fuel efficiency mandates and trends, and identify and analyze factors likely to impact transportation and TIB fund revenues and transportation infrastructure spending in the future;

(2) estimate the gap between costs and projected revenues over the five-year time horizon (the "five-year funding gap") based on the cost of maintaining the state's existing infrastructure, and under any other cost scenario the commission deems appropriate;

(3) evaluate potential new state revenue sources and how existing state revenue sources could optimally be modified to address the five-year and longer term expected transportation funding gaps. The commission shall estimate the amount of funds that would be generated from each new and modified revenue source, and identify implementation structures, requirements, and challenges.

(d) The commission shall deliver a written report of its findings, and of any legislative options for consideration, to the house and senate committees on

transportation by January 15, 2013. The commission shall terminate on January 15, 2013.

(e) Assistance. Upon the request of the commission, the agency may contract with consultants to provide expert assistance to the commission. Any consultant fees shall be paid out of the transportation – policy and planning appropriation. Upon request, the commission shall receive administrative support from the agency of transportation and assistance from the joint fiscal office and any unit of the executive branch the commission deems appropriate.

(f) Any commission member who is not a full-time state employee shall be entitled to compensation and reimbursement of expenses as provided in 32 V.S.A. § 1010. Funds disbursed under this subsection shall be paid out of the transportation – policy and planning appropriation.

* * * Vermont Strong Motor Vehicle Plates * * *

Sec. 41. VERMONT STRONG MOTOR VEHICLE PLATES

The agency is authorized to expend up to $12,000.00 from the central garage appropriation for the purchase of Vermont Strong motor vehicle plates for installation on agency vehicles in conformance with No. 71 of the Acts of the 2011 Adj. Sess. (2012).

* * * Natural Gas-Powered Motor Vehicles; Tax Proceeds * * *

Sec. 42. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(7) Sales of motor fuels taxed or exempted under 23 V.S.A. chapter 28 ~~of Title 23,~~; provided, however, that aviation jet fuel and natural gas used to propel a motor vehicle shall be taxed under this chapter with the proceeds to be allocated to the transportation fund in accordance with 19 V.S.A. § 11.

* * *

Sec. 43. 19 V.S.A. § 11 is amended to read:

§ 11. TRANSPORTATION FUND

The transportation fund shall be comprised of the following:

* * *

(4) moneys received from the sales and use tax on aviation jet fuel and on natural gas used to propel a motor vehicle under 32 V.S.A. chapter 233;

* * *

Sec. 44. 23 V.S.A. § 3101 is amended to read:

§ 3101. DEFINITIONS

(a) The term "distributor" as used in this subchapter shall mean a person, firm, or corporation who imports or causes to be imported gasoline or other motor fuel for use, distribution, or sale within the state, or any person, firm, or corporation who produces, refines, manufactures, or compounds gasoline or other motor fuel within the state for use, distribution, or sale. ~~Kerosene, diesel oil, and aircraft jet fuel shall not be considered to be motor fuel under this subchapter.~~

~~(b)~~ When a person receives motor fuel in circumstances which preclude the collection of the tax from the distributor by reason of the provisions of the constitution and laws of the United States, and ~~shall~~ thereafter ~~sell~~ sells or ~~use~~ uses the motor fuel in the state in a manner and under circumstances as may subject the sale to the taxing power of the state, the person shall be considered a distributor and shall make the same reports, pay the same taxes, and be subject to all provisions of this subchapter relating to distributors of motor fuel.

~~(c)~~(b) "Dealer" means any person who sells or delivers motor fuel into the fuel supply tanks of motor vehicles owned or operated by others.

(c) As used in this subchapter, "gasoline or other motor fuel" or "motor fuel" shall not include kerosene, diesel oil, aircraft jet fuel, or natural gas in any form.

(d) "Motor vehicle" means any self-propelled vehicle using motor fuel on the public highways and registered or required to be registered for operation on these highways.

* * * Effective Dates * * *

Sec. 45. EFFECTIVE DATES

(a) This section and Secs. 3 (portable hot mix plant), 4 (program development – roadway – CIRC alternatives), 11 (Rutland–Burlington rail and crossings project), 13 (purchase of rail bridge inspection vehicle), 14 (anticipation of federal receipts – rail program), 16 (VTrans learning campus facility), 18 (powers of secretary of transportation), 19 (authority to issue transportation infrastructure bonds), 21 (agency of transportation positions), 25 (state aid for town highways), 37 (copies of municipal reports), 38 (traffic safety enforcement cost study), 39 (alternative fuel vehicles; user pay study),

40 (commission on transportation funding), and 41 (Vermont Strong plates) of this act shall take effect on passage. The authority granted by Sec. 25(f) of this act (state aid for federal disasters) shall be retroactive to March 1, 2011.

(b) Secs. 42–44 shall take effect on July 1, 2013.

(c) All other sections of this act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

(No House amendments.)

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, April 11, 2012 – Room 10 – 9 A.M. – 12:00 Noon (11:00 A.M. – Noon for the public) Re: Increasing the price of milk paid to Vermont dairy farmers – Senate Committee on Agriculture.

Thursday, **April 12, 2012** – Room 11 – 6:30-8:30 P.M. – Re: H. 722 - Labeling of Food Produced with Genetic Engineering – House Committee on Agriculture.