

# Journal of the Senate

WEDNESDAY, APRIL 18, 2012

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Bill Referred to Committee on Appropriations

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule, was referred to the Committee on Appropriations:

**H. 780.** An act relating to compensation for certain state employees.

## Bill Amended; Bill Passed

### S. 99.

Senate bill entitled:

An act relating to agricultural economic development.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ashe moved to amend the bill by as follows:

First: By adding a new Sec. 3 to read as follows:

Sec. 3. LEGISLATIVE INTENT; AFFORDABLE HOUSING TAX CREDIT

It is the intent of the general assembly to increase the amount per year that may be awarded under 32 V.S.A. § 5930u(g) for the purposes of the mobile home financing program for owner-occupied mobile homes or alternative affordable structures. Accordingly, it is the intent of the general assembly that in House Bill 782 (2012) entitled “An act relating to miscellaneous tax changes for 2012,” the award amount available for owner-occupied mobile homes or alternative affordable structures shall be increased from \$100,000.00 to \$300,000.00, and the total amount in any fiscal year of total first-year allocations plus succeeding-year deemed allocations shall be increased from \$2,500,000.00 to \$3,500,000.00.

Second: In Sec. 4, in subsection (a) following “stakeholders” by inserting the following: and as funding from FEMA and other sources allows and in

subsection (b) by striking out subdivision (4) in its entirety and inserting in lieu thereof a new subdivision (4) to read as follows:

(4) Working in collaboration with the Vermont housing and conservation board and any additional public or private funding entities, 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.

Third: In Sec. 5, 20 V.S.A. § 2731(k), by striking out subdivision (5) in its entirety.

Fourth: In Sec. 11, in 9 V.S.A. § 4462(d)(3), by striking out the following: “11 V.S.A. chapter 13” and inserting in lieu thereof the following: 11 V.S.A. chapter 14

Fifth: By adding a new Sec. 14 to read as follows:

**Sec. 14. LEGISLATIVE INTENT; SALES AND USE TAX HOLIDAYS FOR MOBILE HOMES**

It is the intent of the general assembly to provide tax relief from the sales and use tax, the local option sales tax, and the property transfer tax for a mobile home purchased to replace a mobile home that was damaged or destroyed as a result of damage incurred during the spring flooding or during Tropical Storm Irene in 2011. Accordingly, it is the intent of the general assembly that in House Bill 782 (2012) entitled “An act relating to miscellaneous tax changes for 2012,” there shall be included a provision authorizing relief from the sales and use tax, the local option sales tax, and the property transfer tax for eligible mobile homes purchased during a qualifying period to replace homes that suffered flood and storm damage, authorizing reimbursement for eligible taxes paid for mobile homes purchased during the qualifying period, and authorizing the department of taxes to adopt standards and procedures necessary to achieve the goals of this section.

Sixth: By adding a new section to be numbered Sec. 15 to read as follows:

**Sec. 15. DELAY OF LOAN REPAYMENTS DUE TO TROPICAL STORM IRENE**

Due to the damage caused by Tropical Storm Irene at the Tri-Parks mobile home parks, the substantial amount of monies necessary for repairs, and the unavailability of additional monies to both make the repairs and make loan payments, the repayment start dates for State Revolving Loans RF1-104 and RF3-163 are hereby delayed by two years until June 1, 2014, without any penalty or additional costs or fees. Subject to any applicable limitations of

federal law, the secretary of natural resources shall have the authority to offer similar repayment modifications to other mobile home parks that suffered damage from Tropical Storm Irene.

Which were collectively agreed to.

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

#### **Bill Passed in Concurrence with Proposal of Amendment**

House bills of the following titles were severally read the third time and passed in concurrence with proposal of amendment:

**H. 758.** An act relating to divorce and dissolution proceedings.

**H. 759.** An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.

#### **Bill Passed in Concurrence**

House bill of the following title was read the third time and passed in concurrence:

**H. 768.** An act relating to ignition interlock restricted driver's licenses and civil suspensions.

#### **Bill Passed in Concurrence with Proposal of Amendment**

##### **H. 770.**

House bill of the following title:

An act relating to the state's transportation program.

Was taken up.

Thereupon the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 27, Nays 0.

Senator Mazza having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent and not voting were:** Fox, Illuzzi, Miller.

**Proposal of Amendment Amended; Bill Passed in Concurrence with  
Proposal of Amendment**

**H. 785.**

House bill entitled:

An act relating to capital construction and state bonding budget adjustment.

Was taken up.

Thereupon, pending third reading of the bill, Senators Galbraith and Benning moved that the Senate propose to the House to amend the bill as follows:

Sec. 28g. FINDINGS

The general assembly finds:

(1) Vermont's parks, forests, wilderness, and conserved lands exist for the benefit of present and future generations and should be kept in a natural state.

(2) Vermont's beautiful landscape, including its mountains, is a major factor in the quality of life for Vermonters and makes an important contribution to the state's economy.

(3) Industrial wind turbines can degrade mountain tops and affect the view of the landscape for many miles.

Sec. 28h. 10 V.S.A. chapter 87 is added to read:

CHAPTER 87. PROHIBITION; COMMERCIAL CONSTRUCTION;  
CERTAIN PUBLIC AND CONSERVED LANDS

§ 2801. PROHIBITION

(a) No construction for any commercial purpose, including the generation of electric power, shall be permitted within any state park or forest, wilderness area designated by law, natural area designated under section 2607 of this title, or any area conserved to protect its wilderness, scenic, natural, or wildlife habitat characteristics or on any land managed by the agency of natural resources created under 3 V.S.A. chapter 51.

(b) This section shall not prohibit the construction of:

(1) A concession or other structure for the use of visitors to state parks or forests.

(2) A modification or improvement to a dam in existence as of the effective date of this section if the modification or improvement is to allow the

dam's use for the generation of electricity and to construct any power lines and facilities necessary for such use.

(3) Telecommunications facilities, as defined under 30 V.S.A. § 248a(b) (certificate of public good; communications facilities), in accordance with all other applicable state law.

(4) A temporary structure or road for forestry purposes as may be permitted on a state land or pursuant to the terms governing a conserved land.

(5) Tapping of maple trees and associated activities on state forestland authorized under a license pursuant to section 2606b of this title.

(6) Construction on state land that is permitted under a lease or license that was in effect on the date of enactment.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Galbraith and Benning?, Senator Galbraith requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Hartwell moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(A), after “permitting.” by inserting construction.

Second: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(B)(i), after “purchasing.” by inserting construction.

Third: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(2), by adding a subdivision (C) to read:

“(C) The special committee may also meet to make decisions made necessary by unanticipated or unforeseen circumstances.”

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 28, Nays 0.

Senator Hartwell having demanded the yeas and nays, they were taken and are as follows:

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** None.

**Those Senators absent and not voting were:** Fox, Illuzzi.

**House Proposals of Amendment Concurred In****S. 179.**

House proposals of amendment to Senate bill entitled:

An act relating to amending perpetual conservation easements.

Were taken up.

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

First: In Sec. 3, 10 V.S.A. § 6307 (enforcement), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) Conservation rights. The holder of conservation rights and interests may seek injunctive relief and damages against any person who damages the holder's rights and interests, irrespective of whether the owner of the land is a party to the proceeding. This subsection shall not affect any right of the owner of the land to join or intervene in any proceeding.

Second: By striking out Sec. 8 (property transfer return) in its entirety and inserting in lieu thereof the following: Sec. 8. [Deleted.]

Third: By striking out Sec. 9 (working group) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

**Sec. 9. WORKING GROUP ON CONSERVATION EASEMENTS**

(a) Creation of working group. There is created a working group on perpetual conservation easements to study the issues relating to the creation of a formal and transparent public process for the amendment of perpetual conservation easements, the criteria for approving such amendments, and the entity most appropriate to review and approve such amendments.

(b) Membership. The conservation easements working group (the working group) shall be composed of the following members:

(1) The secretary of agriculture, food and markets or designee.

(2) A representative of the Vermont housing and conservation board, designated by the board.

(3) The commissioner of forests, parks and recreation or designee.

(4) One member of the legal staff in the Vermont office of the attorney general, designated by the attorney general.

(5) A representative of Vermont Land Trust, designated by its board.

(6) A representative of Upper Valley Land Trust, designated by its board.

(7) A representative of the Vermont Federation of Sportsmen's Clubs, designated by its board.

(8) A representative of the Vermont Green Mountain Club, designated by its board.

(9) A representative of the Vermont chapter of The Nature Conservancy, designated by its director.

(10) A representative of a regional or local land trust in Vermont, appointed by the governor.

(11) An attorney licensed in Vermont and practicing in or knowledgeable about both federal tax law and real estate law, including land conservation, appointed by the Vermont Bar Association.

(12) A representative from a farming organization who is knowledgeable about agricultural conservation, appointed by the governor.

(13) A representative of the Vermont Association of Snow Travelers, designated by its board;

(14) A Vermont landowner owning land subject to a conservation easement, appointed by the governor.

(15) A representative of the Vermont natural resources board, appointed by the board.

(16) A land surveyor licensed in Vermont, appointed by the Vermont Society of Land Surveyors.

(c) Structure; decision-making. The working group shall elect a chair from its membership. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall:

(1) Investigate the options for approval of conservation easement amendments contained in S.179 and H.553 of 2012, as introduced, and during the course of consideration of those bills in the relevant standing committees of the general assembly, including the following options:

(A) creating an easement amendment panel within the natural resources board to provide administrative oversight and approval for the amendment of conservation easements;

(B) requiring the housing and conservation board, in conjunction with the agency of agriculture, food and markets, to provide administrative

oversight and approval for the amendment of conservation easement amendments;

(C) requiring all qualified holders to individually run a transparent public process for the approval of conservation easement amendments and to issue a written decision. Under this option, the working group should consider whether the decision should be revocable or appealable, and if so, by whom;

(D) requiring all qualified holders to get court approval for amendments that may have a significant effect on the conservation values protected by the easement.

(2) Investigate any other options for conservation easement amendment approval that the working group believes are relevant.

(3) Consider any other issues it identifies as relevant to the amendment of perpetual conservation easements.

(4) Develop a proposal setting out a transparent process or processes for the amendment of perpetual conservation easements held by land trusts, state agencies, and other entities qualified to hold perpetual conservation easements in Vermont.

(5) Develop proposed statutory provisions setting out criteria to be used by an administrative body, a court, or an easement holder in approving proposed amendments to perpetual conservation easements, which will ensure that conservation values protected by easement are protected in perpetuity, and that conservation easement holders in Vermont are in compliance with federal law.

(6) Study the issue and make recommendations as to whether conservation rights and interests should be excluded from the requirements of 27 V.S.A. § 603 concerning the re-recording of interests in land within a 40-year period.

(7) Investigate whether there is an existing online or other database appropriate for the storage of information about conservation easements alongside other information relevant to a specific property or parcel of land. This database should be available to an individual completing a title search.

(e) Report. On or before January 15, 2013, the working group shall submit to the general assembly its findings, recommendations, and proposed statutory revisions regarding the issues identified in subsection (d) of this section. This report shall be distributed to the house and senate committees on agriculture and on natural resources and energy.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendations

pursuant to subsection (e) of this section, the working group shall have the administrative and technical assistance of the housing and conservation board.

(g) Meetings. The member from the housing and conservation board shall convene the first meeting of the working group no later than July 15, 2012.

(h) Appointments. Within 30 days of the effective date of this section, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall appoint or designate each member of the working group under subsection (b) of this section and shall report the member so appointed or designated to the housing and conservation board.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

#### **House Proposal of Amendment Concurred In with Amendment**

#### **S. 181.**

House proposal of amendment to Senate bill entitled:

An act relating to school resource officers.

Was taken up.

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

In Sec. 1, 16 V.S.A. § 1167, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) A school board or its designee may enter into a memorandum of understanding with a law enforcement agency to define the nature and scope of assistance that a school resource officer will provide to the school system.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Mullin, on behalf of the Committee on Education, moved that the Senate concur in the House proposal of amendment with the following amendment thereto:

In Sec. 1, 16 V.S.A. § 1167, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) School boards and law enforcement agencies are encouraged to enter into memoranda of understanding relating to:

(1) the possession and use of weapons and devices by a school resource officer on school property; and

(2) the nature and scope of assistance that a school resource officer will provide to the school system.

Which was agreed to.

**Proposal of Amendment; Third Reading Ordered**

**H. 440.**

Senator Mullin, for the Committee on Education, to which was referred House bill entitled:

An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

Reported recommending 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. 3 V.S.A. chapter 49 is added to read:

CHAPTER 49. EDUCATION

§ 2701. AGENCY AND SECRETARY CREATED

There is created an agency of education that shall be under the direction and supervision of a secretary of education.

§ 2702. SECRETARY OF EDUCATION

(a) With the advice and consent of the senate, the governor shall appoint a secretary of education from among no fewer than three candidates proposed by the state board of education. The secretary shall serve at the pleasure of the governor.

(b) The secretary shall report directly to the governor and shall be a member of the governor's cabinet.

(c) At the time of appointment, the secretary shall have expertise in education management and policy and demonstrated leadership and management abilities.

Sec. 2. 16 V.S.A. § 161 is amended to read:

§ 161. STATE BOARD OF EDUCATION; APPOINTMENT OF MEMBERS; TERM; VACANCY

The state board shall consist of ten members. Two of the members shall be secondary students, one of whom shall be a full member and the other of whom shall be a junior member who may not vote. All members shall be appointed by the governor with the advice and consent of the senate. In the appointment of the nonstudent members ~~consideration,~~ priority shall be given

~~to the selection of such persons as shall adequately represent all sections of the state with a demonstrated commitment to ensuring quality education for Vermont students. To the extent possible, the members shall represent geographically diverse areas of the state. The secretary shall serve on the state board as a nonvoting member.~~

\* \* \*

Sec. 3. 16 V.S.A. § 163 is amended to read:

§ 163. ~~OFFICE STAFF; MEETINGS~~

~~(a) The office of the board shall be the office of the commissioner of education. The board shall be supported by adequate staff, who shall report to the board.~~

~~(b) The board shall meet monthly and shall hold special meetings as required for the performance of its duties. The times and places for regular and special meetings shall be designated by the ~~chairman~~ chair of the board. The ~~chairman~~ chair shall call a special meeting upon the written request of any two members.~~

Sec. 4. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD, GENERAL POWERS AND DUTIES

~~The state board shall have supervision over, and management of the department of education and the public school system, except as otherwise provided; and shall evaluate education policy proposals, including timely evaluation of policies presented by the governor and secretary; engage local school board members and the broader education community; and establish and advance education policy for the state of Vermont. In addition to other specified duties, the board shall:~~

\* \* \*

~~(4) Biennially or as required by the governor cause to be prepared a budget for all money to be expended by the department of education. Review and comment on an agency budget prepared by the secretary for the governor.~~

\* \* \*

~~(10) Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices which improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment. [Repealed.]~~

\* \* \*

~~(19) Develop, in consultation with the secretary of state, and make available to school boards, sample ballot language for items which may be voted on by Australian ballot and for which no statutory language exists. [Repealed.]~~

\* \* \*

(21) Report annually to the governor and the general assembly on the progress the board has made on the development of education policy for the state.

Sec. 5. 16 V.S.A. § 212(18), (19), (20), and (21) are added to read:

(18) Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices that improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment.

(19) Develop, in consultation with the secretary of state, and make available to school boards sample ballot language for issues that may be decided by Australian ballot and for which no statutory language exists.

(20) Prepare a budget for the agency and submit it to the governor after review by the state board.

(21) Annually, prior to September 1, present the governor's education policy priorities to the state board.

Sec. 6. REPEAL

16 V.S.A. § 211 (appointment of commissioner by board of education; commissioner's reports to board) is repealed.

\* \* \* Transition \* \* \*

Sec. 7. AGENCY OF EDUCATION; SECRETARY OF EDUCATION;  
POWERS AND DUTIES

On January 1, 2013:

(1) the secretary of education shall assume all the powers, duties, rights, and responsibilities of the commissioner of education; provided, however, that if a secretary appointed by the governor has not assumed office by January 1, 2013, then the commissioner or acting commissioner of the department on that date shall continue to perform the duties until the day on which the secretary assumes office; and

(2) the agency of education shall assume all the powers, duties, rights, and responsibilities of the department of education.

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**Sec. 8. LEGISLATIVE COUNCIL; PREPARATION OF A DRAFT BILL**

On or before January 15, 2013, the legislative council shall prepare and submit a draft bill to the house and senate committees on education that makes statutory amendments of a technical nature and identifies all statutory sections that the general assembly must amend substantively to effect the intent of this act.

**Sec. 9. EFFECTIVE DATES**

(a) This section and Secs. 7 (assumption of powers and duties) and 8 (legislative council) of this act shall take effect on passage.

(b) Secs. 1 (creation of agency), 2 (secretary as nonvoting member of board), and 6 (repeal of board's power to appoint commissioner) of this act shall take effect on January 1, 2013.

(c) Secs. 3 (board staff), 4 (board duties), and 5 (secretary's duties) of this act shall take effect on April 1, 2013.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to on a roll call, Yeas 17, Nays 10.

Senator Mullin having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Benning, Brock, Campbell, Carris, Doyle, Flory, Giard, Hartwell, Kitchel, Kittell, Lyons, Mazza, Miller, Mullin, Sears, Snelling, Starr.

**Those Senators who voted in the negative were:** Ayer, Baruth, Cummings, Galbraith, MacDonald, McCormack, Nitka, Pollina, Westman, White.

**Those Senators absent and not voting were:** Fox, Illuzzi.

Thereupon, third reading of the bill was ordered.

**Proposal of Amendment; Third Reading Ordered****H. 464.**

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to a moratorium on hydraulic fracturing wells for natural gas and oil production.

Reported recommending 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. FINDINGS

The general assembly finds and declares that:

(1) The drilling practice of hydraulic fracturing for natural gas exploration and production uses a variety of chemicals that are pumped into natural gas or oil wells.

(2) During hydraulic fracturing, chemicals and waste fluid pumped into wells may be introduced into and contaminate drinking water aquifers.

(3) To ensure that the state's underground sources of drinking water remain free of contamination, the general assembly should prohibit hydraulic fracturing for the purpose of the recovery of oil or natural gas until it is determined that hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont.

(4) When hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont, the general assembly should repeal the prohibition on hydraulic fracturing for oil and natural gas recovery.

Sec. 2. 29 V.S.A. § 503 is amended to read:

## § 503. DEFINITIONS

As used in this chapter:

\* \* \*

(8) "Gas" means all natural gas, whether hydrocarbon or nonhydrocarbon, including hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casinghead gas, and all other fluid hydrocarbons not defined as oil.

\* \* \*

(15) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of specific gravity, that are in the liquid phase in the reservoir and are produced at the wellhead in liquid form.

(16) “Oil and gas” means both oil and gas, or either oil or gas, as the context may require to give effect to the purposes of this chapter.

\* \* \*

(29) “Fluid” means any material or substance which flows or moves whether in semi-solid, liquid, sludge, gas, or any other form or state.

(30) “Hydraulic fracturing” means the process of pumping a fluid into or under the surface of the ground in order to create fractures in rock for the purpose of the production or recovery of oil or gas.

Sec. 3. 29 V.S.A. chapter 14, subchapter 8 is added to read:

Subchapter 8. Hydraulic Fracturing for Oil or Gas Recovery

§ 571. HYDRAULIC FRACTURING; PROHIBITION

(a) No person may engage in hydraulic fracturing in the state.

(b) No person may collect, store, or treat the wastewater from hydraulic fracturing in a manmade lagoon or pond in the state.

Sec. 4. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

(a) No person shall discharge any waste, substance, or material into waters of the state, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste which interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in joint house resolution 7 of the 1971 session of the general assembly.

\* \* \*

(c) No person shall cause a direct discharge into Class A waters of any wastes that, prior to treatment, contained organisms pathogenic to human beings. Except within a waste management zone, no person shall cause a direct discharge into Class B waters of any wastes that prior to treatment contained organisms pathogenic to human beings.

(d) No person shall cause a discharge of wastes into Class A waters, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the

environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title.

\* \* \*

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section 1571 of this title.

Sec. 5. AGENCY OF NATURAL RESOURCES REPORT; SAFETY OF HYDRAULIC FRACTURING FOR OIL OR NATURAL GAS RECOVERY

(a) On or before January 15, 2013, and annually thereafter, the secretary of natural resources shall submit to the senate and house committees on natural resources and energy and the house committee on fish, wildlife and water resources a report regarding:

(1) whether the process of hydraulic fracturing for the purpose of the production or recovery of oil or natural gas can be conducted in a manner that prevents contamination of groundwater; and

(2) whether the prohibition on the use of hydraulic fracturing for oil or natural gas recovery under 29 V.S.A. § 571 should be repealed.

(b) A recommendation under this section shall be based on regulatory guidance, industry practices, and scientific studies that are available to the secretary at the time of a report required under subsection (a) of this section.

Sec. 6. AGENCY OF NATURAL RESOURCES; UNDERGROUND INJECTION CONTROL RULEMAKING

When the secretary of natural resources amends the rules regulating the discharge of waste into an injection well, including those discharges into an injection well for oil and gas recovery for which the agency of natural resources has jurisdiction, the amended rules shall provide that no permit shall be issued under 10 V.S.A. chapter 47 for a discharge of waste into an injection well when such a discharge would endanger an underground source of drinking water.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

An act relating to hydraulic fracturing wells for natural gas and oil production.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Lyons? Senator Flory raised a *point of order* under Section 114 of Mason's Manual of Legislative Procedure in that Senator Galbraith was asking a question to which he knew the answer in violation of Mason's Rule Section 114.6.

The President *overruled* the point of order stating that the current pending question of Senator Galbraith was not in violation of Mason's Rule section 114.6 as it inquired as to something to which he would not know the answer.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Brock moved to amend the proposal of amendment of the Committee on Natural Resources and Energy as follows:

First: In Sec. 1, by striking out subdivisions (3) and (4) in their entirety and inserting in lieu thereof new subdivision (3) and (4) to read as follows:

(3) To ensure that the state's underground sources of drinking water remain free of contamination, the general assembly should impose a moratorium on hydraulic fracturing for the purpose of the recovery of oil or natural gas until it is determined that hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont.

(4) When hydraulic fracturing can be conducted without risk of contamination to the groundwater of Vermont, the general assembly should repeal the moratorium on hydraulic fracturing for oil and natural gas recovery.

Second: In Sec. 3, 29 V.S.A. § 571, by striking out the following: "PROHIBITION" where it appears in the section title and inserting in lieu thereof the following: MORATORIUM

Third: In Sec. 5, subdivision (a)(2), by striking out the word "prohibition" where it appears and inserting in lieu thereof the following: moratorium

Which was disagreed to on a division of the Senate Yeas 7, Nays 21.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Natural Resources and Energy?, was decided in the affirmative on a roll call Yeas 27, Nays 1.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

**The Senator who voted in the negative was:** Mullin.

**Those Senators absent and not voting were:** Fox, Illuzzi.

Thereupon, third reading of the bill was ordered.

**Proposals of Amendment; Third Reading Ordered****H. 53.**

Senator Benning, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to the Interstate Wildlife Violator Compact.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, by striking out 10 V.S.A. § 4454 in its entirety and inserting in lieu thereof the following:

§ 4454. PENALTIES

(a) Notwithstanding section 4502 of this title, the commissioner may suspend a Vermont hunting, fishing, or trapping license and privileges to obtain such licenses of a person convicted of a wildlife violation in a state party to the compact, provided that the wildlife violation would have been the basis for suspension of license privileges in Vermont.

(b) No person whose license, privilege, or right to hunt, fish, trap, possess, or transport wildlife, having been suspended or revoked pursuant to this chapter, shall be permitted to obtain a license to hunt, fish, or trap in Vermont.

(c) A person shall be subject to the financial penalties as set forth under section 4518 of this title if he or she:

(1) hunts, fishes, traps, possesses, or transports wildlife in Vermont in violation of a suspension or revocation of a license under chapter 108 of this title; or

(2) purchases or possesses a license to hunt, fish, trap, possess, or transport wildlife in Vermont in violation of a suspension or revocation of a license under chapter 108 of this title.

(d)(1) Prior to suspending a Vermont hunting, fishing, or trapping license of a resident of this state under subsection (a) of this section, the commissioner shall notify the person in writing. A suspension shall be deemed effective:

(A) when given if notice is made in person; or

(B) three days after the deposit of notice in the United States mails, if notice is made in writing.

(2) A person receiving notice under subsection (a) of this section may, within 20 days of the date notice is given, request a hearing before the commissioner on whether the requirements for suspension or penalty have been met. The requesting person may present evidence and arguments at the hearing only regarding whether:

(A) A participating state suspended the person's privileges;

(B) There was a conviction in the participating state;

(C) The person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or

(D) A conviction in a participating state could have led to a license suspension or penalty in Vermont

(3) At the hearing, the commissioner or a hearing officer designated by the commissioner may:

(A) Administer oaths;

(B) Issue subpoenas for the attendance of witnesses; and

(C) Admit all relevant evidence and documents, including notifications from participating states.

(4) Following a hearing under this subsection, the commissioner or a designated hearing officer may, based on the evidence, affirm, modify, or rescind the suspension of a license.

(5) A decision of the commissioner or hearing officer under this section shall not be appealable.

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. 10 V.S.A. § 4502 is amended to read:

§ 4502. UNIFORM POINT SYSTEM; REVOCATION OF LICENSE

(a) A uniform point system which assigns points to those convicted of a violation of a provision of this part is established. The conviction report from the court shall be prima facie evidence of the points assessed. In addition to

other penalties assessed for violation of fish and wildlife statutes, the commissioner shall suspend licenses issued under this part which are held by a person who has accumulated ten or more points in accordance with the provisions of subsection (c) of this section.

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

\* \* \*

(3) Twenty points shall be assessed for:

(A) § 4192. General powers and duties-failure to obey warden

\* \* \*

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

(V) § 4454. Interstate Wildlife Violator Compact.

\* \* \*

And that the bill ought to pass in concurrence with such proposals of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

### **Consideration Postponed**

#### **S. 204.**

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to creating an expert panel on the creation of a state bank.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. § 993 is added to read:

#### § 993. PRIVATE ACTIVITY BOND ADVISORY COMMITTEE

(a)(1) Creation; composition. There is created a private activity bond advisory committee, which shall consist of the following members:

(A) the state treasurer or his or her designee;

(B) the secretary of administration or his or her designee;

(C) the secretary of commerce and community development or his or her designee;

(D) two members who shall be representatives of the public, appointed by the governor.

(2) Each public representative shall serve for a two-year term beginning February 1 or until his or her successor is appointed. The terms of the public representatives shall be staggered so that only one member's term expires in each year.

(3) The state treasurer or designee shall serve as chair of the committee.

(4) The office of the state treasurer shall provide administrative support to the committee.

(5) Except as provided in section 1010(d) of this title, members of the committee who are not legislative members or Vermont state employees shall be entitled to receive per diem compensation and expense reimbursement pursuant to subsections 1010(b) and (c), respectively, of this title.

(b) Committee charge.

(1) The committee shall survey the expected need for private activity bond allocations among constituted and eligible issuing authorities empowered to issue such bonds on an annual basis.

(2)(A) The committee shall develop guidelines for allocation of private activity bonding capacity designed to maximize the availability of tax-exempt financing among various sectors of the Vermont economy with a focus on economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation, and other activities that the committee determines will benefit the citizens of Vermont.

(B) The guidelines should support efforts and entities that increase the number of well-paying jobs in the state, promote economic development, support affordable housing, support affordable access to postsecondary education and training, and encourage the use of Vermont's human and natural resources in endeavors that maximize Vermont's comparative economic advantages. The guidelines should be flexible enough to include new and innovative uses of private activity bonds consistent with federal regulations and the Internal Revenue Code.

(3) The committee shall meet at least annually and shall hold at least one public hearing prior to submitting its recommendations to the emergency board. The committee shall further submit its recommendations in an annual report of its activities to the governor and the general assembly.

(4) On or before December 1 of each year, the committee shall make recommendations to the emergency board on the allocation, including any amounts reserved for contingency allocations, of the state's private activity bond ceiling for the following calendar year to and among the constituted issuing authorities empowered to issue such bonds.

(5) On its own initiative, at the request of the governor, or at the request of the emergency board, the committee may make recommendations to the governor or the emergency board concerning assignments or reallocation of any unused portion of the ceiling subsequent to the emergency board's initial allocation in a given year.

Sec. 2. TRANSITION OF PRIVATE ACTIVITY BOND ADVISORY COMMITTEE

Notwithstanding any provision of law to the contrary, on the effective date of this act, the private activity bond advisory committee created in Executive Order 14-11 shall become for all lawful purposes the private activity bond committee authorized in Sec. 1 of this act; provided, however, that the term of the public representative first appointed by the governor pursuant to EO 14-11 shall end on February 1, 2013, and the term of the public representative appointed second by the governor shall end on February 1, 2014.

\* \* \* Bonding Obligation Authority \* \* \*

Sec. 3. 10 V.S.A. § 219(d) is amended to read:

(d) In order to assure the maintenance of the debt service reserve requirement in each debt service reserve fund established by the authority, there may be appropriated annually and paid to the authority for deposit in each such fund, such sum as shall be certified by the chair of the authority, to the governor or the governor-elect, the president of the senate, and the speaker of the house, as is necessary to restore each such debt service reserve fund to an amount equal to the debt service reserve requirement for such fund. The chair shall annually, on or about February 1, make, execute, and deliver to the governor or the governor-elect, the president of the senate, and the speaker of the house, a certificate stating the sum required to restore each such debt service reserve fund to the amount aforesaid, and the sum so certified may be appropriated, and if appropriated, shall be paid to the authority during the then current state fiscal year. The principal amount of bonds or notes outstanding at any one time and secured in whole or in part by a debt service reserve fund to which state funds may be appropriated pursuant to this subsection shall not exceed ~~\$100,000,000.00~~ \$115,000,000.00, provided that the foregoing shall not impair the obligation of any contract or contracts entered into by the authority in contravention of the Constitution of the United States.

Sec. 4. 10 V.S.A. § 262(5) is amended to read:

(5) The principal obligation of the authority's mortgage does not exceed ~~\$1,300,000.00~~ \$1,500,000.00 which may be secured by land and buildings or by machinery and equipment, or both; unless an integral element of the project consists of the generation of heat or electricity employing biomass, geothermal, methane, solar, or wind energy resources to be primarily consumed at the project, in which case the principal obligation of the authority's mortgage does not exceed \$2,000,000.00, which may be secured by land and by buildings, or machinery and equipment, or both; such principal obligation does not exceed 40 percent of the cost of the project; and the mortgagor is able to obtain financing for the balance of the cost of the project from other sources as provided in the following section;

Sec. 5. 10 V.S.A. § 216(15) is amended to read:

(15) To delegate to loan officers the power to review, approve and make loans under this chapter, subject to the approval of the manager, and to disburse funds on such loans, subject to the approval of the manager, provided that such loans do not exceed ~~\$250,000.00~~ \$350,000.00 in aggregate amount for any industrial loan for any three-year period for any particular individual, partnership, corporation, or other entity or related entity, or do not exceed ~~\$200,000.00~~ \$350,000.00 in aggregate amount if the loan is guaranteed by the Farm Services Agency, or its successor agency, or ~~\$150,000.00~~ \$300,000.00 in aggregate amount if the loan is not guaranteed by the Farm Services Agency, or its successor agency, for any agricultural loan for any three-year period for any particular individual, partnership, corporation, or other entity or related entity. No funds may be disbursed for any loan approved under this provision, except for any agricultural loan referenced above in an amount not to exceed \$50,000.00, and no rejection of a loan by a loan officer pursuant to this subdivision shall become final, until three working days after the members of the authority are notified by facsimile, electronic mail, or overnight delivery mailed or sent on the day of approval or rejection, of the intention to approve or reject such loan. If any member objects within that three-day period, the approval or rejection will be held for reconsideration by the members of the authority at its next duly scheduled meeting;

Sec. 6. 10 V.S.A. § 221(a) is amended to read:

(a) Upon application of the proposed mortgagee, the authority may insure mortgage payments required to repay loans made by the mortgagee for the purpose of financing the costs of a project, upon such terms and conditions as the authority may prescribe; provided, however, that the total principal obligations of all mortgages insured under this subsection and under subsection (c) of this section outstanding at any one time shall not exceed ~~\$9,000,000.00~~

\$3,500,000.00. Before insuring any mortgage payments hereunder, the authority shall determine and incorporate each of the findings established by this subsection in its minutes. Such findings, when adopted by the authority shall be conclusive:

\* \* \*

Sec. 7. COMPREHENSIVE CAPITAL GAPS STUDY COMMITTEE

(a) Creation. There is created an expert committee for the purpose of identifying areas of Vermont's economy that have unmet or underserved access to capital, determining what barriers are preventing the efficient and appropriate flow of capital, and developing innovative strategies to make capital more accessible to these underserved areas. The committee shall receive administrative support from the office of the treasurer.

(b) Membership. The committee shall be composed of seven members as follows:

(1) the state treasurer or designee, who shall serve as chair of the committee;

(2) the deputy commissioner of banking within the department of banking, insurance, securities, and health care administration or designee;

(3) the secretary of commerce and community development or designee;

(4) a senior officer of a Vermont bank, who shall be appointed by the governor;

(5) a member of the public, who shall be appointed by the speaker of the house;

(6) a member of the public, who shall be appointed by the president pro tempore of the senate; and

(7) an executive director of a Vermont nonprofit organization which, as part of its mission, directly lends or services loans or other similar obligations, who shall be appointed by the governor.

(c) Powers and duties.

(1) The committee shall identify:

(A) The areas of Vermont's economy that are currently underserved by traditional private and public capital sources. Such areas may include: equity and debt financing for start-ups and growing small businesses; mortgage financing for low income families, first-time homebuyers, and nonprofit developers; underwriting and risk capital for multifamily housing and community facilities; low-interest financing for sustainable agriculture, energy

efficiency and renewable energy ventures; and affordable financing for higher education opportunities for Vermonters;

(B) Public and quasi-public agencies that provide a combination of direct lending, bond financing, loan guarantees, and grant programs for the subject areas referenced in subdivision (1)(A) of this subsection (c). The committee shall receive testimony and reports for the purpose of completing an inventory of current capital sources and related services, missions, and goals, and the extent to which the results are consistent with expected volumes. These institutions may include: the Vermont economic development authority; the Vermont Housing Finance Agency; the Vermont Student Assistance Corporation; the Vermont municipal bond bank; the Vermont community loan fund; and the state treasurer's banking and investment services;

(C) Banking and private sector organizations that work with or provide services in the areas referenced in subdivision (1)(A) of this subsection (c);

(D) Economic impacts relative to financing activities undertaken by the organizations currently providing capital in the state;

(E) The main barriers, such as risk aversion, transactional limits, and existing regulations, that are inhibiting the access to capital in the underserved areas; and

(F) The extent to which capital to meet the needs identified in subdivision (1)(A) of this subsection (c) comes from Vermont sources or is invested in Vermont firms or organizations. Identify opportunities for local investment.

(2) On or before January 15, 2013, the committee shall submit a report of its findings and recommendations to the senate committee on finance and to the house committees on commerce and economic development and on ways and means. The report shall:

(A) Identify the extent to which the capital needs of the underserved areas are currently being met by traditional public and private funding sources, including how public and quasi-public agencies address their statutory missions, deploy Vermont's resources, and measure effectiveness;

(B) Recommend opportunities for collaboration to create efficiencies within existing public, quasi-public, and private financing channels with the goal of adding new capital investment rather than replacing existing markets;

(C) Identify and recommend options for combined activity, tools, policies, strategies, and funding options for strengthening the stated goals of

various public and quasi-public agencies, the treasurer's office, financial institutions, and nonprofits that help to fill capital gaps in the marketplace;

(D) Recommend, where feasible, opportunities for collaboration to restructure or create efficiencies within and among state-sponsored financial institutions;

(E) Review feasibility of creating one or more vehicles or capacity to foster in-state investment opportunities where appropriate. These may include new delivery strategies-and changes to state treasury operations to foster local financing activities;

(F) Evaluate conceptual models of a state bank, green trust, or similar state-created institution authorized to aggregate state funds and raise capital and determine whether further detailed study should be conducted to determine whether one or more such institutions could effectively provide and leverage investment in the Vermont economy where capital needs are identified; and

(G) Provide recommendations that foster partnerships with banking institutions doing business in the state to address unmet needs.

#### Sec. 8. EFFECTIVE DATE

This act shall take effect on passage.

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 state bonding authority and evaluating capital needs.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Finance?, on motion of Campbell, action on the bill was postponed until the next legislative day.

#### **Consideration Postponed**

#### **H. 78.**

Senator Galbraith, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to wages for laid-off employees.

Reported recommending 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. 9 V.S.A. § 1971 is amended to read:

§ 1971. EXTENT OF LIEN UNPAID WAGES; STATUTORY LIEN; PRIORITY OVER SUBSEQUENT MORTGAGE OR LIEN

(a) A statutory lien is created on the real and personal property of an employer for up to 30 days of unpaid wages.

(b) The liability of a corporation an employer as defined in 21 V.S.A. § 341 to wage earners an employee for unpaid wages which were earned in the three months next for a 30-day period prior to the filing of a new mortgage or other lien upon the property and franchise of such corporation of the employer, in all cases, shall be a first lien thereon, notwithstanding any mortgage or other lien thereon recorded after such wages were earned. An individual who works for wages, salary or hire at a rate of compensation not exceeding \$3,000.00 a year shall be deemed to be a wage earner within the meaning of this section. Notice of the lien if on personal property shall be filed with the secretary of state's office and, if on real property, in the land records, by the employee or the department of labor acting on behalf of one or more employees. An employee who is owed wages or the department of labor acting on behalf of one or more employees may file an action to execute on the lien in the civil division of the superior court in the county in which the employer has its principal place of business in the state, or in the civil division of the Washington County superior court.

Sec. 2. 11A V.S.A. § 14.03 is amended to read:

§ 14.03. ARTICLES OF DISSOLUTION; CONTENT OF NOTICE; NOTICE TO DEPARTMENT OF LABOR REGARDING UNPAID WAGES

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

- (1) the name of the corporation;
- (2) the date dissolution was authorized;
- (3) if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;

(4) if voting by voting groups was required, the information required by subdivision (3) of this subsection ~~must be~~, separately provided for each voting group entitled to vote separately on the plan to dissolve;

(5) a statement as to the settlement of debts, the distribution of property, and the status of pending litigation;

(6) a statement whether the corporation owes any unpaid wages to its employees.

(b) Subject to the provisions of section 14.09 of this title, a corporation is dissolved upon the effective date of its articles of dissolution.

(c) If a corporation owes unpaid wages to its employees, it shall also file a statement to that effect with the department of labor.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs?, on motion of Campbell, action on the bill was postponed until the next legislative day.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 484.**

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to amendment to the Windham solid waste district charter.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 24 App. V.S.A. chapter 417, in § 1, by striking out the following: “The member towns of the District are those identified on Attachment A”

Second: In Sec. 2, 24 App. V.S.A. chapter 417, in § 43, by striking out the word “CHARGE” in the section title and inserting in lieu thereof the word CHARGES

Third: In Sec. 2, 24 App. V.S.A. chapter 417, in § 62, in subdivision (4), by striking out the words “but not limited to” where it appears in the first sentence

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

### **Proposal of Amendment; Third Reading Ordered**

#### **H. 550.**

Senator White, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to the Vermont administrative procedure act.

Reported recommending 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. 3 V.S.A. § 844 is amended to read:

§ 844. EMERGENCY RULES

\* \* \*

(d) Emergency rules adopted under this section shall include:

(1) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(2) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety, or welfare and approving of the contents of the rules.

(e)(1) On a majority vote of the entire committee, the committee may object under this subsection if an emergency rule is:

~~(1)~~(A) beyond the authority of the agency;

~~(2)~~(B) contrary to the intent of the legislature;

~~(3)~~(C) arbitrary; or

~~(4)~~(D) not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.

(2) When objection is made under this subsection, on majority vote of the entire committee, the committee may file the objection in certified form with the secretary of state. The objection shall contain a concise statement of the committee's reasons for its action. The secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy

to the agency. After a committee objection is filed with the secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature, is not arbitrary, and is justified by an imminent peril to the public health, safety, or welfare. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(3) When the committee makes an objection to an emergency rule under this subsection, the agency may withdraw the rule to which an objection was made. Prior to withdrawal, the agency shall give notice to the committee of its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a notice of withdrawal with the secretary of state and the committee. If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted.

Sec. 2. 3. V.S.A. § 817 is amended to read:

§ 817 LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

\* \* \*

(d) In addition to its powers under section 842 of this title concerning rules, the committee may, in similar manner, conduct public hearings, object, and file objections concerning existing rules. A rule reviewed under this subsection shall remain in effect until amended or repealed.

(e) At any time following its consideration of a final proposal under section 841 of this title, the committee, by majority vote of the entire committee, may request that any standing committees of the general assembly review the issues or questions presented therein which are outside the jurisdiction of the committee but are within the jurisdiction of the standing committees. On receiving a request for review under this subsection, a standing committee may at its discretion review the issues or questions and act on them. The committee's request for review shall not affect the review or review period of a final proposal.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposal of amendment was agreed to, and third reading of the bill was ordered.

**Rules Suspended; Bills Messaged**

On motion of Senator Campbell, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

**S. 99, S. 181, H. 758, H. 759, H. 768, H. 770, H. 785.**

**Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock in the afternoon on Thursday, April 19, 2012.