# House Calendar

Wednesday, April 24, 2013

106th DAY OF THE ADJOURNED SESSION

House Convenes at 8:30 A.M.

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## ORDERS OF THE DAY

### ACTION CALENDAR

**Action Postponed Until April 24, 2013**

**Favorable with Amendment**

**H. 403**

An act relating to community supports for persons with serious functional impairments

**Rep. Haas of Rochester,** for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. STUDY AND REPORT ON PROVIDING COMMUNITY SUPPORTS TO PERSONS WITH SERIOUS FUNCTIONAL IMPAIRMENTS

(a) As used in this act, "designated population" shall mean those Vermont residents, regardless of whether they are in the custody of the Commissioner of Corrections, with mental and functional impairments or developmental disorders so severe that they cannot live in the community without substantial supports and who have committed, been charged with, or have been identified as being at risk of committing a criminal offense that renders them a threat to public safety or who pose a risk to their own physical safety, or both.

(b) A legislative study committee is established to identify and examine the needs of the designated population in community-based settings. The Study Committee shall consist of a member from the House Committees on Appropriations, on Corrections and Institutions, on Human Services, and on Judiciary, not all from the same party, appointed by the Speaker of the House, and a member from the Senate Committees on Appropriations, on Health and Welfare, on Judiciary, and one Senator selected at large, not all from the same party, appointed by the Committee on Committees. The Study Committee shall discuss and make recommendations on legislative and nonlegislative solutions for improving the quality and cost-effectiveness of treatment to the designated population while maintaining public safety, in collaboration with the following organizations and individuals or their designee:

(1) the Secretary of Human Services;

(2) the Commissioner of Health;

(3) the Commissioner of Disabilities, Aging, and Independent Living;

(4) the Commissioner of Mental Health;

(5) the Commissioner of Corrections;

(6) the Commissioner of Vermont Health Access;

(7) the Commissioner for Children and Families;

(8) the Office of the Attorney General;

(9) the Mental Health Care Ombudsman;

(10) the Court Administrator;

(11) the Vermont Council of Developmental and Mental Health Services;

(12) Vermont Legal Aid's Mental Health Law Project;

(13) the Executive Director of the Vermont Developmental Disabilities Council;

(14) the Executive Director of the Vermont Human Rights Commission;

(15) Disability Rights Vermont;

(16) Vermont Psychiatric Survivors;

(17) Office of the Defender General's Prisoners' Rights Office; and

(18) other interested stakeholders.

(c)(1) The first meeting of the Study Committee shall be held on or before August 1, 2013. At its first meeting, the Study Committee shall elect two legislative members to serve as co-chairs. The Study Committee shall not meet more than four times.

(2)(A) The Office of Legislative Council shall provide administrative, staff, and legislative drafting support to the Study Committee. The Joint Fiscal Office shall provide staff support to the Study Committee.

(B) Prior to the first meeting of the Study Committee, the Office of Legislative Council shall collect from the Agency of Human Services existing data and background materials relevant to the responsibilities of the Study Committee.

(d) The Study Committee shall consider:

(1) the continuum of appropriate treatment and services and supports for members of the designated population living in the community;

(2) practices for lowering the incarceration rate among the designated population;

(3) how best to protect the legal rights of members of the designated population living in community settings;

(4) approaches for managing public safety risks of the designated population;

(5) cost-saving opportunities for treating members of the designated population outside a correctional facility;

(6) treatment approaches used in other states that cost-effectively manage the public safety risks posed by residents comparable to the designated population; and

(7) any other issues as the Study Committee deems necessary and appropriate.

(e) On or before December 15, 2013, the Study Committee shall provide a written report containing any proposed legislation and its findings and recommendations, including the need for future action, to the House Committees on Appropriations, on Corrections and Institutions, on Human Services, and on Judiciary and to the Senate Committees on Appropriations, on Health and Welfare, and on Judiciary. In addition to the Study Committee's findings and recommendations, the report shall:

(1) develop proposed guidelines specifying how an individual shall be assessed to determine if he or she is a member of the designated population and what benchmarks shall be achieved by the individual prior to declassification from the designated population; and

(2) address the extent to which one or more secure residential recovery facilities are within the appropriate continuum of treatment alternatives for the designated population.

(f) For physical participation at meetings, legislative members of the Study Committee shall be entitled to receive per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**( Committee Vote: 11-0-0)**

**Rep. Manwaring of Wilmington,** for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **Human Services** and when further amended as follows:

First: In Sec. 1, subsection (b), by adding a sentence after the first sentence to read: "The Study Committee shall also be charged with determining how to

most effectively allocate funds for the designated population within the constraints of past appropriations made for the purpose of serving this population."

Second: In Sec. 1, subdivision (c)(2)(B), by adding before the period ", including past appropriations used to serve the designated population"

Third: In Sec. 1, subsection (e), subdivision (1), by striking "and" after the semicolon

and in subdivision (2), by striking the period and inserting in lieu thereof "; and"

and by inserting a subdivision (3) to read as follows:

(3) evaluate the cost of potential treatment opportunities found by the Study Committee to appropriately balance care, legal rights, and public safety.

**( Committee Vote: 11-0-0)**

**Amendment to be offered by Rep. Batchelor of Derby to H. 403**

In Sec. 1, subsection (b), by inserting a new subdivision (17) after subdivision (16) to read as follows:

(17) Vermont League of Cities and Towns;

and by renumbering the remaining subdivisions to be numerically correct

## NEW BUSINESS

### Third Reading

**H. 54**

An act relating to Public Records Act exemptions

**H. 226**

An act relating to the regulation of underground storage tanks

**H. 517**

An act relating to approval of the adoption and the codification of the charter of the Town of St. Albans

**S. 47**

An act relating to protection orders and second degree domestic assault

**S. 161**

An act relating to mitigation of traffic fines and approval of a DLS Diversion Program contract

**Favorable with Amendment**

**H. 270**

An act relating to providing access to publicly funded prekindergarten education

**Rep. Buxton of Tunbridge,** for the Committee on **Education,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION~~; RULES~~

(a) Definitions. As used in this section:

(1) "Prekindergarten child" means a child who, as of the date established by the district of residence for kindergarten eligibility, is three or four years of age or is five years of age but is not yet enrolled in kindergarten.

(2) "Prekindergarten education" means services designed to provide to prekindergarten children developmentally appropriate early development and learning experiences based on Vermont's early learning standards.

(3) "Prequalified private provider" means a private provider of prekindergarten education that is qualified pursuant to subsection (c) of this section.

(b) Access to publicly funded prekindergarten education.

(1) No fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll in an available, prequalified program operated by a public school or a private provider.

(2) If a parent or guardian chooses to enroll a prekindergarten child in an available, prequalified program, then, pursuant to the parent or guardian's choice, the school district of residence shall:

(A) pay tuition pursuant to subsection (d) of this section upon the request of the parent or guardian to:

(i) a prequalified private provider; or

(ii) a public school located outside the district that operates a prekindergarten program that has been prequalified pursuant to subsection (c) of this section; or

(B) enroll the child in the prekindergarten education program that it

operates.

(3) If requested by the parent or guardian of a prekindergarten child, the school district of residence shall pay tuition to a prequalified program operated by a private provider or a public school in another district even if the district of residence operates a prekindergarten education program.

(4) If the supply of prequalified private and public providers is insufficient to meet the demand for publicly funded prekindergarten education in any region of the State, nothing in this section shall be construed to require a district to begin or expand a program to satisfy that demand; but rather, in collaboration with the Agencies of Education and of Human Services, the local Building Bright Futures Council shall meet with school districts and private providers in the region to develop a regional plan to expand capacity.

(c) Prequalification. Pursuant to rules jointly developed and overseen by the Secretaries of Education and of Human Services and adopted by the State Board pursuant to 3 V.S.A. chapter 25, the Agencies jointly may determine that a private or public provider of prekindergarten education is qualified for purposes of this section and include the provider in a publicly accessible database of prequalified providers. At a minimum, the rules shall define the process by which a provider applies for and maintains prequalification status, shall identify the minimum quality standards for prequalification, and shall include the following requirements:

(1) A program of prekindergarten education, whether provided by a school district or a private provider, shall have received:

(A) National Association for the Education of Young Children (NAEYC) accreditation; or

(B) at least four stars in the Department for Children and Families STARS system with at least two points in each of the five arenas; or

(C) three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families and the Secretary of Education, to achieve four or more stars in no more than two years with at least two points in each of the five arenas, and the provider has met intermediate milestones.

(2) A licensed provider shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.

(3) A registered home provider that is not licensed and endorsed in early childhood education or early childhood special education shall receive regular, active supervision and training from a teacher who is licensed and endorsed in

early childhood education or in early childhood special education under chapter 51 of this title.

(d) Tuition, budgets, and average daily membership.

(1) On behalf of a resident prekindergarten child, a district shall pay tuition for prekindergarten education for ten hours per week for 35 weeks annually to a prequalified private provider or to a public school outside the district that is prequalified pursuant to subsection (c) of this section; provided, however, that the district shall pay tuition for weeks that are within the district's academic year. Tuition paid under this section shall be at a statewide rate, which may be adjusted regionally, that is established annually through a process jointly developed and implemented by the Agencies of Education and of Human Services. A district shall pay tuition upon:

(A) receiving notice from the child's parent or guardian that the child is or will be admitted to the prekindergarten education program operated by the prequalified private provider or the other district; and

(B) concurrent enrollment of the prekindergarten child in the district of residence for purposes of budgeting and determining average daily membership.

(2) In addition to any direct costs of operating a prekindergarten education program, a district of residence shall include anticipated tuition payments and any administrative, quality assurance, quality improvement, transition planning, or other prekindergarten-related costs in its annual budget presented to the voters.

(3) The district of residence may include within its average daily membership any prekindergarten child for whom it has provided prekindergarten education or on whose behalf it has paid tuition pursuant to this section.

(4) A prequalified private provider may receive additional payment directly from the parent or guardian only for prekindergarten education in excess of the hours paid for by the district pursuant to this section or for child care services, or both. The provider is not bound by the statewide rate established in this subsection when determining the rates it will charge the parent or guardian.

(e) Rules. The ~~commissioner of education and the commissioner for children and families~~ Secretary of Education and the Commissioner for Children and Families shall jointly develop and agree to rules and present them to the ~~state board of education~~ State Board for adoption under 3 V.S.A. chapter 25 as follows:

(1) ~~To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided, however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.~~ To permit private providers that are not prequalified pursuant to subsection (c) of this section to create new or continue existing partnerships with school districts through which the school district provides supports that enable the provider to fulfill the requirements of subsection (c), and through which the district may or may not make in-kind payments as a component of the statewide tuition established under this section.

(2) ~~To ensure that, if a school district begins or expands a prekindergarten education program that intends to include any of the students in its average daily membership, the district shall use existing qualified service providers to the extent that existing qualified service providers have the capacity to meet the district's needs effectively and efficiently.~~ To authorize a district to begin or expand a school-based prekindergarten education program only upon prior approval obtained through a process jointly overseen by the Secretaries of Education and of Human Services, which shall be based upon analysis of the number of prekindergarten children residing in the district and the availability of enrollment opportunities with prequalified private providers in the region. Where the data are not clear or there are other complex considerations, the Secretaries may choose to conduct a community needs assessment.

(3) To require that the school district provides opportunities for effective parental participation in the prekindergarten education program.

(4) To establish a process by which:

(A) a parent or guardian ~~residing in the district or a provider, or both, may request a school district to enter into a contract with a provider located in or outside the district~~ notifies the district that the prekindergarten child is or will be admitted to a prekindergarten education program not operated by the district and concurrently enrolls the child in the district pursuant to subdivision (d)(1) of this section;

(B) a district:

(i) pays tuition pursuant to a schedule that does not inhibit the ability of a parent or guardian to enroll a prekindergarten child in a prekindergarten education program or the ability of a prequalified private provider to maintain financial stability; and

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; and

(C) a provider that has received tuition payments under this section on behalf of a prekindergarten child notifies a district that the child is no longer enrolled.

(5) ~~To identify the services and other items for which state funds may be expended when prekindergarten children are counted for purposes of average daily membership, such as tuition reduction, quality improvements, or professional development for school staff or private providers.~~ To establish a process to calculate an annual statewide tuition rate that is based upon the actual cost of delivering ten hours per week of prekindergarten education that meets all established quality standards and to allow for regional adjustments to the rate.

(6) ~~To ensure transparency and accountability by requiring private providers under contract with a school districts to report costs for prekindergarten programs to the school district and by requiring school districts to report these costs to the commissioner of education.~~ [Repealed.]

(7) To require ~~school districts~~ a district to include identifiable costs for prekindergarten programs and essential early education services in ~~their~~ its annual budgets and reports to the community.

(8) To require ~~school districts~~ a district to report to the ~~departments their~~ Agency of Education annual expenditures made in support of prekindergarten ~~care and~~ education, with distinct figures provided for expenditures made from the ~~general fund~~ General Fund, from the ~~education fund~~ Education Fund, and from all other sources, which shall be specified.

(9) To provide an ~~appeal~~ administrative process for:

(A) a parent, guardian, or provider to challenge an action of ~~the~~ a school district or the State when the ~~appellant~~ complainant believes that the district or State is in violation of state statute or rules regarding prekindergarten education; and

(B) a school district to challenge an action of a provider or the State when the district believes that the provider or the State is in violation of state statute or rules regarding prekindergarten education.

(10) ~~To establish the minimum quality standards necessary for a district~~

~~to include prekindergarten children within its average daily membership. At a minimum, the standards shall include the following requirements:~~

~~(A) The prekindergarten education program, whether offered by or through the district, shall have received:~~

~~(i) National Association for the Education of Young Children (NAEYC) accreditation; or~~

~~(ii) At least four stars in the department for children and families STARS system with at least two points in each of the five arenas; or~~

~~(iii) Three stars in the STARS system if the provider has developed a plan, approved by the commissioner for children and families and the commissioner of education, to achieve four or more stars within three years with at least two points in each of the five arenas, and the provider has met intermediate milestones; and~~

~~(B) A licensed center shall employ or contract for the services of at least one teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title; and~~

~~(C) A registered home shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.~~ To establish a system by which the Agency of Education and Department for Children and Families shall jointly monitor prekindergarten education programs to promote optimal outcomes for children and to collect data that will inform future decisions. At a minimum, the system shall monitor and assess:

(A) programmatic details, including the number of children served, the number of private and public programs operated, and the public financial investment made to ensure access to quality prekindergarten education;

(B) the quality of public and private prekindergarten education programs and efforts to ensure continuous quality improvements through mentoring, training, technical assistance, and otherwise; and

(C) the outcomes for children, including school readiness and proficiency in numeracy and literacy.

(11) To establish a process for documenting the progress of children enrolled in prekindergarten education programs and to require public and private providers to use the process to:

(A) help individualize instruction and improve program practice; and

(B) collect and report child progress data to the ~~commissioner of~~

~~education~~ Secretary of Education on an annual basis.

(12) If the Secretaries find it advisable, to establish guidelines designed to help coordinate prekindergarten education programs under this section with essential early education as defined in section 2942 of this title and with Head Start programs.

(f) Other provisions of law. Section 836 of this title shall not apply to this section.

(g) Limitations. Nothing in this section shall be construed to permit or require payment of public funds to a private provider of prekindergarten education in violation of Chapter I, Article 3 of the Vermont Constitution.

Sec. 2. 16 V.S.A. § 4010(c) is amended to read:

(c) The ~~commissioner~~ Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of this section and the following weights for each class:

Prekindergarten ~~0.46~~ 0.5

Elementary or kindergarten 1.0

Secondary 1.13

Sec. 3. PREKINDERGARTEN EDUCATION; CALCULATION OF EQUALIZED PUPILS; EXCLUSION FROM EDUCATION SPENDING

(a) If a school district did not provide or pay for prekindergarten education pursuant to 16 V.S.A. § 829 in fiscal year 2015, then:

(1) for purposes of determining the equalized pupil count for the fiscal year 2016 budget, the long-term membership of prekindergarten children shall be the number of prekindergarten children for whom the district anticipates it will provide prekindergarten education or pay tuition, or both, in fiscal year 2016; and

(2) for purposes of determining the equalized pupil count for the fiscal year 2017 budget, the long-term membership of prekindergarten children shall be the total number of prekindergarten children for whom the district provided prekindergarten education or paid tuition, or both, in fiscal year 2016, adjusted to reflect the difference between the estimated and actual count for that fiscal year.

(b) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12) in fiscal years, 2016, 2017, and 2018 "education spending" shall not include the portion of a district's proposed budget directly attributable to

providing a prekindergarten education program or paying tuition on behalf of a resident prekindergarten child pursuant to 16 V.S.A. § 829 as amended by this act.

Sec. 4. QUALITY STANDARDS

(a) The Agencies of Education and of Human Services shall review existing quality standards for prekindergarten education programs and may initiate rulemaking under 3 V.S.A. chapter 25 to require higher standards of quality; provided, however, that no new standards shall take effect earlier than July 1, 2015. Changes to the quality standards shall be designed to ensure that programs are based on intentional, evidence-based practices that create a developmentally appropriate environment and support the delivery of an engaging program that supports the social, emotional, intellectual, language, literacy, and physical development of prekindergarten children.

(b) In January of the 2015, 2016, and 2017 legislative sessions, the Agencies shall report to the House and Senate Committees on Education, the House Committee on Human Services, and the Senate Committee on Health and Welfare regarding the quality of prekindergarten education in the State.

Sec. 5. CONSTITUTIONALITY

On or before July 1, 2014, the Secretary of Education shall identify the private prekindergarten education programs to which school districts are paying tuition on behalf of resident prekindergarten children, determine the extent to which any program provides religious prekindergarten education, and establish the steps the Agency will take to ensure that public funds are not expended in violation of Chapter I, Article 3 of the Vermont Constitution and the Vermont Supreme Court's decision in *Chittenden Town School District v. Vermont Department of Education*, 169 Vt. 310 (1999).

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2013 and shall apply to enrollments on July 1, 2015 and after.

**( Committee Vote: 9-0-2)**

**Rep. Greshin of Warren,** for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Education** and when further amended as follows:

First: In Sec. 1, 16 V.S.A. § 829, subsection (d), subdivision (3), by striking the word "The" and inserting in lieu thereof the following: "Pursuant to subdivision 4001(1)(C) of this title, the"

Second: By striking out Sec. 2 (weighted membership) in its entirety

Third: In Sec. 3, by striking out subsection (b) (excess spending) in its entirety and by striking out the subsection designation for subsection (a)

Fourth: In Sec. 1, 16 V.S.A. § 829(g), and Sec. 5, before the period, by inserting the following: "or in violation of the Establishment Clause of the U.S. Constitution"

**( Committee Vote: 7-4-0)**

**Rep. Johnson of South Hero,** for the Committee on **Appropriations,** recommends the bill ought to pass when amended as recommended by the Committee on **Education and Ways and Means** and when further amended as follows:

First: In Sec. 1, 16 V.S.A. § 829, subsection (e), in subdivision (10), after the first period, by inserting a new sentence to read: "The Agency and Department shall be required to report annually to the General Assembly in January."

Second: In Sec. 4, subsection (b), after the words: "on Education" by inserting the words: "and on Appropriations"

**( Committee Vote: 8-3-0)**

**Amendment to be offered by Rep. Buxton of Tunbridge to H. 270**

First: In Sec. 1, 16 V.S.A. § 829, by adding a new subsection to be subsection (h) to read:

(h) Geographic limitations.

(1) Notwithstanding the requirement that a district pay tuition to any prequalified public or private provider in the State, a school board may choose to limit the geographic boundaries within which the district shall pay tuition by paying tuition solely to those prequalified providers in which parents and guardians choose to enroll resident prekindergarten children that are located within the district's "prekindergarten region" as determined in subdivision (2) of this subsection.

(2) For purposes of this subsection, upon application from the school board, a district's prekindergarten region shall be determined jointly by the Agencies of Education and of Human Services in consultation with the school board, private providers of prekindergarten education, parents and guardians of prekindergarten children, and other interested parties pursuant to a process adopted by rule under subsection (e) of this section. A prekindergarten region:

(A) shall not be smaller than the geographic boundaries of the school district;

(B) shall be based in part upon the estimated number of prekindergarten children residing in the district and in surrounding districts, the availability of prequalified private and public providers of prekindergarten education, commuting patterns, and other region-specific criteria; and

(C) shall be designed to support existing partnerships between the school district and private providers of prekindergarten education.

(3) If a school board chooses to pay tuition to providers solely within its prekindergarten region, and if a resident prekindergarten child is unable to access publicly funded prekindergarten education within that region, then the child's parent or guardian may request and in its discretion the district may pay tuition at the statewide rate for a prekindergarten education program operated by a prequalified provider located outside the prekindergarten region.

(4) Except for the narrow exception permitting a school board to limit geographic boundaries under subdivision (1) of this subsection, all other provisions of this section and related rules shall continue to apply.

Second: By adding a new section to be Sec. 4a to read:

Sec. 4a. REPORT ON ENROLLMENT AND ACCESS

The Agencies of Education and of Human Services and the Building Bright Futures Council shall monitor and evaluate access to and enrollment in prekindergarten education programs under Sec. 1 of this act. On or before January 1, 2018, they shall report to the House and Senate Committees on Education and on Appropriations, the House Committee on Ways on Means, and the Senate Committee on Finance regarding their evaluation, conclusions, and any recommendations for amendments to statute or related rule.

Third: In Sec. 1, 16 V.S.A. § 829, subsection (e), in subdivision (1), by striking out the reference: "subsection (c)" and inserting in lieu thereof the reference: "subdivision (c)(2) or (3)"

**Amendment to be offered by Rep. Browning of Arlington to H. 270**

First: After Sec. 2, by adding a new section to be Sec. 2a to read:

Sec. 2a. 16 V.S.A. § 4025(a) is amended to read:

(a) An education fund is established to be comprised of the following:

* * *

(2) For each fiscal year, the amount of the general funds appropriated or transferred to the education fund shall be:

(A) $276,240,000.00 increased by the most recent New England economic project cumulative price index, as of November 15, for state and

local government purchases of goods and services from fiscal year 2012 through the fiscal year for which the payment is being determined, plus an additional one-tenth of one percent; plus

(B) if there were an increase in the amount of education spending statewide for prekindergarten education between the two most recent fiscal years for which data is available, an amount equal to that increase.

* * *

Second: By striking out Sec. 6 in its entirety and inserting a new Sec. 6 to read:

Sec. 6. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2013.

(b) Secs. 1 and 2 of this act shall apply to enrollments on July 1, 2015 and after.

(c) Sec. 2a of this act shall apply to appropriations and transfers for fiscal year 2016 and after.

**H. 450**

An act relating to expanding the powers of regional planning commissions

**Rep. Townsend of Randolph,** for the Committee on **Government Operations,** recommends the bill be amended as follows:

First: In Sec. 1, 24 V.S.A. § 4345, in subdivision (16), by striking subdivisions (B) and (C) and inserting in lieu thereof new subdivisions (B) and (C) to read:

(B) borrow money and incur indebtedness for the purposes of purchasing or leasing property for office space or may establish a line of credit if approved by a two-thirds vote of those representatives to the regional planning commission present and voting at a meeting to approve such action. Any obligation incurred under this subdivision (B):

(i) shall not encumber the grand list or any property of a member municipality; and

(ii) in the case of a purchase, shall pledge the property to be purchased as collateral and shall not exceed the fair market value of such property;

(C) at the request of one or more member municipalities, act as an escrow agent and hold funds related to a municipal capital project or a project subject to a municipal land use permit in an escrow account, including taxes to be paid by the project, fines, and developer fees. Funds so held shall be

segregated in a special account for each project on the books of the regional planning commission and, within each project account, by municipality. However, this subdivision (C) shall not confer authority on a regional planning commission to hold tax increment revenues received from a tax increment financing district under chapter 53, subchapter 5 of this title; and

Second: In Sec. 1, 24 V.S.A. § 4345, in subdivision (16), in subdivision (D), after "Vermont", by inserting "and the federal government,"

Third: In Sec. 2, 24 V.S.A. § 4346, by striking the first sentence and inserting in lieu thereof:

Regional planning commissions may apply for, receive, and expend monies from any source, public or private, including~~, without limitation,~~ grants, loans, and funds made available by the participating municipalities, and by ~~the agency of commerce and community development~~ an agency or department of the State of Vermont, out of state funds appropriated to that agency or department for this purpose.

**( Committee Vote: 9-0-2)**

**H. 535**

An act relating to the approval of the adoption and to the codification of the charter of the Town of Woodford

**Rep. Mook of Bennington,** for the Committee on **Government Operations,** recommends the bill be amended as follows:

In Sec. 2, in 24 V.S.A. chapter 162, in § 6 (open meetings), by striking out the last sentence in its entirety and inserting in lieu thereof the following: "No executive session shall be held except in accordance with the terms of the general law."

**( Committee Vote: 10-0-1)**

**H. 538**

An act relating to making miscellaneous amendments to education funding laws.

**(Rep. Sharpe of Bristol** will speak for the Committee on **Ways and Means.)**

**Rep. Winters of Williamstown,** for the Committee on **Appropriations,** recommends the bill be amended as follows:

amended in Sec. 12, subsection (c), by striking out subdivisions (3) through (5) in their entirety and inserting in lieu thereof two new subdivisions to be subdivisions (3) and (4) to read:

(3) incentives for compliance; and

(4) implementation dates that apply the staffing ratios beginning in school year 2015–2016 with tax penalties for noncompliance beginning in school year 2016–2017.

(**Committee Vote 8-3-0)**

**Amendment to be offered by Rep. Donovan of Burlington to H. 538**

By adding a new section to be Sec. 13 to read:

Sec. 13. SMALL SCHOOL QUALITY; STUDY

The Secretary of Education shall examine the quality of opportunities and the educational outcomes for students enrolled in schools that receive small school support pursuant to 16 V.S.A. § 4015. In particular, the Secretary shall compare outcomes for students qualifying for free or reduced school meals who are enrolled in small schools versus the outcomes for the same population of students who are enrolled in larger Vermont schools. The Secretary shall consider whether and to what extent the quality of education provided should be considered when determining whether a school district should remain eligible for small school support pursuant to the amendments contained in Sec. 3 of this act. On or before January 15, 2014, the Secretary shall submit a report to the House and Senate Committees on Education detailing the results of this study and presenting recommendations for any changes to statute or rule.

and by renumbering the remaining section to be numerically correct

**Amendment to be offered by Rep. Donovan of Burlington to H. 538**

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

Sec. 12. STUDENT-TO-STAFF RATIOS

The Secretary of Education shall collect data necessary to inform development of a comprehensive plan to establish minimum student-to-staff ratios, student-to-administrator ratios, student-to-classroom teacher ratios, and student-to-teacher ratios in public elementary and secondary schools and supervisory unions in a manner that promotes educational opportunities and outcomes for students in Vermont. On or before November 30, 2013, the Secretary shall present the data to the House and Senate Committees on Appropriations and on Education, the House Committee on Ways and Means, and the Senate Committee on Finance.

**Amendment to be offered by Reps. Ellis of Waterbury and Stevens of Waterbury to H. 538**

First: After Sec. 7, by adding a new section to be Sec. 7a to read:

Sec. 7a. 32 V.S.A. § 5401(13) is amended to read:

(13) "District spending adjustment" means the greater of: one or a fraction in which the numerator is the district's education spending plus excess spending, per equalized pupil, for the school year; and the denominator is the base education amount for the school year, as defined in 16 V.S.A. § 4001.

(A) For a district that pays tuition to a public school or an approved independent school or both for all of its resident students in any year and ~~which~~ that has decided by a majority vote of its school board to opt into this provision, the district spending adjustment shall be the average of the district spending adjustment calculated under this subdivision for the previous year and for the current year. Any district opting for a two-year average under this subdivision may not opt out of such treatment, and the averaging shall continue until the district no longer qualifies for such treatment.

(B) The Secretary has the discretion, on an annual basis, to exclude a district's excess spending from the calculation of its district spending adjustment if:

(i) the district voted affirmatively within the previous three years to merge with one or more other districts;

(ii) the proposed merger failed due to the negative vote of one or more of the other districts; and

(iii) the district certifies to the Secretary that it is continuing to pursue opportunities to merge with one or more other districts.

Second: In Sec. 13, by adding a new subsection to be subsection (f) to read:

(f) Sec. 7a of this act shall take effect on passage and shall apply to education budgets for fiscal years 2014 through 2017.

and by relettering the remaining subsections to be alphabetically correct

**S. 1**

An act relating to consideration of financial cost of criminal sentencing options

**Rep. Wizowaty of Burlington,** for the Committee on **Judiciary,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. CRIMINAL JUSTICE CONSENSUS COST-BENEFIT WORKING GROUP

(a)(1) A Criminal Justice Consensus Cost-Benefit Working Group is established to develop collaboratively a criminal and juvenile justice cost-benefit model for Vermont for the purpose of providing policymakers with the information necessary to weigh the pros and cons of various strategies and programs, and enable them to identify options that are not only cost-effective, but also have the greatest net social benefit. The model will be used to estimate the costs related to the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants, and victimization of citizens by defendants.

(2) The Working Group shall:

(A) develop estimates of costs associated with the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants in Vermont by using the cost-benefit methodology developed by the Washington State Institute for Public Policy and currently used collaboratively by the Joint Fiscal Office and the PEW Charitable Trust for the Vermont Results First Project;

(B) estimate costs incurred by citizens who are the victims of crime by using data from the Vermont Center of Crime Victim Services, supplemented where necessary with national survey data;

(C) assess the quality of justice data collection systems and make recommendations for improved data integration, data capture, and data quality as appropriate;

(D) develop a throughput model of the Vermont criminal and juvenile justice systems which will serve as the basic matrix for calculating the cost and benefit of Vermont justice system programs and policies;

(E) investigate the need for and most appropriate entity within state government to be responsible for:

(i) revising the statewide cost benefit model in light of legislative or policy changes, or both, in the criminal or juvenile justice systems;

(ii) updating cost estimates; and

(iii) updating throughput data for the model.

(3) The Working Group shall be convened and staffed by the Vermont Center for Justice Research.

(4) The costs associated with staffing the Working Group shall be underwritten through December 31, 2013 by funding previously obtained by the Vermont Center for Justice Research from the Bureau of Justice Statistics, U.S. Department of Justice.

(b) The Working Group shall be composed of the following members:

(1) the Administrative Judge or designee;

(2) the Chief Legislative Fiscal Officer or designee;

(3) the Attorney General or designee;

(4) the Commissioner of Corrections or designee;

(5) the Commissioner for Children and Families or designee;

(6) the Executive Director of State's Attorneys and Sheriffs or designee;

(7) the Defender General or designee;

(8) the Commissioner of Public Safety or designee;

(9) the Director of the Vermont Center for Crime Victim Services or designee;

(10) the President of the Chiefs of Police Association of Vermont or designee;

(11) the President of the Vermont Sheriffs' Association or designee; and

(12) the Director of the Vermont Center for Justice Research.

(c) On or before November 15, 2013, the Working Group shall report its preliminary findings to the Senate Committee on Judiciary, the House Committee on Judiciary, and the House Committee on Corrections and Institutions. The Working Group shall issue a final report to the General Assembly on or before January 1, 2014.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**(Committee vote: 10-0-1 )**

**(For text see Senate Journal 2/6/2013 )**

**S. 151**

An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation

**Rep. Kilmartin of Newport City,** for the Committee on **Transportation,** recommends that the House propose to the Senate that the bill be amended as follows:

By inserting a new Sec. 2 to read:

Sec. 2. 23 V.S.A. § 102(d) is amended to read:

(d) The ~~commissioner~~ Commissioner may authorize background investigations for potential employees that may include criminal, traffic, and financial records checks; provided, however, that the potential employee is notified and has the right to withdraw his or her name from application. Additionally, employees who are ~~authorized to manufacture or produce~~ involved in the manufacturing or production of operators' licenses and identification cards, including enhanced licenses, or who have the ability to affect the identity information that appears on a license or identification card, or current employees who will be assigned to such positions, shall be subject to appropriate background checks and shall be provided notice of the background check and the contents of that check. These background checks will include a name-based and fingerprint-based criminal history records check using at a minimum the Federal Bureau of Investigation's National Crime Information Center and the Integrated Automated Fingerprint Identification database and state repository records on each covered employee. Employees may be subject to further appropriate security ~~clearance~~ clearances if required by federal law, including background investigations that may include criminal and traffic~~,~~ records checks~~,~~ and providing proof of United States citizenship. The ~~commissioner~~ Commissioner may, in connection with a formal disciplinary investigation, authorize a criminal or traffic record background investigation of a current employee; provided, however, that the background review is relevant to the issue under disciplinary investigation. Information acquired through the investigation shall be provided to the ~~commissioner~~ Commissioner or designated division director, and must be maintained in a secure manner. If the information acquired is used as a basis for any disciplinary action, it must be given to the employee during any pretermination hearing or contractual grievance hearing to allow the employee an opportunity to respond to or dispute the information. If no disciplinary action is taken against the employee, the information acquired through the background check shall be destroyed.

and by renumbering the remaining section to be numerically correct.

**(Committee vote: 10-0-1 )**

**(No Senate Amendments )**

**Rep. Masland of Thetford,** for the Committee on **Ways and Means,** recommends the bill ought to pass when amended as recommended by the Committee on **Transportation.**

**(Committee Vote: 8-0-3)**

**Senate Proposal of Amendment**

**H. 71**

An act relating to tobacco products

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

First: In Sec. 22, 33 V.S.A. § 1918, in subdivision (f)(1), by striking out the second sentence in its entirety and inserting in lieu thereof the following: The bond shall be issued by a surety company in good standing and authorized to transact business in this State to secure the payment of any escrow due or which may become due from the nonparticipating manufacturer or its United States importer.

Second: By striking out Sec. 23 in its entirety and inserting in lieu thereof the following:

Sec. 23. EFFECTIVE DATES

This section shall take effect on passage. Sec. 19 of this act shall take effect on June 30, 2013. All remaining sections shall take effect on July 1, 2013.

(For text see House Journal 2/28/2013 and 3/1/2013 )

**H. 510**

An act relating to the State's transportation program and miscellaneous changes to the State's transportation laws

The Senate proposes to the House to amend the bill by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM ADOPTED; DEFINITIONS

(a) The Agency of Transportation's proposed fiscal year 2014 transportation program appended to the Agency of Transportation's proposed fiscal year 2014 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. 1a. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified in accordance with this section. Among projects selected in the Secretary's discretion, the Secretary shall:

(1) reduce project spending authority in the total amount of $3,827,500.00 in transportation funds;

(2) increase project spending authority in the total amount of $2,087,500.00 in TIB bond proceeds on projects eligible under 32 V.S.A. § 972; and

(3) increase project spending authority in the total amount of $1,740,000.00 in federal funds.

* * * Town Highway Bridge * * *

Sec. 2. TOWN HIGHWAY BRIDGE

The following modification is made to the town highway bridge program:

(1) Spending authority for the Mount Tabor project to replace bridge 2 on town highway 1 (VT FH 17-1(1)) is added to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| PE | 0 | 0 | 0 |
| Construction | 0 | 1,579,500 | 1,579,500 |
| Total | 0 | 1,579,500 | 1,579,500 |
| Sources of funds | | | |
| State | 0 | 0 | 0 |
| TIB | 0 | 0 | 0 |

| | | | |
|---|---|---|---|
| Federal | 0 | 1,579,500 | 1,579,500 |
| Local | 0 | 0 | 0 |
| Total | 0 | 1,579,500 | 1,579,500 |

* * * Maintenance * * *

Sec. 3. MAINTENANCE

(a) Total authorized spending in the maintenance program is amended as follows:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| Personal services | 39,744,134 | 39,744,134 | 0 |
| Operating expenses | 50,687,536 | 48,877,536 | -1,810,000 |
| Grants | 75,000 | 75,000 | 0 |
| Total | 90,506,670 | 88,696,670 | -1,810,000 |
| Sources of funds | | | |
| State | 79,961,670 | 78,151,670 | -1,810,000 |
| Federal | 10,445,000 | 10,445,000 | 0 |
| Interdep't transfer | 100,000 | 100,000 | 0 |
| Total | 90,506,670 | 88,696,670 | -1,810,000 |

(b) The reduction in authorized maintenance program spending under subsection (a) of this section shall be allocated among maintenance activities as specified by the Secretary.

* * * Paving * * *

Sec. 4. PROGRAM DEVELOPMENT – PAVING

(a) Spending authority for the statewide–district leveling activity within the program development–paving program is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| PE | 0 | 0 | 0 |
| Construction | 6,000,000 | 5,338,000 | -662,000 |
| Total | 6,000,000 | 5,338,000 | -662,000 |
| Sources of funds | | | |
| State | 6,000,000 | 5,338,000 | -662,000 |
| TIB | 0 | 0 | 0 |
| Federal | 0 | 0 | 0 |
| Total | 6,000,000 | 5,338,000 | -662,000 |

(b) Spending authority for the Bethel–Randolph Resurface VT 12 project (STP 2921()) is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|

| | | | |
|---|---|---|---|
| PE | 0 | 0 | 0 |
| Construction | 5,200,000 | 5,200,000 | 0 |
| Total | 5,200,000 | 5,200,000 | 0 |
| Sources of funds | | | |
| State | 1,585,563 | 983,840 | -601,723 |
| TIB | -601,723 | 0 | 601,723 |
| Federal | 4,216,160 | 4,216,160 | 0 |
| Total | 5,200,000 | 5,200,000 | 0 |

(c) Spending authority for the Bolton–Waterbury Resurface US 2 project (STP 2709(1)) is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| PE | 0 | 0 | 0 |
| Construction | 6,530,000 | 6,530,000 | 0 |
| Total | 6,530,000 | 6,530,000 | 0 |
| Sources of funds | | | |
| State | 0 | 601,723 | 601,723 |
| TIB | 1,235,476 | 633,753 | -601,723 |
| Federal | 5,294,524 | 5,294,524 | 0 |
| Total | 6,530,000 | 6,530,000 | 0 |

(d) Spending authority on the Weathersfield Resurface VT 131 project (STP 2913(1)) within the program development – paving program is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| PE | 0 | 0 | 0 |
| Construction | 5,000,000 | 5,000,000 | 0 |
| Total | 5,000,000 | 5,000,000 | 0 |
| Sources of funds | | | |
| State | 946,000 | 696,000 | -250,000 |
| TIB | 0 | 250,000 | 250,000 |
| Federal | 4,054,000 | 4,054,000 | 0 |
| Total | 5,000,000 | 5,000,000 | 0 |

* * * Rest Areas * * *

Sec. 5. REST AREAS

Spending authority on the Derby–Welcome Center project within the rest area program is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| PE | 50,000 | 50,000 | 0 |

| | | | |
|---|---|---|---|
| Construction | 2,500,000 | 0 | -2,500,000 |
| Total | 2,550,000 | 50,000 | -2,500,000 |
| Sources of funds | | | |
| State | 0 | 0 | 0 |
| TIB | 255,000 | 5,000 | -250,000 |
| Federal | 2,295,000 | 45,000 | -2,250,000 |
| Total | 2,550,000 | 50,000 | -2,500,000 |

* * * Rail * * *

Sec. 6. RAIL

(a) The Secretary shall reduce by $600,000.00 the spending of fiscal year 2014 state transportation funds on projects or activities within the rail program selected at his or her discretion.

(b) Authorized spending in the fiscal year 2014 rail program shall be reduced by $200,000.00 in transportation funds, and $500,000.00 in TIB funds, which were previously authorized in the fiscal year 2013 transportation program and appropriated in the 2013 appropriations bill.

Sec. 7. CANCELLATION OF RAIL PROJECTS

Pursuant to 19 V.S.A. § 10g(h) (legislative approval for cancellation of projects), the General Assembly approves cancellation of the following rail projects:

(1) Salisbury-Middlebury – 05G342 – Rail Improvements;

(2) White River Junction-Newport – 05G350 – Improve RR Bridges;

(3) Proctor-New Haven – STRB(37) – 08G090 – Repair and/or Replace 6 Bridges;

(4) Middlebury – WCRS( ) – 09G108 – Bridge 236;

(5) Waterbury – STP 2036(10) – 09G364 – Crossing;

(6) Rutland–Fair Haven – 09G372 – 2 Miles of CWR;

(7) Rutland–Fair Haven – 11G254 – Crossings.

Sec. 8. PITTSFORD BRIDGE 219 PROJECT

For the Pittsford Bridge 219 Project (HPP ABRB(9)), the estimate of total construction costs of $10,350,000.00 is deleted and replaced with the amount of $2,100,000.00, and the estimate of the total cost of all activities of $11,863,814.00 is deleted and replaced with the amount of $3,613,814.00.

* * * Amtrak Vermont Services; Fares * * *

Sec. 8a. AMTRAK VERMONT SERVICES; FARES

The Agency shall work with Amtrak and other states with which Vermont has agreements under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) to implement as soon as possible fares that maximize revenues for Vermont. The goal of the change in fares is to reduce by at least 20 percent the amount of the year-over-year increase in Vermont's subsidy to Amtrak required under PRIIA in fiscal year 2014.

* * * Aviation * * *

Sec. 9. AVIATION

(a) Spending authority on the Statewide-Airport Facilities Maintenance and Improvements project (AIR 04-3144) within the aviation program is amended to read:

| FY14 | As Proposed | As Amended | Change |
|---|---|---|---|
| Construction | 1,850,758 | 1,710,758 | -140,000 |
| Total | 1,850,758 | 1,710,758 | -140,000 |
| Sources of funds | | | |
| State | 1,810,758 | 1,670,758 | -140,000 |
| TIB | 0 | 0 | 0 |
| Federal | 40,000 | 40,000 | 0 |
| Total | 1,850,758 | 1,710,758 | -140,000 |

(b) The Secretary shall reduce the spending of state transportation funds on activities within the Statewide-Airport Facilities Maintenance and Improvements project selected at his or her discretion in the amount specified in subsection (a) of this section.

* * * Fiscal Year 2014 Transportation Infrastructure Bonds * * *

Sec. 10. 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 $11,700,000.00 for the purpose of funding:

(1) the spending authorized in Sec. 11 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. 11. TRANSPORTATION INFRASTRUCTURE BONDS; SPENDING

AUTHORITY

The amount of $10,387,500.00 from the issuance of transportation infrastructure bonds is authorized for expenditure in fiscal year 2014 on eligible projects as defined in 32 V.S.A. § 972(d) on projects in the State's fiscal year 2014 program development program.

* * * Transportation Alternatives Grant Program* * *

Sec. 12. 19 V.S.A. § 38 is amended to read:

§ 38. TRANSPORTATION ~~ENHANCEMENT~~ ALTERNATIVES GRANT PROGRAM

(a) The ~~Vermont transportation enhancement grant committee~~ Transportation Alternatives Grant Committee is created and shall be comprised of:

(1) the ~~secretary of transportation~~ Secretary of Transportation or his or her designee~~,~~;

(2) a representative from the ~~division of historic preservation~~ Division of Historic Preservation appointed by the ~~secretary of the agency of commerce and community development~~ Secretary of Commerce and Community Development~~,~~;

(3) one member ~~to be~~ appointed by the ~~secretary of the agency of commerce and community development~~ Secretary of Commerce and Community Development to represent the tourism and marketing industry~~,~~;

(4) a representative of the ~~agency of natural resources~~ Agency of Natural Resources appointed by the ~~secretary of the agency of natural resources,~~ Secretary of Natural Resources;

(5) three municipal representatives appointed by the governing body of the Vermont ~~league of cities and towns,~~ League of Cities and Towns;

(6) one member representing and appointed by the governing board of the Vermont ~~association of planning and development agencies,~~ Association of Planning and Development Agencies;

(7) two members from the ~~house~~ House designated by the ~~speaker,~~ Speaker; and

(8) two members from the ~~senate~~ Senate designated by the ~~committee on committees~~ Committee on Committees.

(b) Municipal and legislative members of the Transportation Alternatives Grant Committee shall serve concurrently for two-year terms and the initial appointments of these members shall be made in a manner which allows for

them to serve a full legislative biennium. In the event a municipal or legislative member ceases to serve on the ~~committee~~ Committee prior to the full term, the appointing authority shall fill the position for the remainder of the term. The ~~committee~~ Committee shall, to the greatest extent practicable, encompass a broad geographic representation of Vermont.

~~(b)~~(c) The ~~Vermont transportation enhancement grant program~~ Transportation Alternatives Grant Program is created. The ~~grant program shall be funded as provided in subsection (c) of this section and~~ Grant Program shall be administered by the ~~agency~~ Agency, and shall be funded in the amount provided for in 23 U.S.C. § 213(a), less the funds set aside for the Recreational Trails Program as specified in 23 U.S.C. § 213(f). ~~The grant program~~ Awards shall be made to eligible entities as defined under 23 U.S.C. § 213(c)(4), and awards under the Grant Program shall be limited to ~~enhancement~~ the activities ~~as defined in~~ described at 23 U.S.C. § ~~101(a)(35) which are sponsored by municipalities, nonprofit organizations, or political subdivisions of the state other than the agency~~ 213(b) other than Recreational Trails Program grants.

(d) Eligible ~~applicants~~ entities awarded a grant must provide all funds required to match federal funds awarded for ~~an enhancement~~ a transportation alternatives project. All grant awards shall be decided and awarded by the ~~transportation enhancement grant committee~~ Transportation Alternatives Grant Committee.

~~(c) The following federal aid highway program funds received by the state under the federal aid highway reauthorization act, and succeeding reauthorization acts, that succeed the Transportation Equity Act for the 21st Century (Public Law 105-178 as amended) shall be exclusively reserved to cover the costs of enhancement projects awarded grants under the Vermont transportation enhancement grant program with respect to federal fiscal years 2004 and thereafter:~~

~~(1) at a minimum, four percent of the state's apportionment of surface transportation funds received by the state under 23 U.S.C. § 104(b)(3) over the life of the applicable federal reauthorization act; and, if greater,~~

~~(2) at a maximum, the state's apportionment of federal aid highway program funds that are exclusively reserved for transportation enhancement activities under 23 U.S.C. § 133(d)(2) received by the state over the life of the applicable federal reauthorization act.~~

~~(d) For each fiscal year starting with fiscal year 2005, the agency shall determine or estimate as required:~~

~~(1) the state's apportionment of surface transportation program funds which the state expects to receive under 23 U.S.C. § 104(b)(3) with respect to~~

~~the equivalent federal fiscal year; and~~

~~(2) the state's pro rata apportionment of federal aid highway program funds which are exclusively reserved for transportation enhancement activities under 23 U.S.C. 133(d)(2). To determine the pro rata amount, the agency shall estimate the total amount of exclusively reserved funds expected to be received by the state over the life of the applicable federal reauthorization act, subtract the total amount of enhancement grants awarded under this section with respect to prior federal fiscal years of the applicable federal reauthorization act, and divide the resulting sum by the number of years remaining in the life of the applicable federal reauthorization act. The agency shall adjust the amounts determined under subdivisions (1) and (2) of this subsection to account for any differences between estimates made, actual appropriations received, and enhancement grants awarded with respect to applicable prior federal fiscal years.~~

~~(e)(1) For each fiscal year starting with fiscal year 2005, the state's enhancement grant program for the fiscal year shall be at the discretion of the secretary:~~

~~(A) at a minimum, four percent of the adjusted amount ascertained by the agency under subdivision (d)(1) of this section; and~~

~~(B) at a maximum, the adjusted amount ascertained by the agency under subdivision (d)(2) of this section.~~

~~(2) The agency shall plan its budget accordingly and advise the general assembly in its recommended budget:~~

~~(A) if sufficient information is available to determine a sum certain, of the amount of the enhancement grant program; or~~

~~(B) if sufficient information is not available to determine a sum certain, of the range within which the agency estimates the size of the enhancement grant program will be.~~

~~(f)~~(e) ~~Enhancement~~ Transportation alternatives grant awards shall be announced annually by the ~~transportation enhancement grant committee~~ Transportation Alternatives Grant Committee not earlier than December and not later than the following March ~~of the federal fiscal year of the federal funds being committed by the grant awards~~.

~~(g)~~(f) Each year, ~~up to~~ $200,000.00 of the grant program or such lesser sum if all eligible applications amount to less than $200,000.00 shall be reserved for municipalities for eligible salt and sand shed projects. Grant awards for eligible projects shall not exceed $50,000.00 per project. Regarding the balance of grant program funds, in evaluating applications for ~~enhancement~~

transportation alternatives grants, the ~~transportation enhancement grant committee~~ Transportation Alternatives Grant Committee shall give preferential weighting to projects involving as a primary feature a bicycle or pedestrian facility. The degree of preferential weighting and the circumstantial factors sufficient to overcome the weighting shall be in the complete discretion of the ~~transportation enhancement grant committee~~ Transportation Alternatives Grant Committee.

~~(h)~~(g) The ~~agency~~ Agency shall develop an outreach and marketing effort designed to provide information to communities with respect to the benefits of participating in the ~~enhancement program~~ Transportation Alternatives Grant Program. The outreach and marketing activities shall include apprising municipalities of the availability of grants for salt and sand sheds. The outreach effort should be directed to areas of the ~~state~~ State historically underserved by this program.

Sec. 12a. 19 V.S.A. § 42 is amended 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), 10e(c), 10g, 11f(i), 12a, and 12b(d)~~, and 38(e)(2)~~ of this title shall be preserved absent specific action by the ~~general assembly~~ General Assembly repealing the reports or reporting requirements.

Sec. 13. TRANSPORTATION ALTERNATIVES GRANT PROGRAM PRIORITIES; CONFORMING AMENDMENTS

2012 Acts and Resolves No. 153, Sec. 24 is amended to read:

Sec. 24. ~~ENHANCEMENT~~ TRANSPORTATION ALTERNATIVES 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)~~ 38(f), in evaluating applications for ~~enhancement~~ transportation alternatives grants in fiscal years ~~2013,~~ 2014~~,~~ and 2015, the ~~transportation enhancement grant committee~~ Transportation Alternatives 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~~ 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~~ Transportation Alternatives Grant Committee.

* * * Central Garage * * *

Sec. 14. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2014, 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.

* * * State Highways; Relinquishment to Municipal Control * * *

Sec. 15. 19 V.S.A. § 15 is amended to read:

§ 15. CHANGES IN THE STATE HIGHWAY SYSTEM

(a) ~~Highways~~ Except as provided in subsection (b) of this section, highways may be added to or deleted from the state highway system by:

(1) ~~legislative action~~ an act of the General Assembly; or

(2) a proposal by the ~~agency~~ Agency which is accepted by the legislative body of the affected municipality and approved by an act of the ~~general assembly~~ General Assembly.

(b) Upon entering into an agreement with the affected municipality, the Secretary may relinquish to municipal control segments of state highway rights-of-way that have been replaced by new construction and are no longer needed as part of the state highway system. Upon their relinquishment to municipal control, the segments shall become class 3 town highways, and may be reclassified by the municipality in accordance with chapter 7 of this title.

* * * State Highway System; Town of Clarendon * * *

Sec. 15a. STATE HIGHWAY SYSTEM; TOWN OF CLARENDON

Pursuant to 19 V.S.A. § 15, the General Assembly approves the addition to the state highway system of a segment of Airport Road (TH #7) in the Town of Clarendon extending from its intersection with Vermont Route 103 to the main entrance of the Rutland–Southern Vermont Regional Airport. The existing 35 miles per hour speed limit on this segment of Airport Road shall remain in force after its transfer to the state highway system, unless and until the Traffic Committee alters the speed limit pursuant to 23 V.S.A. § 1003.

* * * Transportation Board; Small Claims Against the Agency * * *

Sec. 16. 19 V.S.A. § 20 is amended to read:

§ 20. SMALL CLAIMS FOR INJURY OR DAMAGE

~~When a claim~~ ~~is~~ The Board shall have exclusive jurisdiction over claims of $5,000.00 or less made for personal injuries or property damage, or both, sustained as the result of the negligence of any employee of the ~~agency, the~~

~~board~~ Agency. The Board may hear all parties in interest and may award damages not to exceed ~~$2,000.00~~ $5,000.00. When the Board awards damages ~~are awarded, the board,~~ it shall certify its ~~findings~~ decision to the ~~commissioner of finance and management who~~ Commissioner of Finance and Management. Upon the disposition of any appeal or the expiration or waiver of all appeal rights, the Commissioner of Finance and Management shall issue his or her warrant for the amount of the award, with payment in the manner prescribed by 12 V.S.A. § 5604.

* * * Limited Access Facilities; Fair Market Value Rent * * *

Sec. 17. 19 V.S.A. § 26a is amended to read:

§ 26a. DETERMINATION OF RENT TO BE CHARGED FOR LEASING OR LICENSING STATE-OWNED PROPERTY UNDER THE AGENCY'S JURISDICTION

(a) Except as otherwise provided by subsection (b) of this section, or as otherwise provided by law, leases or licenses negotiated by the ~~agency~~ Agency under 5 V.S.A. §§ 204 and 3405 and ~~section~~ sections 26 and 1703(d) of this title ordinarily shall require the payment of fair market value rent, as determined by the prevailing area market prices for comparable space or property. However, the ~~agency~~ Agency may lease or license state-owned property under its jurisdiction for less than fair market value when the ~~agency~~ Agency determines that the proposed occupancy or use serves a public purpose or that there exist other relevant factors, such as a prior course of dealing between the parties, that justify setting rent at less than fair market value.

* * *

* * * Emergency Repairs; Condemnation Authority * * *

Sec. 18. 19 V.S.A. § 518 is amended to read:

§ 518. MINOR ALTERATIONS TO EXISTING FACILITIES

(a) For purposes of this section, the term "minor alterations to existing facilities" means any of the following activities involving existing facilities, provided the activity does not require a permit under 10 V.S.A. chapter 151 (Act 250):

(1) Activities which qualify as "categorical exclusions" under 23 C.F.R. § 771.117~~(c)~~ and the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321–4347~~, and do not require a permit under 10 V.S.A. chapter 151 (Act 250)~~; or

(2) Activities involving emergency repairs to or emergency replacement of an existing bridge ~~or,~~ culvert, highway, or state-owned railroad,

even ~~though~~ if the need for repairs or replacement does not arise from damage caused by a natural disaster or catastrophic failure from an external cause~~; provided, however, that the activities do not require a permit under 10 V.S.A. chapter 151 (Act 250)~~. Any temporary rights under this subdivision shall be limited to 10 years from the date of taking.

(b) In cases involving minor alterations to existing facilities, the ~~agency~~ Agency, following the procedures of section 923 of this title, may exercise the powers of a selectboard. If an appeal is taken under subdivision 923(5) of this title, the person taking the appeal shall follow the procedure specified in section 513 of this title.

* * * Secretary's Authority with Regard to Junkyards * * *

Sec. 19. 19 V.S.A. § 7(f) is amended to read:

(f) The ~~secretary~~ Secretary may:

* * *

(7) organize, reorganize, transfer, or abolish sections and staff function sections within the ~~agency~~ Agency; except however, the ~~secretary~~ Secretary may not alter the number of highway districts without legislative approval~~; and~~

~~(8) adopt rules regarding the operation of junkyards~~.

* * * State Highway Closures * * *

Sec. 20. 19 V.S.A. § 43 is amended to read:

§ 43. STATE HIGHWAY CLOSURES

(a) For purposes of this section, the phrase "planned closure of a state highway" means the closure of a state highway for more than 48 hours for a project that is part of the State's annual transportation program. The phrase does not include emergency projects, or closures of 48 hours or less for maintenance work.

(b) Before the planned closure of a state highway, the ~~agency~~ Agency shall:

(1) contact the legislative body of any municipality affected by the closure to determine whether the legislative body wishes to convene a regional public meeting for the purpose of ~~listening to~~ hearing public concerns~~. The agency~~ regarding the planned closure; and

(2) conduct a regional public meeting if requested by the legislative body of a municipality affected by the closure.

(c) To address concerns raised at a meeting held pursuant to subsection (b) of this section or otherwise to reduce adverse impacts of the planned closure of

a state highway, the Agency shall consult with other state agencies and departments, regional chambers of commerce, regional planning commissions, local legislative bodies, emergency medical service organizations, school officials, and area businesses to develop mitigation strategies ~~to reduce the impact of the planned closure on the local and regional economies~~.

~~(b)~~(d) In developing mitigation strategies, the ~~agency~~ Agency shall consider the need to provide a level of safety for the traveling public comparable to that available on the segment of state highway affected by the planned closure. If the ~~agency~~ Agency finds town highways unsuitable for a signed detour, the ~~agency~~ Agency will advise local legislative bodies of the reasons for its determination.

* * * Taxation of Diesel and Motor Fuels * * *

Sec. 21. 23 V.S.A. § 3003 is amended to read:

§ 3003. IMPOSITION OF TAX; EXCEPTIONS

(a) A tax of ~~$0.25~~ $0.27, a fee of $0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a $0.03 motor fuel transportation infrastructure assessment~~,~~ which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

(1) sold or delivered by a distributor; or

(2) used by a user.

* * *

Sec. 22. 23 V.S.A. § 3003 is amended to read:

(a) A tax of ~~$0.27~~ $0.29, a fee of $0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a $0.03 motor fuel transportation infrastructure assessment which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

(1) sold or delivered by a distributor; or

(2) used by a user.

* * *

Sec. 23. 23 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this ~~state~~ State, which sales shall be exempt from the ~~tax and from the motor fuel~~

~~transportation infrastructure assessment~~ taxes and assessments authorized under this section, ~~in all cases not~~ unless exempt ~~from the tax~~ under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the ~~commissioner~~ Commissioner:

(A) a tax of ~~$0.19~~ $0.115 upon each gallon of motor fuel sold by the distributor~~,~~; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor~~, exclusive of: all federal and state taxes, the petroleum distributor licensing fee established by 10 V.S.A. § 1942, and the motor fuel transportation infrastructure assessment authorized by this section. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January-March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter~~; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) $0.134 per gallon; or

(II) four percent of the tax-adjusted retail price or $0.18 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.

(2) For the purposes of subdivision (1)(B) of this subsection, the retail price applicable for a quarter shall be the average of the monthly retail prices for regular gasoline determined and published by the Department of Public Service for the three months of the preceding quarter. The tax-adjusted retail price applicable for a quarter shall be the retail price exclusive of: all federal and state taxes and assessments, and the petroleum distributor licensing fee established by 10 V.S.A. § 1942, at the rates applicable in the preceding quarter.

(3) The distributor shall also pay to the ~~commissioner a tax and a motor fuel transportation infrastructure assessment in the same amounts~~ Commissioner the tax and assessments specified in this subsection upon each

gallon of motor fuel used within the ~~state~~ State by him or her.

* * *

Sec. 24. MOTOR FUEL ASSESSMENTS: MAY 1, 2013–SEPTEMBER 30, 2013

Notwithstanding the provisions of 23 V.S.A. § 3106(a)(1)(B) and 3106(a)(2), from May 1, 2013 through September 30, 2013, the motor fuel transportation infrastructure assessment required under 23 V.S.A. § 3106(a)(1)(B)(i) shall be $0.0656 per gallon, and the fuel tax assessment required under 23 V.S.A. § 3106(a)(1)(B)(ii) shall be $0.134 per gallon.

* * * DUI Special Enforcement Fund * * *

Sec. 25. 23 V.S.A. § 1220a(b) is amended to read:

(b) The DUI enforcement special fund shall consist of:

(1) receipts from the surcharges assessed under section 206 and subsections 674(i), 1091(d), 1094(f), 1128(d), 1133(d), 1205(r), and 1210(k) of this title;

(2) beginning in fiscal year 2000 and thereafter, the first $150,000.00 of revenues collected from fines imposed under subchapter 13 of chapter 13 of this title pertaining to DUI related offenses;

(3) beginning ~~in fiscal year 2000~~ May 1, 2013 and thereafter, ~~two percent~~ $0.0038 per gallon of the revenues raised by the motor fuel tax on gasoline imposed by chapter 28 of this title; and

(4) any additional funds transferred or appropriated by the ~~general assembly~~ General Assembly.

* * * Transfer of Position * * *

Sec. 26. TRANSFER OF POSITION

Effective May 1, 2013, one position (080134) and any funds related thereto are transferred from the Department of Taxes to the Department of Motor Vehicles.

* * * Appropriation of Transportation Funds * * *

Sec. 27. 19 V.S.A. § 11a is amended to read:

§ 11a. TRANSPORTATION FUNDS APPROPRIATED FOR THE DEPARTMENT OF PUBLIC SAFETY

No transportation funds shall be appropriated for the support of government other than for the ~~agency of transportation~~ Agency, the ~~transportation board~~

Board, transportation pay act funds, construction of transportation capital facilities ~~used by the agency of transportation~~, transportation debt service, the ~~department of buildings and general services~~ operation of information centers by the Department of Buildings and General Services, and the ~~department of public safety~~ Department of Public Safety. The amount of transportation funds appropriated to the ~~department of public safety~~ Department of Public Safety shall not exceed:

(1) $25,250,000.00 in fiscal year 2014;

(2) $22,750,000.00 in fiscal year 2015; and

(3) $20,250,000.00 in fiscal year 2016 and in succeeding fiscal years.

* * *

* * * Electric Vehicles; Contribution to Transportation Fund; Study * * *

Sec. 28. STUDY OF CHARGES ON ELECTRICITY USED TO POWER PLUG-IN ELECTRIC VEHICLES

(a) The Commissioner of Public Service or designee and the Commissioner of Taxes or designee (collectively, the "Commissioners"), in consultation with the Public Service Board, the Commissioner of Motor Vehicles or designee, the Joint Fiscal Office, and any other persons or entities the Commissioners deem appropriate, shall study the feasibility, alternative implementation mechanisms, and timeline for replacing, in whole or in part, motor fuel tax revenues not collected from operators of plug-in hybrid and all-electric vehicles. The Commissioners shall develop recommendations as to the most reasonable and efficient mechanisms, and a realistic time frame, to charge operators of plug-in hybrid and all-electric vehicles for their use of transportation infrastructure so as to contribute to the Transportation Fund.

(b) On or before December 15, 2013, the Commissioners shall submit a written report of their findings and recommendations to the House and Senate Committees on Transportation. The Commissioners' report shall also identify which recommendations would require legislative action and include proposed legislation to implement any recommendations requiring legislative action.

* * * Propane and Natural Gas-Powered Vehicles; Study * * *

Sec. 29. PROPANE AND NATURAL GAS-POWERED VEHICLES; STUDY

(a)(1) In Act 153 of 2012, the General Assembly required that effective on July 1, 2013, the sales and use tax on natural gas used to propel a motor vehicle be allocated to the Transportation Fund. The applicable sales and use tax rate is six percent. Act 153 did not address propane used to propel motor

vehicles.

(2) In a November 5, 2012 report submitted pursuant to 2012 Acts and Resolves No. 153, Sec. 39, the Vermont Energy Investment Corporation found that the six percent sales and use tax rate on natural gas would be insufficient to replace motor fuel or diesel tax revenues not collected from operators of motor vehicles propelled by natural gas. The report did not address motor vehicles propelled by propane.

(b) The Commissioner of Motor Vehicles or designee ("Commissioner"), in consultation with the Commissioner of Taxes or designee, the Joint Fiscal Office, and any other persons or entities the Commissioner deems appropriate, shall study mechanisms to charge operators of motor vehicles propelled by natural gas or by propane for their use of the transportation system, so as to replace, in whole or in part, motor fuel or diesel tax revenues not collected from such operators. The Commissioner shall formulate recommendations on the most reasonable and efficient mechanisms to charge such operators and identify implementation steps required.

(c) On or before December 15, 2013, the Commissioner shall submit a written report of his or her findings and recommendations to the House and Senate Committees on Transportation. The Commissioner's report shall also identify which recommendations would require legislative action and include proposed legislation to implement any recommendations requiring legislative action.

* * * State Facilities Served by Town Highways * * *

Sec. 30. STATE FACILITIES SERVED BY TOWN HIGHWAYS

(a) The General Assembly finds that access to state parks and other state facilities is critical for the State and its economy. For state parks and state facilities that are primarily accessible by class 3 and 4 town highways, no state funding source other than general town highway aid exists to assist municipalities with the maintenance and rehabilitation of these highways.

(b) A Study Committee is established consisting of:

(1) the Secretary of Transportation or designee, who shall chair the committee;

(2) the Commissioner of Forests, Parks and Recreation or designee;

(3) the Commissioner of Buildings and General Services or designee;

(4) a member designated by the Vermont League of Cities and Towns.

(c) The Study Committee shall examine the condition of class 3 and 4 town highways that serve as primary access roads to state parks and other state

facilities used by the public, alternative mechanisms for the State to assist municipalities with the maintenance or rehabilitation of such town highways, the appropriate municipal share for projects to maintain or rehabilitate such highways and whether a cap on any state assistance is appropriate, and the potential fiscal impact to the State of the alternative mechanisms reviewed by the Committee. The Committee shall formulate recommendations for consideration by the General Assembly as to whether and how the State should assist municipalities in maintaining and rehabilitating the town highways described in this subsection.

(d) On or before December 15, 2013, the Study Committee shall submit a written report of its findings and recommendations to the House and Senate Committees on Transportation.

Sec. 30a. SCHOOL BUS PILOT PROGRAM

(a) Definitions. As used in this section, the term "person" shall have the same meaning as in 1 V.S.A. § 128, and the term "Type II school bus" shall have the same meaning as in 23 V.S.A. § 4(34)(C).

(b) Pilot program. Upon application, the Commissioner of Motor Vehicles shall approve up to three persons who satisfy the requirements of this section to participate in a pilot program. Pilot program participants shall be authorized to operate on Vermont highways Type II school buses registered in this State that are retrofitted with an auxiliary fuel tank to enable the use of biodiesel, waste vegetable oil, or straight vegetable oil, provided the school bus has passed inspection in accordance with subdivision (c)(3) of this section and the bus and its auxiliary tank comply with the Federal Motor Vehicle Safety Standards applicable to Type II school buses. If more than three persons apply to participate in the pilot program, the Commissioner shall give priority to applicants who seek to install the auxiliary fuel tank in connection with a student-led or student-generated school project.

(c) Documentation; requirements. The Commissioner may prescribe that applicants furnish information necessary to implement the pilot program. After an applicant furnishes such information and is approved, the Commissioner shall provide the person with documentation of the person's selection under the pilot program and the expiration date of the program. If the approved person is a municipality or another legal entity, the Commissioner's documentation shall list the specific individuals authorized to operate the Type II school bus. The Commissioner's documentation shall:

(1) be carried in the school bus while it is operated on a highway;

(2) constitute and be recognized by enforcement officers in Vermont as a waiver, until expiration of the pilot program, of those provisions of 23 V.S.A.

§§ 4(37), 1221, and 1283(a)(6) and of any rule that would prohibit school buses retrofitted with auxiliary fuel tanks from lawfully operating on Vermont highways; and

(3) be recognized by authorized inspection stations as a waiver of the prohibition on auxiliary or added fuel tanks, and of the requirement that buses only be equipped with such motor fuel tanks as are regularly installed by the manufacturer, specified in the School Bus Periodic Inspection Manual ("Inspection Manual"); provided, however, that no school bus equipped with an auxiliary or added fuel tank shall pass inspection unless all other requirements of the Inspection Manual regarding fuel systems are satisfied.

(d) Expiration. The pilot program established and the waivers granted under this section shall expire on September 1, 2015.

* * * Effective Dates * * *

Sec. 31. EFFECTIVE DATES

(a) This section, Sec. 8a (Amtrak Vermont services), Sec. 10 (authority to issue transportation infrastructure bonds), Sec. 15a (addition to state highway system), and Sec. 30a (school bus pilot program) of this act shall take effect on passage.

(b) Secs. 23–26 of this act shall take effect on May 1, 2013.

(c) Sec. 22 (taxation of diesel at $0.29 per gallon) of this act shall take effect on July 1, 2014.

(d) All other sections of this act shall take effect on July 1, 2013.

(No House Amendments )

**Amendment to be offered by Rep. Brennan of Colchester to H. 510**

Rep. Brennan of Colchester moves that the House concur in the Senate proposals of amendment with a further amendment thereto as follows:

First: By striking Secs. 22, 23, and 24 in their entirety and by inserting in lieu thereof the following:

Sec. 22. 23 V.S.A. § 3003 is amended to read:

§ 3003. IMPOSITION OF TAX; EXCEPTIONS

(a) A tax of ~~$0.27~~ $0.28, a fee of $0.01 established pursuant to the provisions of 10 V.S.A. § 1942, and a $0.03 motor fuel transportation infrastructure assessment which for purposes of the International Fuel Tax Agreement only shall be deemed to be a surcharge, are imposed on each gallon of fuel:

(1) sold or delivered by a distributor; or

(2) used by a user.

* * *

Sec. 23. 23 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this ~~state~~ State, which sales shall be exempt from the ~~tax and from the motor fuel transportation infrastructure assessment~~ taxes and assessments authorized under this section, ~~in all cases not~~ unless exempt ~~from the tax~~ under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the ~~commissioner~~ Commissioner:

(A) a tax of ~~$0.19~~ $0.182 upon each gallon of motor fuel sold by the distributor~~,~~; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor~~, exclusive of: all federal and state taxes, the petroleum distributor licensing fee established by 10 V.S.A. § 1942, and the motor fuel transportation infrastructure assessment authorized by this section. The retail price shall be based upon the average retail prices for regular gasoline determined and published by the department of public service. The retail price applicable for the January–March quarter shall be the average of the retail prices published by the department of public service the prior October, November, and December; and the retail price applicable in each succeeding calendar quarter shall be equal to the average of the retail prices published by the department of public service in the preceding quarter~~; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) $0.067 per gallon; or

(II) two percent of the tax-adjusted retail price or $0.09 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.

(2) For the purposes of subdivision (1)(B) of this subsection, the retail price applicable for a quarter shall be the average of the monthly retail prices for regular gasoline determined and published by the Department of Public

Service for the three months of the preceding quarter. The tax-adjusted retail price applicable for a quarter shall be the retail price exclusive of all federal and state taxes and assessments, and the petroleum distributor licensing fee established by 10 V.S.A. § 1942, at the rates applicable in the preceding quarter.

(3) The consolidated executive branch fee report and request for transportation made pursuant to 32 V.S.A. § 605(b)(1) may recommend an adjustment in the tax specified in subdivision (1)(A) of this subsection to reflect changes in the Consumer Price Index for All Urban Consumers.

(4) The distributor shall also pay to the ~~commissioner a tax and a motor fuel transportation infrastructure assessment in the same amounts~~ Commissioner the tax and assessments specified in this subsection upon each gallon of motor fuel used within the ~~state~~ State by him or her.

* * *

Sec. 23a. 23 V.S.A. § 3106 is amended to read:

§ 3106. IMPOSITION, RATE, AND PAYMENT OF TAX

(a)(1) Except for sales of motor fuels between distributors licensed in this State, which sales shall be exempt from the taxes and assessments authorized under this section, unless exempt under the laws of the United States at the time of filing the report required by section 3108 of this title, each distributor shall pay to the Commissioner:

(A) a tax of ~~$0.182~~ $0.121 upon each gallon of motor fuel sold by the distributor; and

(B) the following assessments, which shall be levied on the tax-adjusted retail price of gasoline as defined herein:

(i) a motor fuel transportation infrastructure assessment in the amount of two percent of the tax-adjusted retail price upon each gallon of motor fuel sold by the distributor; and

(ii) a fuel tax assessment, which shall be used exclusively for transportation purposes and not be transferred from the Transportation Fund, that is the greater of:

(I) ~~$0.067~~ $0.134 per gallon; or

(II) ~~two~~ four percent of the tax-adjusted retail price or ~~$0.09~~ $0.18 per gallon, whichever is less, upon each gallon of motor fuel sold by the distributor.

* * *

Sec. 24. MOTOR FUEL ASSESSMENTS: MAY 1, 2013–SEPTEMBER 30, 2013

Notwithstanding the provisions of 23 V.S.A. § 3106(a)(1)(B) and 3106(a)(2), from May 1, 2013 through September 30, 2013, the motor fuel transportation infrastructure assessment required under 23 V.S.A. § 3106(a)(1)(B)(i) shall be $0.0656 per gallon, and the fuel tax assessment required under 23 V.S.A. § 3106(a)(1)(B)(ii) shall be $0.067 per gallon.

Second: By striking Sec. 31 in its entirety and by inserting in lieu thereof the following:

* * * Effective Dates * * *

Sec. 31. EFFECTIVE DATES

(a) This section, Sec. 8a (Amtrak Vermont services), Sec. 10 (authority to issue transportation infrastructure bonds), Sec. 15a (addition to state highway system), and Sec. 30a (school bus pilot program) of this act shall take effect on passage.

(b) Secs. 23, 24, 25, and 26 of this act shall take effect on May 1, 2013.

(c) Secs. 22 (taxation of diesel) and 23a (taxation of motor fuel) of this act shall take effect on July 1, 2014.

(d) All other sections of this act shall take effect on July 1, 2013.

## NOTICE CALENDAR

### Favorable with Amendment

### S. 14

An act relating to payment of fair-share fees

**Rep. Moran of Wardsboro,** for the Committee on **General, Housing and Military Affairs,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * State Employees * * *

Sec. 1. 3 V.S.A. § 902 is amended to read:

§ 902. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(19) "Collective bargaining service fee" means a fee deducted by an employer from the salary or wages of an employee who is not a member of an

employee organization, which is paid to the employee organization which is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization, and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization, and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the state~~ of chargeable activities.

Sec. 2. 3 V.S.A. § 903 is amended to read:

§ 903. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section, and to appeal grievances as provided in this chapter.

(b) ~~No~~ A state employee may not strike or recognize a picket line of an employee or labor organization while in the performance of his or her official duties.

(c) An employee who exercises the right not to join the employee organization representing the employee's collective bargaining unit shall pay the collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

(d) All employers, their officers, agents, and employees or representatives shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 904 of this title and to settle all disputes, whether arising out of the application of those agreements~~,~~ or growing out of any dispute between the employer and the employees thereof.

Sec. 3. 3 V.S.A. § 904 is amended to read:

§ 904. SUBJECTS FOR BARGAINING

(a) All matters relating to the relationship between the employer and employees shall be the subject of collective bargaining except those matters

which are prescribed or controlled by statute. Such matters appropriate for collective bargaining to the extent they are not prescribed or controlled by statute include ~~but are not limited to~~:

* * *

(9) ~~Rules~~ rules and regulations for personnel administration, except the following: rules and regulations relating to persons exempt from the classified service under section 311 of this title and rules and regulations relating to applicants for employment in state service and employees in an initial probationary status, including any extension or extensions thereof provided such rules and regulations are not discriminatory by reason of an applicant's race, color, creed, sex, or national origin; and

(10) ~~A collective bargaining service fee~~ the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

* * *

Sec. 4. 3 V.S.A. § 941 is amended to read:

§ 941. UNIT DETERMINATION, CERTIFICATION, AND REPRESENTATION

* * *

(k) Nothing in this chapter requires an individual to seek the assistance of his or her collective bargaining unit or its representative(s) in any grievance proceeding. He or she may represent himself or herself or be represented by counsel of his or her own choice or may avail himself or herself of the unit representative in grievance proceedings. ~~Employees who are eligible for membership in a collective bargaining unit who exercise their right not to join such unit may upon agreement with the unit representative avail themselves of the services of the unit representative(s) in grievance proceedings upon payment to the unit of a fee established by the unit representative, provided that in the event a collective bargaining service fee is negotiated, the unit representative shall represent nonmember employees in grievance proceedings without charge.~~

Sec. 5. 3 V.S.A. § 962 is amended to read:

§ 962. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a collective bargaining fee ~~negotiated pursuant to section~~

~~904 of this title~~ unless such employee organization has established and maintained a procedure to provide nonmembers with:

(A) an audited financial statement that identifies the major categories of expenses, and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the agency fee sought, any amount reasonably in dispute to be placed in escrow;

(C) prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

* * * Judiciary Employees * * *

Sec. 6. 3 V.S.A. § 1011 is amended to read:

§ 1011. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(4) "Collective bargaining service fee," means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, and that fee is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization; shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization; and shall be used to defray the costs ~~incurred by the employee organization in fulfilling its duty to represent the employees in their employment relations with the employer~~ of chargeable activities.

* * *

Sec. 7. 3 V.S.A. § 1012 is amended to read:

§ 1012. EMPLOYEES' RIGHTS AND DUTIES; PROHIBITED ACTS

(a) Employees shall have the right to self-organization; to form, join, or assist employee organizations; to bargain collectively through their chosen representatives; to engage in concerted activities of collective bargaining or other mutual aid or protection; to refrain from any or all those activities, except as provided in ~~subsection (b)~~ subsections (b) and (c) of this section; and to appeal grievances as provided in this chapter.

(b) ~~No~~ An employee may not strike or recognize a picket line of an employee organization while performing the employee's official duties.

(c) An employee who exercises the right not to join the employee

organization representing the employee's certified unit pursuant to section 1021 of this title shall pay a collective bargaining service fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the collective bargaining service fee. Nothing in this section shall require an employer to discharge an employee who does not pay the collective bargaining service fee.

~~(c)~~(d) The employer and employees and the employee's representative shall exert every reasonable effort to make and maintain agreements concerning matters allowable under section 1013 of this title and to settle all disputes, whether arising out of the application of those agreements or growing out of any dispute between the employer and the employees.

Sec. 8. 3 V.S.A. § 1013 is amended to read:

§ 1013. SUBJECTS FOR BARGAINING

All matters relating to the relationship between the employer and employees are subject to collective bargaining, to the extent those matters are not prescribed or controlled by law, including:

* * *

(10) ~~A collective bargaining service fee~~ the manner in which to enforce an employee's obligation to pay the collective bargaining service fee.

Sec. 9. 3 V.S.A. § 1027 is amended to read:

§ 1027. EMPLOYEES

It shall be an unfair labor practice for an employee organization or its agents:

* * *

(10) To charge a ~~negotiated~~ collective bargaining fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) An audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses.

(B) An opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute.

(C) Prompt arbitration by the board to resolve any objection over the amount of the collective bargaining fee.

* * * Teachers * * *

Sec. 10. 16 V.S.A. § 1981 is amended to read:

§ 1981. DEFINITIONS

As used in this chapter unless the context requires otherwise:

* * *

(7) "Agency fee" ~~means a fee for representation in collective bargaining, not exceeding teachers' or administrators' organization dues, payable to the organization which is the exclusive bargaining agent for teachers or administrators in a bargaining unit, from individuals who are not members of the organization~~ means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. The collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 11. 16 V.S.A. § 1982 is amended to read:

§ 1982. RIGHTS

(a) Teachers shall have the right to or not to join, assist, or participate in any teachers' organization of their choosing. However, teachers ~~may be required to pay an agency fee~~ who choose not to join the teachers' organization, recognized as the exclusive representative pursuant to ~~an agreement negotiated under~~ section 1992 of this chapter, shall pay the agency fee in the same manner as teachers who choose to join the teachers' organization pay membership fees. The teachers' organization shall indemnify and hold the school board harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) Principals, assistant principals, and administrators other than superintendent and assistant superintendent shall have the right to or not to join, assist, or participate in any administrators' organization or as a separate unit of any teachers' organization of their choosing. However, subject to the provisions of subsection (d) of this section, administrators other than the superintendent and assistant superintendent ~~may be required to pay an agency fee~~ who choose not to join the administrators' organization, recognized as the exclusive representative pursuant to ~~an agreement negotiated under~~ section

1992 of this chapter, shall pay the agency fee in the same manner as administrators who choose to join the administrators' organization pay membership fees. The administrators' organization agrees to indemnify and hold the school harmless from any and all claims stemming from the implementation or administration of the agency fee.

(c) ~~Neither the~~ The school board ~~nor~~ or any employee of the school board serving in any capacity~~, nor~~ or any other person or organization shall not interfere with, restrain, coerce, or discriminate in any way against or for any teacher or administrator engaged in activities protected by this legislation.

(d) A teachers' or administrators' organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the teachers' or administrators' organization.

(e) Nothing in this section shall require an employer to discharge an employee who does not pay the agency fee.

Sec. 12. 16 V.S.A. § 2004 is amended to read:

§ 2004. AGENDA

The school board, through its negotiations council, shall, upon request, negotiate with representatives of the teachers' or administrators' organization negotiations council on matters of salary, related economic conditions of employment, ~~an~~ the manner in which it will enforce an employee's obligation to pay the agency service fee, procedures for processing complaints and grievances relating to employment, and any mutually agreed upon matters not in conflict with the statutes and laws of the ~~state~~ State of Vermont.

* * * Certain Private Sector Employees * * *

Sec. 13. 21 V.S.A. § 1502 is amended to read:

§ 1502. DEFINITIONS

~~In~~ As used in this chapter ~~the following words shall have the following~~

~~meaning~~:

* * *

(14) "Agency fee" means a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

Sec. 14. 21 V.S.A. § 1503 is amended to read:

§ 1503. RIGHTS OF EMPLOYEES; MUTUAL DUTY TO BARGAIN

(a) Employees shall have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choice, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in ~~section~~ subsection 1621(a) of this title. An employee who exercises the right not to join the labor organization representing the employee's certified unit pursuant to section 1581 of this title shall, subject to subsection (b) of this section, pay the agency fee to the representative of the bargaining unit in the same manner as employees who pay membership fees to the representative. The labor organization agrees to indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency fee.

(b) A labor organization shall not charge the agency fee unless it has established and maintained a procedure to provide nonmembers with:

(1) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(2) an opportunity to object to the amount of the agency fee sought, and to place in escrow any amount reasonably in dispute;

(3) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the teachers' or administrators' organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency fee. The costs of arbitration shall be paid by the labor organization.

Sec. 15. 21 V.S.A. § 1621 is amended to read:

§ 1621. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(6) Nothing in this chapter or any other statute of this state shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection (a) as an unfair labor practice) to require as a condition of employment membership in such labor organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 1583 of this chapter, in the appropriate collective bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 1584 of this chapter within one year preceding the effective date of such agreement, the ~~board~~ Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. ~~No~~ An employer shall not justify any discrimination against an employee for nonmembership in a labor organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents:

* * *

(5) To require employees covered by ~~a~~ the agency fee requirement or other union security agreement authorized under subsection (a) of this section to pay, as a condition precedent to becoming a member of such organization, a fee in an amount which the ~~board~~ Board finds excessive or discriminatory under all the circumstances. In making such a finding, the ~~board~~ Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the

employees affected.

* * *

* * * Municipal Employees * * *

Sec. 16. 21 V.S.A. § 1722 is amended to read;

§ 1722. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

(1) "Agency service fee" means a fee ~~for representation in collective bargaining not exceeding employee organization dues, payable to an employee organization which is the exclusive bargaining agent for employees in a bargaining unit from individuals who are not members of the employee organization~~ a fee deducted by an employer from the salary or wages of an employee who is not a member of an employee organization, which is paid to the employee organization that is the exclusive bargaining agent for the bargaining unit of the employee. A collective bargaining service fee shall not exceed 85 percent of the amount payable as dues by members of the employee organization and shall be deducted in the same manner as dues are deducted from the salary or wages of members of the employee organization and shall be used to defray the costs of chargeable activities.

* * *

Sec. 17. 21 V.S.A. § 1726 is amended to read:

§ 1726. UNFAIR LABOR PRACTICES

(a) It shall be an unfair labor practice for an employer:

* * *

(8) ~~Nothing in this chapter or any other statute of this state shall preclude a municipal employer from making an agreement with the exclusive bargaining agent to require an agency service~~ A municipal employer and the exclusive bargaining agent may agree to require the agency service fee to be paid as a condition of employment, or ~~to~~ require as a condition of employment membership in such employee organization on or after the 30th day following the beginning of such employment or the effective date of such agreement, whichever is the later. Nothing in this section shall require an employer to discharge an employee in the absence of such an agreement. ~~No~~ A municipal employer shall not discharge or discriminate against any employee for nonpayment of ~~an~~ the agency service fee or for nonmembership in an employee organization:

(A) ~~If~~ if the employer has reasonable grounds for believing that

membership was not available to the employee on the same terms and conditions generally applicable to other members; or

(B) ~~If~~ if the employer has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

(b) It shall be an unfair labor practice for an employee organization or its agents:

* * *

(6) ~~To~~ to require employees covered by ~~an~~ the agency service fee ~~agreement~~ requirement or other union security agreement authorized under subsection (a) of this section to pay an initiation fee which the ~~board~~ Board finds excessive or discriminatory under all the circumstances, including the practices and customs of employee organizations representing municipal employees~~,~~ and the wages paid to the employees affected.

* * *

(12) to charge the agency service fee unless the employee organization has established and maintained a procedure to provide nonmembers with all the following:

(A) an audited financial statement that identifies the major categories of expenses and divides them into chargeable and nonchargeable expenses;

(B) an opportunity to object to the amount of the fee requested and to place in escrow any amount reasonably in dispute; and

(C) prompt arbitration by an arbitrator selected jointly by the objecting fee payer and the employee organization or pursuant to the rules of the American Arbitration Association to resolve any objection over the amount of the agency service fee. The costs of arbitration shall be paid by the employee organization.

Sec. 18. 21 V.S.A. § 1734 is amended to read:

§ 1734. MISCELLANEOUS

(a) Municipal employees and exclusive bargaining agents are authorized to negotiate provisions in a collective bargaining agreement calling for:

(1) ~~Payroll~~ payroll deduction of employee organization dues and initiation fees~~, or an agency service fee~~;

(2) ~~Binding~~ binding arbitration of grievances involving the interpretation or application of a written collective bargaining agreement. The

cost of arbitration shall be shared equally by the parties.

* * *

(d) In the absence of an agreement requiring an employee to be a member of the employee organization, an employee choosing not to be a member of the employee organization shall pay the agency service fee in the same manner as employees who choose to join the employee organization pay dues. The employee organization shall indemnify and hold the employer harmless from any and all claims stemming from the implementation or administration of the agency service fee.

* * * Moderation of Union Dues * * *

Sec. 19. MODERATION OF UNION DUES

An employee organization shall use any increased revenue resulting from the implementation of this act solely for the purpose of moderating its existing membership dues.

* * * Effective Dates * * *

Sec. 20. EFFECTIVE DATES

This act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on the date following the expiration date stated in the collective bargaining agreement, if any, then in effect, but in no event shall an employee be required to pay an agency fee under this act for any period prior to July 1, 2013 unless an existing collective bargaining agreement requires payment of the fee. In the event that no collective bargaining agreement is in effect on June 30, 2013, this act shall take effect on June 30, 2013 and apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 on July 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to payment of agency fees and collective bargaining service fees"

**(Committee vote: 5-2-1 )**

**(For text see Senate Journal 2/1/2013 and 2/6/2013 )**

**Amendment to be offered by Rep. Townsend of Randolph to the recommendation of amendment of the Committee on General, Housing and Military Affairs to S. 14**

By striking out Sec. 20 in its entirety and inserting in lieu thereof a new Sec. 20 to read:

Sec. 20. EFFECTIVE DATES; TRANSITIONAL PROVISIONS

(a) This act shall take effect on June 30, 2013 and apply to employees hired after the effective date of this act and who are subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22.

(b) Notwithstanding any provision of law to the contrary, this act shall not apply to employees subject to 3 V.S.A. chapters 27 and 28, 16 V.S.A. chapter 57, and 21 V.S.A. chapters 19 and 22 who have not paid a negotiated agency fee prior to the effective date of this act.

**S. 30**

An act relating to siting of electric generation plants

**Rep. Klein of East Montpelier,** for the Committee on **Natural Resources and Energy,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE REVIEW; SITING POLICY COMMISSION REPORT

During adjournment between the 2013 and 2014 sessions of the General Assembly:

(1) The House and Senate Committees on Natural Resources and Energy (the Committees) jointly shall review the report and recommendations of the Governor's Energy Siting Policy Commission created by Executive Order No. 10-12 dated October 2, 2012; may consider any issue related to electric generation plants, including their development, siting, and operation; and may recommend legislation to the General Assembly concerning electric generation plants.

(2) The Committees shall meet jointly for the purposes of this section no more than six times at the call of the chairs. For attendance at these meetings, members of the Committees shall be entitled to compensation and reimbursement for expenses as provided in 2 V.S.A. § 406.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**(Committee vote: 11-0-0 )**

**(For text see Senate Journal 2/28/2013 and 3/26/2013 )**

**S. 77**

An act relating to patient choice and control at end of life

**Rep. Haas of Rochester,** for the Committee on **Human Services,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 113 is added to read:

CHAPTER 113. RIGHTS OF QUALIFIED PATIENTS SUFFERING A TERMINAL CONDITION

§ 5281. DEFINITIONS

As used in this chapter:

(1) "Capable" means that in the opinion of a court or in the opinion of the patient's prescribing physician, consulting physician, psychiatrist, psychologist, or clinical social worker, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(2) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's illness and who is willing to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

(3) "Dispense" means to prepare and deliver pursuant to a lawful order of a physician a prescription drug in a suitable container appropriately labeled for subsequent use by a patient entitled to receive the prescription drug. The term shall not include the actual administration of a prescription drug to the patient.

(4) "Evaluation" means a consultation between a psychiatrist, psychologist, or clinical social worker licensed in Vermont and a patient for the purpose of confirming that the patient:

(A) is capable; and

(B) does not have impaired judgment.

(5) "Good faith" means objective good faith.

(6) "Health care facility" shall have the same meaning as in section 9432 of this title.

(7) "Health care provider" means a person, partnership, corporation,

facility, or institution, licensed or certified or authorized by law to administer health care or dispense medication in the ordinary course of business or practice of a profession.

(8) "Hospice care" means a program of care and support provided by a Medicare-certified hospice provider to help an individual with a terminal condition to live comfortably by providing palliative care, including effective pain and symptom management. Hospice care may include services provided by an interdisciplinary team that are intended to address the physical, emotional, psychosocial, and spiritual needs of the individual and his or her family.

(9) "Informed decision" means a decision by a patient to request and obtain a prescription for medication to be self-administered to hasten his or her death based on the patient's understanding and appreciation of the relevant facts that was made after the patient was fully informed by the prescribing physician of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life, and that the patient may live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed.

(10) "Palliative care" shall have the same meaning as in section 2 of this title.

(11) "Patient" means a person who is 18 years of age or older, a resident of Vermont, and under the care of a physician.

(12) "Physician" means a physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

(13) "Prescribing physician" means the physician whom the patient has designated to have primary responsibility for the care of the patient and who is willing to participate in the provision to a qualified patient of medication to

hasten his or her death in accordance with this chapter.

(14)(A) "Qualified patient" means a patient who:

(i) is capable;

(ii) is physically able to self-administer medication;

(iii) has executed an advance directive in accordance with chapter 231 of this title;

(iv) is enrolled in hospice care; and

(v) has satisfied the requirements of this chapter in order to obtain a prescription for medication to hasten his or her death.

(B) An individual shall not qualify under the provisions of this chapter solely because of age or disability.

(15) "Terminal condition" means an incurable and irreversible disease which would, within reasonable medical judgment, result in death within six months.

§ 5282. REQUESTS FOR MEDICATION

(a) In order to qualify under this chapter:

(1) A patient who is capable, who has been determined by the prescribing physician and consulting physician to be suffering from a terminal condition, and who has voluntarily expressed a wish to hasten the dying process may request medication to be self-administered for the purpose of hastening his or her death in accordance with this chapter.

(2) A patient shall have made an oral request and a written request and shall have reaffirmed the oral request to his or her prescribing physician not less than 15 days after the initial oral request. At the time the patient makes the second oral request, the prescribing physician shall offer the patient an opportunity to rescind the request.

(b) Oral requests for medication by the patient under this chapter shall be made in the physical presence of the prescribing physician.

(c) A written request for medication shall be signed and dated by the patient and witnessed by at least two persons, at least 18 years of age, who, in the presence of the patient, sign and affirm that the patient appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed. Neither witness shall be any of the following persons:

(1) the patient's prescribing physician, consulting physician, or any

person who has conducted an evaluation of the patient pursuant to section 5285 of this title;

(2) a person who knows that he or she is a relative of the patient by blood, civil marriage, civil union, or adoption;

(3) a person who at the time the request is signed knows that he or she would be entitled upon the patient's death to any portion of the estate or assets of the patient under any will or trust, by operation of law, or by contract; or

(4) an owner, operator, or employee of a health care facility, nursing home, or residential care facility where the patient is receiving medical treatment or is a resident.

(d) A person who knowingly fails to comply with the requirements in subsection (c) of this section is subject to prosecution under 13 V.S.A. § 2004.

(e) The written request shall be completed only after the patient has been examined by a consulting physician as required under section 5284 of this title.

(f)(1) Under no circumstances shall a guardian or conservator be permitted to act on behalf of a ward for purposes of this chapter.

(2) Under no circumstances shall an agent under an advance directive be permitted to act on behalf of a principal for purposes of this chapter.

§ 5283. PRESCRIBING PHYSICIAN; DUTIES

The prescribing physician shall perform all the following:

(1) determine whether a patient:

(A) is suffering a terminal condition, based on the prescribing physician's physical examination of the patient and review of the patient's relevant medical records;

(B) is capable;

(C) has executed an advance directive in accordance with chapter 231 of this title;

(D) is enrolled in hospice care;

(E) is making an informed decision; and

(F) has made a voluntary request for medication to hasten his or her death;

(2) require proof of Vermont residency, which may be shown by:

(A) a Vermont driver's license or photo identification card;

(B) proof of Vermont voter's registration; or

(C) a Vermont resident personal income tax return for the most recent tax year;

(3) inform the patient in person, both verbally and in writing, of all the following:

(A) the patient's medical diagnosis;

(B) the patient's prognosis, including an acknowledgement that the physician's prediction of the patient's life expectancy is an estimate based on the physician's best medical judgment and is not a guarantee of the actual time remaining in the patient's life, and that the patient may live longer than the time predicted;

(C) the range of treatment options appropriate for the patient and the patient's diagnosis;

(D) all feasible end-of-life services, including palliative care, comfort care, hospice care, and pain control;

(E) the range of possible results, including potential risks associated with taking the medication to be prescribed; and

(F) the probable result of taking the medication to be prescribed;

(4) refer the patient to a consulting physician for medical confirmation of the diagnosis, prognosis, and a determination that the patient is capable and is acting voluntarily;

(5) verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter;

(6) with the patient's consent, consult with the patient's primary care physician, if the patient has one;

(7) recommend that the patient notify the next of kin or someone with whom the patient has a significant relationship;

(8) counsel the patient about the importance of ensuring that another individual is present when the patient takes the medication prescribed pursuant to this chapter and the importance of not taking the medication in a public place;

(9)(A) inform the patient that the patient has an opportunity to rescind the request at any time and in any manner; and

(B) offer the patient an opportunity to rescind after the patient's second oral request;

(10) verify, immediately prior to writing the prescription for medication

under this chapter, that the patient is making an informed decision;

(11) fulfill the medical record documentation requirements of section 5290 of this title;

(12) ensure that all required steps are carried out in accordance with this chapter prior to writing a prescription for medication to hasten death; and

(13)(A) dispense medication directly, including ancillary medication intended to facilitate the desired effect while minimizing the patient's discomfort, provided the prescribing physician is licensed to dispense medication in Vermont, has a current Drug Enforcement Administration certificate, and complies with any applicable administrative rules; or

(B) with the patient's written consent:

(i) contact a pharmacist and inform the pharmacist of the prescription; and

(ii) deliver the written prescription personally or by mail or facsimile to the pharmacist, who will dispense the medication to the patient, the prescribing physician, or an expressly identified agent of the patient.

§ 5284. MEDICAL CONSULTATION REQUIRED

Before a patient is qualified in accordance with this chapter, a consulting physician shall physically examine the patient, review the patient's relevant medical records, and confirm in writing the prescribing physician's diagnosis that the patient is suffering from a terminal condition and verify that the patient is capable, is acting voluntarily, and has made an informed decision. The consulting physician shall either verify that the patient does not have impaired judgment or refer the patient for an evaluation under section 5285 of this chapter.

§ 5285. REFERRAL FOR EVALUATION

If, in the opinion of the prescribing physician or the consulting physician, a patient may have impaired judgment, either physician shall refer the patient for an evaluation. A medication to end the patient's life shall not be prescribed until the person conducting the evaluation determines that the patient is capable and does not have impaired judgment.

§ 5286. INFORMED DECISION

A person shall not receive a prescription for medication to hasten his or her death unless the patient has made an informed decision. Immediately prior to writing a prescription for medication in accordance with this chapter, the prescribing physician shall verify that the patient is making an informed decision.

§ 5287. RECOMMENDED NOTIFICATION

The prescribing physician shall recommend that the patient notify the patient's next of kin or someone with whom the patient has a significant relationship of the patient's request for medication in accordance with this chapter. A patient who declines or is unable to notify the next of kin or the person with whom the patient has a significant relationship shall not be refused medication in accordance with this chapter.

§ 5288. RIGHT TO RESCIND

A patient may rescind the request for medication in accordance with this chapter at any time and in any manner regardless of the patient's mental state. A prescription for medication under this chapter shall not be written without the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5289. WAITING PERIOD

The prescribing physician shall write a prescription no less than 48 hours after the last to occur of the following events:

(1) the patient's written request for medication to hasten his or her death;

(2) the patient's second oral request; or

(3) the prescribing physician's offering the patient an opportunity to rescind the request.

§ 5290. MEDICAL RECORD DOCUMENTATION

(a) The following shall be documented and filed in the patient's medical record:

(1) the date, time, and wording of all oral requests of the patient for medication to hasten his or her death;

(2) all written requests by a patient for medication to hasten his or her death;

(3) the prescribing physician's diagnosis, prognosis, and basis for the determination that the patient is capable, is acting voluntarily, and has made an informed decision;

(4) the consulting physician's diagnosis, prognosis, and verification, pursuant to section 5284 of this title, that the patient is capable, is acting voluntarily, and has made an informed decision;

(5) a copy of the patient's advance directive;

(6) the prescribing physician's attestation that the patient was enrolled in hospice care at the time of the patient's oral and written requests for medication to hasten his or her death;

(7) the prescribing physician's and consulting physician's verifications that the patient either does not have impaired judgment or that the prescribing or consulting physician, or both, referred the patient for an evaluation pursuant to section 5285 of this title and the person conducting the evaluation has determined that the patient does not have impaired judgment;

(8) a report of the outcome and determinations made during any evaluation which the patient may have received;

(9) the date, time, and wording of the prescribing physician's offer to the patient to rescind the request for medication at the time of the patient's second oral request; and

(10) a note by the prescribing physician indicating that all requirements under this chapter have been satisfied and describing all of the steps taken to carry out the request, including a notation of the medication prescribed.

(b) Medical records compiled pursuant to this chapter shall be subject to discovery only if the court finds that the records are:

(1) necessary to resolve issues of compliance with or limitations on actions under this chapter; or

(2) essential to proving individual cases of civil or criminal liability and are otherwise unavailable.

§ 5291. REPORTING REQUIREMENT

(a) The Department of Health shall require:

(1) that any physician who writes a prescription pursuant to this chapter promptly file a report with the Department covering all the prerequisites for writing a prescription under this chapter; and

(2) physicians to report on an annual basis the number of written requests for medication received pursuant to this chapter, regardless of whether a prescription was actually written in each instance.

(b) The Department shall review annually the medical records of qualified patients who hastened their deaths in accordance with this chapter during the previous year.

(c) The Department shall adopt rules pursuant to 3 V.S.A. chapter 25 to facilitate the collection of information regarding compliance with this chapter and to enable the Department to report information as required by subsection

(d) of this section. Individually identifiable health information collected under this chapter, as well as reports filed pursuant to subdivision (a)(1) of this section, are confidential and are exempt from public inspection and copying under the Public Records Act.

(d) The Department shall generate and make available to the public an annual statistical report of information collected under subsections (a) and (b) of this section, including:

(1) demographic information regarding patients who hastened their deaths in accordance with this chapter, including the underlying illness and the type of health insurance or other health coverage, if any;

(2) reasons given by patients for their use of medication to hasten their deaths in accordance with this chapter, including whether patients expressed concerns about:

(A) being a burden to family or caregivers;

(B) the financial implications of treatment; and

(C) inadequate pain control;

(3) information regarding physicians prescribing medication in accordance with this chapter, including physicians' compliance with the requirements of this chapter;

(4) the number of patients who did not take the medication prescribed pursuant to this chapter and died of other causes; and

(5) the length of time between when a patient ingested the medication and when death occurred and the number of instances in which medication was taken by a qualified patient to hasten death but failed to have the intended effect.

§ 5292. SAFE DISPOSAL OF UNUSED MEDICATIONS

The Department of Health shall adopt rules providing for the safe disposal of unused medications prescribed under this chapter.

(1) The Department initially shall adopt rules under this section as emergency rules pursuant to 3 V.S.A. § 844. The General Assembly determines that adoption of emergency rules pursuant to this subdivision is necessary to address an imminent peril to public health and safety.

(2) Contemporaneously with the initial adoption of emergency rules under subdivision (1) of this section, the Department shall propose permanent rules under this section for adoption pursuant to 3 V.S.A. §§ 836–843. The Department subsequently may revise these rules in accordance with the

Vermont Administrative Procedure Act.

§ 5293. PROHIBITIONS; CONTRACT CONSTRUCTION; INSURANCE POLICIES

(a) A provision in a contract, will, trust, or other agreement, whether written or oral, shall not be valid to the extent the provision would affect whether a person may make or rescind a request for medication to hasten his or her death in accordance with this chapter.

(b) The sale, procurement, or issue of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request by a person for medication to hasten his or her death in accordance with this chapter or the act by a qualified patient to hasten his or her death pursuant to this chapter. Neither shall a qualified patient's act of ingesting medication to hasten his or her death have an effect on a life, health, or accident insurance or annuity policy.

(c) The sale, procurement, or issue of any medical malpractice insurance policy or the rate charged for the policy shall not be conditioned upon or affected by whether the physician is willing or unwilling to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with this chapter.

§ 5294. LIMITATIONS ON ACTIONS

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for actions taken in good faith reliance on the provisions of this chapter. This includes being present when a qualified patient takes the prescribed medication to hasten his or her death in accordance with this chapter.

(b) A health care provider shall not subject a person to discipline, suspension, loss of license, loss of privileges, or other penalty for actions taken in good faith reliance on the provisions of this chapter or refusals to act under this chapter.

(c) The provision by a prescribing physician of medication in good faith reliance on the provisions of this chapter shall not constitute patient neglect for any purpose of law.

(d) A request by a patient for medication under this chapter shall not provide the sole basis for the appointment of a guardian or conservator.

(e) A health care provider shall not be under any duty, whether by contract, by statute, or by any other legal requirement, to participate in the provision to a qualified patient of medication to hasten his or her death in accordance with

this chapter. If a health care provider is unable or unwilling to carry out a patient's request in accordance with this chapter and the patient transfers his or her care to a new health care provider, the previous health care provider, upon request, shall transfer a copy of the patient's relevant medical records to the new health care provider. A decision by a health care provider not to participate in the provision of medication to a qualified patient shall not constitute the abandonment of the patient or unprofessional conduct under 26 V.S.A. § 1354.

§ 5295. HEALTH CARE FACILITY EXCEPTION

Notwithstanding any other provision of law to the contrary, a health care facility may prohibit a prescribing physician from writing a prescription for medication under this chapter for a patient who is a resident in its facility and intends to use the medication on the facility's premises, provided the facility has notified the prescribing physician in writing of its policy with regard to the prescriptions. Notwithstanding subsection 5294(b) of this title, any health care provider who violates a policy established by a health care facility under this section may be subject to sanctions otherwise allowable under law or contract.

§ 5296. LIABILITIES AND PENALTIES

(a) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter shall be construed to limit liability for civil damages resulting from negligent conduct or intentional misconduct by any person.

(b) With the exception of the limitations on actions established by section 5294 of this title and with the exception of the provisions of section 5298 of this title, nothing in this chapter or in 13 V.S.A. § 2312 shall be construed to limit criminal prosecution under any other provision of law.

(c) A health care provider is subject to review and disciplinary action by the appropriate licensing entity for failing to act in accordance with this chapter, provided such failure is not in good faith.

§ 5297. FORM OF THE WRITTEN REQUEST

A written request for medication as authorized by this chapter shall be substantially in the following form:

REQUEST FOR MEDICATION TO HASTEN MY DEATH

I, _____, am an adult of sound mind.

I am suffering from _____, which my prescribing physician has determined is a terminal disease and which has been confirmed by a consulting

physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, and the expected result. I am enrolled in hospice care and have completed an advance directive.

I request that my prescribing physician prescribe medication that will hasten my death.

INITIAL ONE:

_____ I have informed my family or others with whom I have a significant relationship of my decision and taken their opinions into consideration.

_____ I have decided not to inform my family or others with whom I have a significant relationship of my decision.

_____ I have no family or others with whom I have a significant relationship to inform of my decision.

I understand that I have the right to change my mind at any time.

I understand the full import of this request, and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer, and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: _____ Dated: _____

AFFIRMATION OF WITNESSES

We affirm that, to the best of our knowledge and belief:

(1) the person signing this request:

(A) is personally known to us or has provided proof of identity;

(B) signed this request in our presence;

(C) appears to understand the nature of the document and to be free from duress or undue influence at the time the request was signed; and

(2) that neither of us:

(A) is under 18 years of age;

(B) is a relative (by blood, civil marriage, civil union, or adoption) of the person signing this request;

(C) is the patient's prescribing physician, consulting physician, or a

person who has conducted an evaluation of the patient pursuant to 18 V.S.A. § 5285;

(D) is entitled to any portion of the person's assets or estate upon death; or

(E) owns, operates, or is employed at a health care facility where the person is a patient or resident.

Witness 1/Date _____

Witness 2/Date _____

NOTE: A knowingly false affirmation by a witness may result in criminal penalties.

§ 5298. STATUTORY CONSTRUCTION

Nothing in this chapter shall be construed to authorize a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Action taken in accordance with this chapter shall not be construed for any purpose to constitute suicide, assisted suicide, mercy killing, or homicide under the law.

Sec. 2. 13 V.S.A. § 2312 is added to read:

§ 2312. VIOLATION OF PATIENT CHOICE AND CONTROL AT END OF LIFE ACT

A person who violates 18 V.S.A. chapter 113 with the intent to cause the death of a patient as defined in subdivision 5281(11) of that title may be prosecuted under chapter 53 of this title (homicide).

Sec. 3. 13 V.S.A. § 2004 is added to read:

§ 2004. FALSE WITNESSING

A person who knowingly violates the requirements of 18 V.S.A. § 5282(c) shall be imprisoned for not more than 10 years or fined not more than $2,000.00, or both.

Sec. 4. EFFECTIVE DATES

This act shall take effect on September 1, 2013, except that 18 V.S.A. § 5292 (rules for safe disposal of unused medications) in Sec. 1 of this act shall take effect on passage. The Department of Health shall ensure that emergency rules adopted under Sec. 1 of this act, 18 V.S.A. § 5292, are in effect on or before September 1, 2013.

**(Committee vote: 7-4-0 )**
**(For text see Senate Journal 2/13/2013 and 2/14/2013 )**