

House Calendar

Wednesday, March 26, 2014

79th DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 P.M.

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ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until March 26, 2014

Committee Bill for Second Reading

H. 878

An act relating to prevailing wages.

(Rep. Moran of Wardsboro will speak for the Committee on General, Housing and Military Affairs.)

NEW BUSINESS

Third Reading

H. 239

An act relating to information regarding the rights of landlords and tenants

H. 876

An act relating to making miscellaneous amendments and technical corrections to education laws

Amendment to be offered by Rep. Goodwin of Weston to H. 876

By adding a new section to be Sec. 36 with a related reader assistance heading to read:

* * * Audits * * *

Sec. 36. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

~~Annually, the~~ The supervisory union board shall employ one or more public accountants to audit the financial statements of the supervisory union ~~and its member districts on an annual basis and of its member districts once in every three years.~~ The audits shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting to be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that the audits have been performed and the time and place where the full report of the public accountant will be available for inspection and for copying at cost.

and by renumbering the remaining sections to be numerically correct.

Amendment to be offered by Reps. Kupersmith of South Burlington, Botzow of Pownal, Bouchard of Colchester, Carr of Brandon, Cross of Winooski, Dickinson of St. Albans Town, Kitzmiller of Montpelier, Marcotte of Coventry, Scheuermann of Stowe, and Young of Glover to H. 876

After Sec. 34 and before the reader assistance heading “* * * Repeals * * *”, by inserting a reader assistance heading and four new sections to be Secs. 35–38 to read:

* * * Mandatory Binding Arbitration; Strikes; Imposed Contracts; Teachers and Administrators * * *

Sec. 35. 16 V.S.A. § 2011 is added to read:

§ 2011. MANDATORY DETERMINATION BY THE VERMONT LABOR RELATIONS BOARD

(a) If the parties’ dispute remains unresolved as to any issue on the 15th day after delivery of the fact-finding commission’s report under section 2007 of this title or if the parties otherwise agree that they have reached an impasse, each party shall submit to the Vermont Labor Relations Board its last best offer on all undisputed issues, which shall be reviewed and decided upon as a single package. The Labor Relations Board may hold hearings and may consider the recommendations of the fact-finding committee, if one has been activated.

(b) In reaching a decision, the Labor Relations Board shall give weight to all relevant evidence presented by the parties, including:

(1) the lawful authority of the school board;

(2) stipulations of the parties;

(3) the interest and welfare of the public and the financial ability of the school board to pay for increased costs of public services, including the cost of labor;

(4) comparisons of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of other employees performing similar services in public schools in comparable communities or in private employment in comparable communities;

(5) the average consumer prices for goods and services commonly known as the cost of living;

(6) the overall compensation currently received by the employees, including direct wages, benefits, continuity conditions and stability of employment, and all other benefits received; and

(7) the prior negotiations and existing conditions of other school and municipal employees.

(c) Within 30 days of receiving the last best offers of the parties, the Labor Relations Board shall select between the offers, considered in their entirety without amendment, and shall determine the cost of its selection. The Labor Relations Board shall not issue an order under this subsection that is in conflict with any law or rule or that relates to an issue that is not bargainable. The Labor Relations Board shall file one copy of the decision with the relevant municipal clerk or clerks and the negotiations councils. Except as provided in subsection (d) of this section, the decision of the Labor Relations Board shall be final and binding on the parties.

(d) The parties shall share equally all mutually incurred costs incidental to this section.

(e) Upon application of a party, a Superior Court shall vacate an award on the same grounds as set forth in 21 V.S.A. § 1733(d) and according to the same procedures as set forth in 21 V.S.A. § 1733(e).

(f) Upon application by either party, a Superior Court may issue a temporary restraining order or other injunctive relief and may award costs, including reasonable attorney's fees in connection with any action taken by a representative organization, its officials, or its members or by a school board or its representative in violation of this section, including engaging in a strike, which shall have the same meaning as in 21 V.S.A. § 1722, and the imposition of contractual terms.

Sec. 36. 3 V.S.A. § 924(e) is amended to read:

(e) In addition to its responsibilities under this chapter, the ~~board~~ Board shall carry out the responsibilities given to it under 16 V.S.A. chapter 57, 21 V.S.A. chapters 19 and 22, and chapter 28 of this title and when so doing shall exercise the powers and follow the procedures set out in that chapter.

Sec. 37. REPEAL

The following sections of Title 16 are repealed:

- (1) § 2008 (finality of school board decisions);
- (2) § 2010 (injunctions granted only if action poses clear and present danger);
- (3) § 2021 (negotiated binding interest arbitration);
- (4) § 2022 (selection and decision of arbitrator);
- (5) § 2023 (jurisdiction of arbitrator);

(6) § 2024 (judicial appeal);

(7) § 2025 (factors to be considered by the arbitrator);

(8) § 2026 (notice of award); and

(9) § 2027 (fees and expenses of arbitration).

Sec. 38. IMPLEMENTATION

Secs. 35–37 of this act shall apply to negotiations beginning on or after that date for collective bargaining agreements for fiscal year 2016 and after.

and by renumbering the remaining sections to be numerically correct.

Amendment to be offered by Rep. Lewis of Berlin to H. 876

First: By striking out Sec. 36 (effective date) and the reader assistance heading “* * * Effective Date * * *” in their entirety and inserting in lieu thereof six new sections to be Secs. 36 through 41 with reader assistance headings to read:

* * * Supervisory Unions; Budgets; Vote * * *

Sec. 36. 16 V.S.A. § 261a(11) is amended to read:

(11) ~~on or before June 30 of each year, adopt a budget for the ensuing school year~~ annually, prepare a budget for presentation to the voters of the member school districts pursuant to section 305 of this title; and

Sec. 37. 16 V.S.A. § 242(4)(D) is amended to read:

(D) prepare for each district an itemized report detailing the portion of the proposed supervisory union budget for the subsequent school year for which the district would be assessed ~~for the subsequent school year responsible~~, identifying the component costs by category and explaining the method by which the district’s share for each cost was calculated; and provide the report to each district at least 14 days before ~~a budget, including~~ the supervisory union ~~assessment~~, budget is voted on by the electorate of the district;

Sec. 38. 16 V.S.A. § 301 is amended to read:

§ 301. APPORTIONMENT OF EXPENSES

Unless otherwise agreed upon, ~~each school district shall pay a~~ the portion of the supervisory union budget to be voted upon by each school district shall represent that district’s proportionate share of the salary and expenses of the superintendent and the expenses of the supervisory union based on the number of enrolled students in each member school district. “Enrolled students” shall be defined by the State Board by rule, including the treatment of tuition

students, special education students, students enrolled in career technical centers, and other particular circumstances.

Sec. 39. 16 V.S.A. § 305 is added to read:

§ 305. ESTABLISHMENT OF A SUPERVISORY UNION BUDGET

(a) Annually, the board of a supervisory union shall provide a proposed supervisory union budget to the board of each member school district, together with the detailed information required in subdivision 242(4)(D) of this title.

(b) Each district board shall present the supervisory union budget to the district voters as a separate article in the warning for the district budget, expressing the sum in dollars and indicating the district's proportionate share of the total budget. If the voters in a town vote on the budgets of two or more districts, then they shall have the opportunity to vote only once on the supervisory union budget, but the proportionate share for each district shall be indicated. The voters in each district within a supervisory union shall vote on the supervisory union budget on the same day and during the same hours.

(c) The vote on the supervisory union budget shall be warned and held by Australian ballot. If a district does not vote on its district budget by Australian ballot, then the voters of that district may vote to proceed in the same manner as for the school district budget, provided that the number of votes in favor of and opposed to the supervisory union budget shall be tallied and the supervisory union budget shall not be amended.

(d) The clerk of each school district shall certify the number of votes in favor of and opposed to the supervisory union budget in that district. Within ten days of the vote, all school district clerks within the supervisory union shall meet to establish and jointly certify if a majority of the commingled votes were in favor of or in opposition to the supervisory union budget.

(e) The supervisory union budget is established if all school district clerks within a supervisory union certify that a majority of the commingled votes were in favor of the budget. If a proposed budget is rejected, then the supervisory union board shall prepare a revised budget and shall identify a date on which all districts will vote whether to approve it. The board of each member school district shall warn the vote on the revised budget, which shall be by Australian ballot and shall take place in the same locations as the original vote. If the revised budget is rejected, then the boards shall repeat the procedure in this subsection until the budget is adopted. If the voters fail to approve a supervisory union budget by July 1 of any year, then the most recently adopted budget shall be the budget for the fiscal year beginning on that July 1 and the supervisory union shall assess each member district for payment of a proportionate share.

(f) Following a successful vote on a supervisory union budget, the supervisory union board shall give notice to the legislative branch of each district.

(g) Early and absentee voting as provided by 17 V.S.A. §§ 2531–2550 is permitted.

(h) Unless clearly inconsistent, the provisions of 17 V.S.A. chapter 55 shall apply to actions taken under this section.

(i) If an audit conducted of the supervisory union reveals that the supervisory union has:

(1) surplus funds, then the supervisory union board shall carry the funds into the next year to be used to offset each member district’s obligation proportionally;

(2) a deficit, then the supervisory union board shall apportion the obligation to each member district in the next supervisory union budget.

Sec. 40. 16 V.S.A. § 563(11)(C)(i) is amended to read:

(i) all revenues from all sources, and expenses, including as separate items ~~any assessment for a supervisory union of which it is a member~~ the district’s proportionate share of the supervisory union’s proposed budget and any tuition to be paid to a career technical center; and including the report required in subdivision 242(4)(D) of this title itemizing the component costs of the district’s proportionate share of the supervisory union assessment budget;

* * *

* * * Effective Date * * *

Sec. 41. EFFECTIVE DATE

This act shall take effect on passage; provided, however, that:

(1) Sec. 29 (tuition for graduate and distance education programs) shall not apply to students who are enrolled as of that date in the University of Vermont in:

(A) a distance education course or program; or

(B) a graduate program other than in the College of Medicine; and

(2) Secs. 36 through 40 shall apply to budgets for the 2015–2016 academic year and after.

Amendment to be offered by Rep. Lewis of Berlin to H. 876

After Sec. 34 and before the reader assistance heading “* * * Repeals * * *”, by inserting a reader assistance heading and a new section to be Sec. 35 to

read:

* * * Public School Activities; Students Enrolled in Independent Schools * * *

Sec. 35. 16 V.S.A. § 563(24) is amended to read:

(24) Shall adopt a policy ~~which~~ that, in accordance with rules adopted by the ~~state board of education~~ State Board, will:

(A) integrate home study students into its schools through enrollment in courses, participation in cocurricular and extracurricular activities, including athletics, and use of facilities; and

(B) enable resident students in grade 9 through grade 12 who are enrolled in approved and recognized independent schools to participate in all extracurricular activities available to students enrolled in the secondary school maintained by the district, including membership on the district's athletic teams, if the independent school does not offer the activity.

and by renumbering the remaining sections to be numerically correct.-

H. 880

An act relating to universal college savings accounts

Favorable with Amendment

H. 555

An act relating to the commitment of a criminal defendant who is incompetent to stand trial because of a traumatic brain injury

Rep. Koch of Barre Town, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4801 is amended to read:

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental ~~disease or defect~~ illness, intellectual disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms "~~mental disease or defect~~" "mental illness, intellectual disability, or traumatic brain injury" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms "mental~~

~~disease or defect~~ shall include congenital and traumatic mental conditions as well as disease.

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.

Sec. 2. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION

(a) Any court before which a criminal prosecution is pending may order the ~~department of mental health~~ Department of Mental Health to have the defendant examined by a psychiatrist at any time before, during or after trial, and before final judgment in any of the following cases:

(1) ~~When~~ when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a ~~mental disease, defect,~~ mental illness, intellectual disability, traumatic brain injury or other condition bearing upon the issue of whether he or she had the mental state required for the offense charged;

(2) ~~When~~ when the defendant, the ~~state~~ State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before ~~such~~ the court the issue of whether the defendant is mentally competent to stand trial for the alleged offense;

(3) ~~When~~ when the court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or

(4) ~~When~~ when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(b) ~~Such~~ An order under this section may be issued by the court on its own motion, or on motion of the ~~state~~ State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

(a) It is the purpose of this section to provide a mechanism by which a defendant is examined in the least restrictive environment deemed sufficient to complete the examination and prevent unnecessary pre-trial detention and substantial threat of physical violence to any person, including a defendant.

(b) The order for examination may provide for an examination at any jail or correctional center, or at the ~~State~~ Vermont Psychiatric Care Hospital or a

designated hospital, ~~or at its successor in interest~~, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health.

(c) A motion for examination shall be made as soon as practicable after a party or the Court has good faith reason to believe that there are grounds for an examination. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, the Court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the Court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the Court, the Court may ~~forego~~ forego consideration of the screener's recommendations.

(f) The Court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the Court finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examination at the Vermont State Psychiatric Care Hospital, ~~or its successor in interest~~, or a designated hospital. The Court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the ~~court~~ Court shall determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the ~~commissioner of mental health~~ Commissioner of Mental Health.

(A) If a Vermont State Psychiatric Care Hospital psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital psychiatrist determines prior to admission that the defendant is not in need of inpatient hospitalization ~~prior to admission~~, the Commissioner shall release the defendant pursuant to the terms governing the defendant's release from the Commissioner's custody as ordered by the Court. The Commissioner of Mental Health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient

mental health services.

(B) If a Vermont ~~State Psychiatric Care Hospital~~ psychiatrist, ~~or a psychiatrist of its successor in interest~~, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The Commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~State Psychiatric Care Hospital~~ psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the ~~court~~ Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the Commissioner notifies the ~~court~~ Court that the examination has been completed, unless the terms established by the Court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If the defendant is to be released pursuant to subdivision (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the Commissioner of Corrections, the defendant shall be returned to the defendant's residence or ~~such other~~ to another appropriate place within the State of Vermont by the Department of Mental Health at the expense of the ~~court~~ Court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the ~~commissioner~~ Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) ~~For the purposes of~~ As used in this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall

be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

(i) As used in this section:

(1) ~~No,~~ "no refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the Commissioner in contract.

(2) ~~"Successor in interest" shall mean the mental health hospital owned and operated by the State that provides acute inpatient care and replaces the Vermont State Hospital.~~

Sec. 4. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in the preceding section shall have reference to:

(1) ~~Mental~~ mental competency of the person examined to stand trial for the alleged offense; and

(2) ~~Sanity~~ sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a ~~developmental~~ an intellectual disability or traumatic brain injury shall include a current evaluation by a psychologist or other appropriate medical professional skilled in assessing individuals with ~~developmental disabilities~~ those conditions.

(c) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a) of this section. The report shall be transmitted to the Court issuing the order for examination, and copies of the report shall be sent to the ~~state's attorney~~ State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he or she has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial, and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the Court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the Court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the Court, at the Court's expense.

Sec. 5. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the ~~state~~ State, at any time before final judgment, raises before the court before which ~~such the~~ person is tried or is to be tried, the issue of whether ~~such the~~ person is incompetent to stand trial, or if the court has reason to believe that ~~such the~~ person may not be competent to stand trial, a hearing shall be held before ~~such the~~ court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that ~~such the~~ person may be incompetent to stand trial due to a ~~mental disease or mental defect, such illness, intellectual disability, or traumatic brain injury,~~ hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, ~~such the~~ person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial.

Sec. 6. 13 V.S.A. § 4819 is amended to read:

§ 4819. ACQUITTAL BY REASON OF INSANITY

When a person tried on information, complaint, or indictment is acquitted by a jury by reason of insanity at the time of the alleged offense, the jury shall state in its verdict of not guilty that the ~~same is given for such cause~~ acquittal is for that reason.

Sec. 7. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

When a person charged on information, complaint, or indictment with a criminal offense:

(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title, to have been insane at the time of the alleged offense; ~~or.~~

(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental ~~disease or mental defect; or~~ illness, intellectual disability, or traumatic brain injury.

(3) Is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court; ~~or.~~

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which ~~such~~ the person is tried or is to be tried for ~~such~~ the offense; shall hold a hearing for the purpose of determining whether ~~such~~ the person should be committed to the custody of the ~~commissioner of mental health~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

Sec. 8. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the ~~commissioner of mental health or the commissioner of disabilities, aging, and independent living, and the state's attorney~~ Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the ~~state~~ State in the case, shall be given notice of the time and place of a hearing under the preceding section. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181 of Title 18. Procedures for hearings for persons who are ~~mentally retarded intellectually disabled or have a traumatic brain injury~~ shall be as provided in 18 V.S.A. chapter 206, subchapter 3 of chapter 206 of Title 18.

Sec. 9. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the Court finds that ~~such~~ the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the ~~court~~ Court shall issue an order of commitment directed to the Commissioner

of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the Commissioner of Mental Health shall give notice thereof to the committing Court and ~~state's attorney~~ State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing Court issuing the order under that section. In all other cases, when the committing Court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the ~~state's attorney~~ State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the ~~state's attorney~~ State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(d) The Court may continue the hearing provided in subsection (c) of this section for a period of 15 additional days upon a showing of good cause.

(e) If the ~~court~~ Court determines that commitment shall no longer be necessary, it shall issue an order discharging the patient from the custody of the ~~department of developmental and mental health services~~ Department of Mental Health.

(f) The Court shall issue its findings and order not later than 15 days from the date of hearing.

Sec. 10. 13 V.S.A. § 4823 is amended to read:

§ 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~
~~RETARDATION~~ INTELLECTUAL DISABILITY OR
TRAUMATIC BRAIN INJURY

(a) If the court finds that ~~such~~ the person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

(b) ~~Such~~ The order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~ the order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843.

(c) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of state in which case the proceedings shall be conducted in the original committing Court.

Sec. 11. 18 V.S.A. § 8839 is amended to read:

§ 8839. DEFINITIONS

As used in this subchapter:

* * *

(3) “Person in need of custody, care, and habilitation” means:

(A) a ~~mentally retarded~~ person with an intellectual disability or a person with a traumatic brain injury;

(B) who presents a danger of harm to others; and

(C) for whom appropriate custody, care, and habilitation can be provided by the ~~commissioner~~ Commissioner in a designated program.

Sec. 12. CONSTRUCTION

This act’s replacement of the terms “mental disease or mental defect” with the terms “mental illness” or “intellectual disability” in 13 V.S.A. chapter 157 shall not be construed to alter the substance or effect of existing law or judicial precedent. These changes in terminology are merely meant to reflect evolving attitudes toward persons with disabilities.

Sec. 13. REPORTS

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to stand trial. The report shall include a break-down indicating how many orders were based on mental illness, intellectual disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(b)(1) On or before September 1, 2014, the Department of Sheriffs and State's Attorneys shall report to the House and Senate Committees on Judiciary regarding the charging practices of State's Attorneys for persons with traumatic brain injury.

(2) The report shall describe the number of cases from July 1, 2011 through June 30, 2013, broken down by the type of criminal charge, in which a person with traumatic brain injury was:

(A) charged with a criminal offense, including the disposition of the offense;

(B) charged with a criminal offense and the charges were dismissed because the person was suffering from a traumatic brain injury; and

(C) arrested for, or otherwise believed to be responsible for, a crime and criminal charges were not brought because the person was suffering from a traumatic brain injury.

(3) A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary on the status of the Department's implementation of this act. The status reports shall include updates on the Department's progress developing the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.

Sec. 14. EFFECTIVE DATES

(a) Secs. 1–12 shall take effect on July 1, 2015.

(b) Sec. 13 and this section shall take effect on passage.

(Committee Vote: 10-0-1)

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

by striking out Sec. 14 in its entirety and inserting in lieu thereof new Secs. 14 and 15 to read as follows:

Sec. 14. APPROPRIATION

The amount of \$50,000.00 is appropriated in fiscal year 2014 from the Global Commitment Fund to the Department of Disabilities, Aging, and Independent Living to research and design a program that satisfies this act's requirement that the Department treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial. To the maximum extent possible, the Department shall design the program to be integrated into the Department's existing framework of services.

Sec. 15. EFFECTIVE DATES

(a) Secs. 1-12 shall take effect on July 1, 2015.

(b) Secs. 13 and 14 and this section shall take effect on passage.

(Committee Vote: 11-0-0)

H. 590

An act relating to the safety and regulation of dams

Rep. McCullough of Williston, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Registration and Inspection of Dams * * *

Sec. 1. 10 V.S.A. chapter 43 is amended to read:

CHAPTER 43. DAMS

§ 1080. DEFINITIONS

As used in this chapter:

(1) "Department" means the ~~department of environmental conservation~~ Department of Environmental Conservation.

(2) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the ~~state~~ State of Vermont or any agency, department, or subdivision of the ~~state~~ State, any federal agency, or

any other legal or commercial entity.

(3) “Person in interest” means, in relation to any dam, a person who has riparian rights affected by that dam, a substantial interest in economic or recreational activity affected by the dam, or whose safety would be endangered by a failure of the dam.

(4) “Engineer” means a professional engineer ~~registered~~ licensed under Title 26 who has experience in the design and investigation of dams.

(5) “Time” shall be reckoned in the manner prescribed by 1 V.S.A. § 138.

(6) “Abandoned dam” means a dam that has no identifiable owner or a dam for which the owner fails to comply with the requirements of section 1104 of this title.

(7) “Dam” means any artificial barrier, impoundment, or structure and its appurtenant works that are, were, or will be capable of impounding water or other liquid after construction or alteration, except for:

(A) waste management systems constructed and operated according to the accepted agricultural practices as administered by the Agency of Agriculture, Food and Markets; or

(B) barriers, impoundments, or structures impounding water with one acre or less of surface area.

(8) “Pond” means a natural body of water with a volume exceeding 500,000 cubic feet.

§ 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

BOARD

(a) Unless otherwise provided, the powers and duties authorized by this chapter shall be exercised by the ~~department, except that the public service board~~ Department, except that the Public Service Board shall exercise those powers and duties over dams and projects that relate to or are incident to the generation of electric energy for public use or as a part of a public utility system.

(b) Transfer of jurisdiction. Jurisdiction over a dam is transferred from the ~~department~~ Department to the ~~public service board~~ Public Service Board whenever the Federal Energy Regulatory Commission grants a license to generate electricity at the dam or whenever the ~~public service board~~ Public Service Board receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred from the ~~public service board~~ Public Service Board to the ~~department~~ Department whenever

such a federal license expires or is otherwise lost, whenever such a certificate of public good is revoked or otherwise lost, or whenever the ~~public service board~~ Public Service Board denies an application for a certificate of public good.

(c) Upon transfer of jurisdiction as set forth above and upon written request, the state agency having former jurisdiction shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction.

§ 1082. AUTHORIZATION

(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or otherwise alter any dam, ~~or the natural outlet of a pond or impoundment or other structure which is or will be capable of impounding more than 500,000 cubic feet of water or other liquid after construction or alteration,~~ or remove, breach, or otherwise lessen the capacity of an existing dam that is or was capable of impounding more than 500,000 cubic feet within or along the borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of water within this ~~state~~ State, unless authorized by the ~~state agency having jurisdiction so to do~~ Department or the Public Service Board. However, in the matter of flood control projects where cooperation with the federal government is provided for by the provisions of section 1100 of this title, that section shall control.

(b) For the purposes of this chapter, the volume a dam or other structure is capable of impounding is the volume of water or other liquid, including any accumulated sediments, controlled by the structure with the water or liquid level at the top of the nonoverflow part of the structure.

§ 1083. APPLICATION

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the ~~state agency having jurisdiction,~~ Department or the Public Service Board and shall give notice thereof to the governing body of the municipality or municipalities in which the dam or any part of the dam is to be located. The application shall set forth:

(1) the location, the height, length and other dimensions, and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of, or any change in the number of cubic feet of water to be impounded;

(3) the plans and specifications to be followed in the construction, remodeling, reconstruction, altering, lowering, raising, removal, breaching, or adding to;

(4) any change in operation and maintenance procedures; and

(5) other information that the ~~state agency having jurisdiction~~ Department or the Public Service Board considers necessary to properly review the application.

(b) The plans and specifications shall be prepared under the supervision of an engineer.

§ 1083a. ~~AGRICULTURAL DAMS~~

~~(a) Notwithstanding the provisions of sections 1082, 1083, 1084, and 1086 of this title, the owners of an agricultural enterprise who propose, as an integral and exclusive part of the enterprise, to construct or alter any dam, pond or impoundment or other structure requiring a permit under section 1083 shall apply to the natural resources conservation district in which his land is located. The natural resources conservation districts created under the provisions of chapter 31 of this title shall be the state agency having jurisdiction and shall review and approve the applications in the same manner as would the department. The districts may request the assistance of the department for any investigatory work necessary for a determination of public good and for any review of plans and specifications as provided in section 1086.~~

~~(b) As used in this section, "agricultural enterprise" means any farm, including stock, dairy, poultry, forage crop and truck farms, plantations, ranches and orchards, which does not fall within the definition of "activities not engaged in for a profit" as defined in Section 183 of the Internal Revenue Code and regulations relating thereto. The growing of timber does not in itself constitute farming.~~

~~(c) Notwithstanding the provisions of this section, jurisdiction shall revert to the department when there is a change in use or when there is a change in ownership which affects use. In those cases the department may, on its own motion, hold meetings in order to determine the effect on the public good and public safety. The department may issue an order modifying the terms and conditions of approval.~~

~~(d) The natural resources conservation districts may adopt any rules necessary to administer this chapter. The districts shall adhere to the requirements of chapter 25 of Title 3 in the adoption of those rules.~~

~~(e) Notwithstanding the provisions of chapter 7 of Title 3, the attorney general shall counsel the districts in any case where a suit has been instituted against the districts for any decision made under the provisions of this chapter. [Repealed.]~~

§ 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

~~The commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife shall investigate the potential effects on fish and wildlife habitats of any proposal subject to section 1082 of this title and shall certify the results to the ~~state agency having jurisdiction~~ Department or the Public Service Board prior to any hearing or meeting relating to the determination of public good and public safety.

§ 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall give notice to all persons interested.

~~(1) For any project subject to its jurisdiction under this chapter, on~~ On the petition of 25 or more persons, the ~~department~~ Department or the Public Service Board shall, or on its own motion it may, hold a public information meeting in a municipality in the vicinity of the proposed project to hear comments on whether the proposed project serves the public good and provides adequately for the public safety. Public notice shall be given by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper at least 10 days before the meeting.

~~(2) For any project subject to its jurisdiction under this chapter, the public service board shall hold a hearing on the application. The purpose of the hearing shall be to determine whether the project serves the public good as defined in section 1086 of this title and provides adequately for the public safety. The hearing shall be held in a municipality in the vicinity of the proposed project and may be consolidated with other hearings, including hearings under 30 V.S.A. § 248 concerning the same project. Notice shall be given at least 10 days before the hearing to interested persons by posting in the municipal offices of the towns in which the project will be completed and by publishing in a local newspaper.~~

§ 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

(a) “Public good” means the greatest benefit of the people of the State. In determining whether the public good is served, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall give due consideration to, among other things, ~~to~~ the effect the proposed project will have on:

(1) the quantity, kind, and extent of cultivated agricultural land that may be rendered unfit for use by or enhanced by the project, including both the immediate and ~~long range~~ long-range agricultural land use impacts;

- (2) scenic and recreational values;
- (3) fish and wildlife;
- (4) forests and forest programs;
- (5) the need for a minimum water discharge flow rate schedule to protect the natural rate of flow and the water quality of the affected waters;
- (6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;
- (7) the creation of any hazard to navigation, fishing, swimming, or other public uses;
- (8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;
- (9) the creation of any public benefits;
- (10) consistency with the Vermont water quality standards and the classification, if any, of the affected waters under chapter 47 of this title;
- (11) any applicable ~~state~~ State, regional, or municipal plans;
- (12) municipal grand lists and revenues;
- (13) public safety; and
- (14) in the case of proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but which was not subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

(b) If the ~~State agency having jurisdiction~~ Department or the Public Service Board finds that the proposed project will serve the public good, and, in case of any waters designated by the Secretary as outstanding resource waters, will preserve or enhance the values and activities sought to be protected by designation, the ~~agency~~ Department or the Public Service Board shall issue its order approving the application. The order shall include conditions for minimum stream flow to protect fish and instream aquatic life, as determined by the Agency of Natural Resources, and such other conditions as the ~~agency having jurisdiction~~ Department or the Public Service Board considers necessary to protect any element of the public good listed above. Otherwise it shall issue its order disapproving the application.

(c) The ~~agency~~ Department or the Public Service Board shall provide the applicant and interested parties with copies of its order.

(d) ~~In the case of a proposed removal of a dam that is under the jurisdiction~~

~~of the department and that formerly related to or was incident to the generation of electric energy but that was not subject to a memorandum of understanding dated before January 1, 2006 relating to its removal, the department shall consult with the department of public service regarding the potential for and value of future power production at the site. [Repealed.]~~

§ 1087. REVIEW OF PLANS AND SPECIFICATIONS

Upon receipt of an application, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall employ a ~~registered~~ licensed engineer experienced in the design and investigation of dams to investigate the property, review the plans and specifications, and make additional investigations as it considers necessary to ensure that the project adequately provides for the public safety. The engineer shall report his or her findings to the ~~agency~~ Department or the Public Service Board.

§ 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

With the approval of the ~~governor~~ Governor, the ~~state agency having jurisdiction~~ Department or the Public Service Board may employ a competent hydraulic engineer to investigate the property, review the plans and specifications, and make such additional investigation as ~~such agency~~ the Department or the Public Service Board shall deem necessary, and such engineer shall report to the ~~agency~~ Department or the Public Service Board his or her findings in respect thereto.

§ 1090. CONSTRUCTION SUPERVISION

The construction, alteration, or other action authorized in section 1086 of this title shall be supervised by a ~~registered~~ licensed engineer employed by the applicant. Upon completion of the authorized project, the engineer shall certify to the ~~agency having jurisdiction~~ Department or the Public Service Board that the project has been completed in conformance with the approved plans and specifications.

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in interest or the legislative body of a municipality, the ~~agency having jurisdiction~~ Department or the Public Service Board shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing dam or portion of a dam, of any size. The ~~agency~~ Department or the Public Service Board may fix a time and place for hearing and shall give notice in the manner it directs to all parties interested. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the ~~agency~~ Department or the Public Service

Board finds that the dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to make the dam safe.

(b) If, upon the expiration of such date as may be ordered, the owner of such dam has not complied with the order directing the reconstruction, repair, breaching, removal, draining, or other action of such unsafe dam, the ~~state agency having jurisdiction~~ Department or the Public Service Board may petition the ~~superior court~~ Superior Court in the county in which the dam is located to enforce its order or exercise the right of eminent domain to acquire such rights as may be necessary to effectuate a remedy as the public safety or public good may require. If the order has been appealed, the ~~court~~ Court may prohibit the exercise pending disposition of the appeal.

(c) If, upon completion of the investigation described in subsection (a) of this section, the ~~state agency having jurisdiction~~ Department or the Public Service Board considers the dam to present an imminent threat to human life or property it shall take whatever action it considers necessary to protect life and property and subsequently conduct the hearing described in subsection (a).

* * *

§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

The ~~department~~ Department may contract for the removal of sandbars, debris, or other obstructions from streams which the ~~department~~ Department finds that while so obstructed may be a menace in time of flood, or endanger property or life below, or the property of riparian owners. The expense of investigation and removal of the obstruction shall be paid by the ~~state~~ State from funds provided for that purpose.

§ 1099. APPEALS

(a) Appeals of any act or decision of the ~~department~~ Department under this chapter shall be made in accordance with chapter 220 of this title.

(b) Appeals from actions or orders of the ~~public service board~~ Public Service Board may be taken in the ~~supreme court~~ Supreme Court in accord with 30 V.S.A. § 12.

* * *

§ 1104. DAM REGISTRATION

(a) Application of section. The requirements of this section shall apply to all dams in the State within the jurisdiction of the Department regardless of whether the dam is permitted or approved under this chapter. The rules of the Public Service Board shall control the regulation and inspection of dams and

projects over which the Public Service Board has jurisdiction.

(b) Dam registration. On or before January 1, 2015 and annually thereafter, the owner of property on which a dam is located or the owner of the dam, if that person is not the owner of the property, shall, on a form provided by the Department, register the dam with the Department.

(c) Department identification of dam.

(1) The Department shall post the location and hazard potential classification of every dam in the State on the Agency of Natural Resources' website.

(2) The standards for hazard classification shall be equivalent to the standards for low, significant, and high hazard dams under the U.S. Army Corps of Engineers Hazard Potential Classification of Dams, under 33 C.F.R. § 222.6. The Department may designate a dam as an unknown hazard dam when it lacks information sufficient to classify it as a low, significant, or high hazard dam.

(d) Failure to submit registration. If the Department identifies the owner of an unregistered dam, the Department shall notify the owner of the requirement to register the dam under this section. The owner of a dam who receives notice of required registration under this subsection shall have 60 days from the date of the Department's notice to submit a complete dam registration form to the Department.

(e) Dam safety inspection. Fees collected under 3 V.S.A. § 2822(j)(12)(B) shall be deposited into the Environmental Permit Fund under 3 V.S.A. § 2805 and shall be used to implement the requirements of this chapter.

(f) Designation of dam as abandoned. If an owner of a dam classified as an unknown hazard fails to submit to the Department the dam registration form required by this section, the dam may be designated an abandoned dam subject to the provisions of section 1104a of this title.

(g) Failure to file dam evaluation report. If an owner of a dam fails to submit the dam registration form as required under subsection (b) of this section, the Department may inspect, or retain a licensed professional engineer to inspect, the dam. The cost to the Department of the inspection shall be assessed against the owner of the dam.

§ 1104a. ABANDONED DAMS

(a) Designation of dam as abandoned. The Department may designate a dam as abandoned if the Department:

(1) has identified an owner of the dam, but the owner fails to comply

with the requirements of section 1104 of this title or the owner fails to comply with an action or order required under this chapter; or

(2) cannot identify an owner of the dam; and

(3) publishes notice of a pending determination of abandonment of the dam in a newspaper of general circulation in the county in which the dam is located; and after 45 days from the date of publication of pending determination of abandonment, no person has asserted ownership or control of the dam.

(b) Inspection of abandoned dam. Upon designation of a dam as abandoned, the Department shall conduct an inspection of the dam according to its inspection authority under section 1105 of this title.

(c) Lien on property on which dam is situated. When the Department takes action under this section to inspect an abandoned dam or when the Department takes any action under this chapter to alleviate or address a risk to life or property from an abandoned dam, the costs of the action shall be a lien in favor of the State on the property on which the dam is located and on the buildings and structures located on that property in order to secure repayment of the State of inspection or other action. The lien shall arise at the time demand is made by the Secretary and shall continue until the liability for such sum with interest and costs is satisfied or becomes unenforceable. A lien under this section shall be subordinate to a primary mortgage on the property. Notice of a lien under this section shall be recorded in the land records of the town in which the property is located.

(d) Assumption of ownership of an abandoned dam. A person may assume ownership of a dam designated by the Department as abandoned by:

(1) notifying the Department, where applicable, of the intent to assume ownership;

(2) submission of the dam registration form required under section 1104 of this title;

(3) payment of costs or liabilities due the Department; and

(4) submission of indicia of ownership of the dam.

* * *

* * * Disclosure of Dam at Conveyance * * *

Sec. 2. 27 V.S.A. § 617 is added to read:

§ 617. DISCLOSURE OF DAM ON PROPERTY AT CONVEYANCE

(a) Definitions. As used in this section, “dam” shall have the same

meaning as provided for in 10 V.S.A. § 1080(7).

(b) Seller; disclosure of dam on property. A seller of real property on which a dam is located shall:

(1) prior to the execution of a contract for the conveyance of real property:

(A) disclose to the buyer the presence and location of the dam on the property; and

(B) provide the buyer with an inspection report for the dam that accurately reflects the current condition of the dam by an independent licensed engineer experienced in the design and investigation of dams; and

(2) submit to the Department a notice of property transfer of the dam no later than 15 days from execution of the contract for the conveyance of the real property.

(c) Buyer; registration with Department. No later than 15 days from execution of a contract for the conveyance of real property on which a dam is located, the buyer of the real property shall, on a form provided by the Department, notify the Department and the municipality or municipalities in which the dam is located of the property transfer. The notification form shall include:

(1) a copy of the current dam safety inspection report provided by the seller prior to execution of the contract for the conveyance; and

(2) the name, mailing address, and telephone number of the buyer.

(d) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(e) Penalty; liability. Liability for failure to provide the informational materials required by this section shall be limited to a civil penalty, imposed by the Agency of Natural Resources under 10 V.S.A. chapter 201, of no less than \$100.00 and no more than \$250.00 for each day in violation.

* * * Dam Registration Fees * * *

Sec. 3. 3 V.S.A. § 2805 is amended to read:

§ 2805. ENVIRONMENTAL PERMIT FUND

(a) There is hereby established a special fund to be known as the Environmental Permit Fund. Within the Fund, there shall be two accounts: the Environmental Permit Account and the Air Pollution Control Account. Unless otherwise specified, fees collected in accordance with subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and appropriations shall be

* * * Dam Registration Report * * *

Sec. 5. DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2016, the Department of Environmental Conservation shall submit a report to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43, including whether impoundments of water with less than one acre of surface area should continue to be exempt from the definition of dam;

(2) a summary of the dams registered under the program, organized by amount of water impounded; and

(3) an evaluation of any other hydrologic concerns related to dam registration.

* * * Effective Date * * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee Vote: 7-0-2)

Rep. Clarkson of Woodstock, for the Committee on **Ways and Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Fish, Wildlife & Water Resources** and when further amended as follows:

First: In Sec. 1, in 10 V.S.A. § 1080, by striking out subdivision (7) in its entirety and inserting in lieu thereof a new subdivision (7) to read:

(7) “Dam” means any artificial barrier, impoundment, or structure and its appurtenant works that are, were, or will be capable of impounding water or other liquid after construction or alteration, except for:

(A) waste management systems constructed and operated according to the accepted agricultural practices as administered by the Agency of Agriculture, Food and Markets;

(B) impoundments that are capable of impounding no more than 500,000 cubic feet of liquid with a surface area less than one acre;

(C) municipal underground or elevated tanks to store water; or

(D) any other structure identified by the Department in a duly-adopted rule.

Second: In Sec. 1, in 10 V.S.A. § 1104, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read:

(b) Dam registration.

(1) On or before January 1, 2015, the person owning legal title to a dam shall, on a form provided by the Department, register the dam with the Department.

(2) Beginning one year from the date of dam registration, a dam registered under subdivision (1) shall be subject to an annual dam safety program operation fee.

(3) If no person owns legal title to a dam, the person owning the property on which the dam is located shall submit the registration required under subdivisions (1) and (2) of this subsection.

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

Sec. 4. 3 V.S.A. § 2822(j)(12) is amended to read:

(12)(A) For dam permits issued under 10 V.S.A. chapter 43: 0.525 percent of construction costs, minimum fee of \$200.00.

(B) For the dam registration under 10 V.S.A. § 1104(b)(1), a person registering a dam shall pay a registration fee based on the hazard classification of the dam as follows:

<u>(i) Low hazard dam</u>	<u>\$200.00;</u>
<u>(ii) Significant hazard dam</u>	<u>\$350.00;</u>
<u>(iii) High hazard dam</u>	<u>\$1,000.00.</u>

(C) The annual dam safety program operation fee submitted under 10 V.S.A. § 1104(b)(2) shall be based on the hazard classification of the dam as follows:

<u>(i) Low hazard dam</u>	<u>\$200.00;</u>
<u>(ii) Significant hazard dam</u>	<u>\$350.00;</u>
<u>(iii) High hazard dam</u>	<u>\$1,000.00.</u>

Fourth: By striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read:

Sec. 5. DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2016, the Department of Environmental Conservation shall submit a report to the House Committee on Fish, Wildlife

and Water Resources, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the Senate Committee on Finance. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43, including whether impoundments of water with less than one acre of surface area should continue to be exempt from the definition of dam;

(2) a recommendation on whether to modify the fee structure of the dam registration program;

(3) a summary of the dams registered under the program, organized by amount of water impounded; and

(4) an evaluation of any other hydrologic concerns related to dam registration.

and by renumbering the remaining subdivisions to be numerically correct.

(Committee Vote: 11-0-0)

H. 695

An act relating to establishing a product stewardship program for primary batteries

Rep. Yantachka of Charlotte, for the Committee on **Natural Resources and Energy**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 168 is added to read:

CHAPTER 168. PRODUCT STEWARDSHIP

FOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIES

Subchapter 1. Definitions

§ 7581. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Natural Resources.

(2) “Brand” means a name, symbol, word, or traceable mark that identifies a primary battery and attributes the primary battery to the owner or licensee of the brand as the producer.

(3) “Calendar year” means the period commencing January 1 and ending December 31 of the same year.

(4) “Collection rate” means a percentage by weight that each producer or primary battery stewardship organization collects by an established date.

The collection rate shall be calculated by dividing the total weight of the primary batteries that are collected during a calendar year by the average annual weight of primary batteries that were estimated to have been sold in the State by participating producers during the previous three calendar years. Estimates of primary batteries sold in the State may be based on a reasonable pro rata calculation based on national sales.

(5) “Consumer” means any person who presents or delivers any number of primary batteries to a collection facility that is included in an approved primary battery stewardship plan.

(6) “Consumer product” means any product that is regularly used or purchased to be used for personal, family, or household purposes. “Consumer product” shall not mean a product primarily used or purchased for industrial or business use.

(7) “Discarded primary battery” means a primary battery that is no longer used for its manufactured purpose.

(8) “Easily removable” means readily detachable by a person without the use of tools or with the use of common household tools.

(9) “Participate” means to appoint a primary battery stewardship organization or rechargeable battery stewardship organization to operate on behalf of oneself and to have that appointment accepted by the stewardship organization.

(10) “Primary battery” means a nonrechargeable battery weighing two kilograms or less, including alkaline, carbon-zinc, and lithium metal batteries. “Primary battery” shall not mean batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

(11) “Primary battery producer” or “producer” means one of the following with regard to a primary battery that is sold, offered for sale, or distributed in the State:

(A) a person who manufactures a primary battery and who sells, offers for sale, or distributes that primary battery in the State under the person’s own name or brand;

(B) if subdivision (A) of this subdivision (11) does not apply, a person who owns or licenses a trademark or brand under which a primary battery is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (11) do not apply, a person who imports a primary battery into the State for sale or distribution.

(12) “Primary battery stewardship organization” means an organization appointed by one or more producers to act as an agent on behalf of a producer or producers to design, submit, implement, and administer a primary battery stewardship plan under this chapter.

(13) “Primary battery stewardship plan” or “plan” means a plan submitted to the Secretary pursuant to section 7584 of this title by an individual producer or a primary battery stewardship organization.

(14) “Program” or “stewardship program” means the system for the collection, transportation, recycling, and disposal of primary batteries implemented pursuant to an approved primary battery stewardship plan.

(15)(A) “Rechargeable battery” means:

(i) one or more voltaic or galvanic cells, electrically connected to produce electric energy and designed to be recharged and weighing less than 11 pounds; or

(ii) a battery pack designed to be recharged that weighs less than 11 pounds and that is designed to provide less than 40 volts direct current.

(B) “Rechargeable battery” shall not mean:

(i) a battery that is not easily removable or is not intended or designed to be removed from the covered product, other than by the manufacturer;

(ii) a battery that contains electrolyte as a free liquid;

(iii) a battery or battery pack that employs lead-acid technology, unless the battery or battery pack:

(I) is sealed;

(II) contains no liquid electrolyte; and

(III) is intended by its manufacturer to power a handheld device or to provide uninterrupted backup electrical power protection for stationary consumer products or stationary office equipment; or

(iv) a battery intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use.

(16) “Rechargeable battery steward” means a person who:

(A) manufactures a rechargeable battery or a rechargeable product that is sold, offered for sale, or distributed in the State under its own brand name;

(B) owns or licenses a trademark or brand under which a

rechargeable battery or rechargeable product is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

(C) if subdivisions (A) and (B) of this subdivision (16) do not apply, imports a rechargeable battery or rechargeable product into the State for sale or distribution.

(17) “Rechargeable battery stewardship organization” means an entity registered by the Secretary pursuant to section 7588 of this title that is either a single rechargeable battery steward operating on its own behalf; an organization appointed by one or more rechargeable battery stewards to operate a plan in which each steward is participating; or a retailer or franchisor of retailers operating a plan on behalf of itself or its franchisees.

(18) “Rechargeable product” means a consumer product that contains or is packaged with a rechargeable battery at the time the product is sold, offered for sale, or distributed in the State. “Rechargeable product” shall not mean:

(A) a product from which a rechargeable battery is not easily removable or is not intended or designed to be removed from the product, other than by the manufacturer; or

(B) an implanted medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as amended.

(19) “Recycling” means any process by which discarded products, components, and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity, but does not include energy recovery or energy generation by means of combusting discarded products, components, and by products with or without other waste products.

(20) “Retailer” means a person who offers a primary battery for sale to any consumer or business at retail in the State through any means, including remote offerings such as sales outlets, catalogues, or an Internet website.

(21) “Secretary” means the Secretary of Natural Resources.

Subchapter 2. Primary Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES

(a) Sale prohibited. Except as set forth under subsections (c) and (d) of this section, beginning on January 1, 2016, a producer of a primary battery shall not sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery unless the producer has complied with the requirements of subsection (b) of this section.

(b) Requirements for sale. No producer shall sell, offer for sale, or

deliver to a retailer for subsequent sale a primary battery in the State unless:

(1) the producer or the primary battery stewardship organization in which the producer is participating is registered under an approved and implemented primary battery stewardship plan;

(2) the producer or primary battery stewardship organization has paid the fee under section 7594 of this title; and

(3) the name of the producer and the producer's brand are designated on the Agency website as covered by an approved primary battery stewardship plan.

(c) New producers.

(1) A producer of a primary battery who, after January 1, 2016, seeks to sell, offer for sale, or offer for promotional purposes in the State a primary battery not previously sold in State, shall notify the Secretary prior to selling or offering for sale or promotion a primary battery not covered by an approved primary battery stewardship plan.

(2) The Secretary shall list a producer who supplies notice under this subsection as a "new producer" on the Agency's website. A producer that supplies notice under this subsection shall have 90 days, not including the time required for public comment under subsection 7586(c) of this section, to either join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the State.

(d) Exemption. A producer who annually sells, offers for sale, distributes, or imports in or into the State primary batteries with a total retail value of less than \$2,000.00 shall be exempt from the requirements of this chapter.

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION; REQUIREMENTS; REGISTRATION

(a) Participation in a primary battery stewardship organization. A producer of primary batteries may meet the requirements of this chapter by participating in a primary battery stewardship organization that undertakes the producer's responsibilities under sections 7582, 7584, and 7585 of this title.

(b) Qualifications for a primary battery stewardship organization. To qualify as a primary battery stewardship organization under this chapter, an organization shall:

(1) commit to assume the responsibilities, obligations, and liabilities of all producers participating in the primary battery stewardship organization;

(2) not create unreasonable barriers for participation by producers in the primary battery stewardship organization; and

(3) maintain a public website that lists all producers and producers' brands covered by the primary battery stewardship organization's approved collection plan.

(c) Registration requirements.

(1) Beginning on March 1, 2015 and annually thereafter, a primary battery stewardship organization shall file a registration form with the Secretary. The Secretary shall provide the registration form to a primary battery stewardship organization. The registration form shall require submission of the following information:

(A) a list of the producers participating in the primary battery stewardship organization;

(B) the name, address, and contact information of a person responsible for ensuring a producer's compliance with this chapter;

(C) a description of how the primary battery stewardship organization proposes to meet the requirements of subsection (a) of this section, including any reasonable requirements for participation in the primary battery stewardship organization; and

(D) the name, address, and contact information of a person for a nonmember manufacturer to contact on how to participate in the primary battery stewardship organization to satisfy the requirements of this chapter.

(2) A renewal of a registration without changes may be accomplished through notifying the Secretary on a form provided by the Secretary.

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

(a) Primary battery stewardship plan required. On or before June 1, 2015, each producer selling, offering for sale, distributing, or offering for promotional purposes a primary battery in the State shall individually or as part of a primary battery stewardship organization submit a primary battery stewardship plan to the Secretary for review.

(b) Primary battery stewardship plan; minimum requirements. Each primary battery stewardship plan shall include, at a minimum, all of the following elements:

(1) List of producers and brands. Each primary battery stewardship plan shall list:

(A) all participating producers and contact information for each of the participating producers; and

(B) the brands of primary batteries covered by the plan.

(2) Free collection. Each primary battery stewardship plan shall provide for the collection of primary batteries from consumers at no cost to consumers. A producer shall not refuse the collection of a primary battery based on the brand or producer of the primary battery.

(3) Collection; convenience. Each primary battery stewardship plan shall:

(A) Allow all retailers who meet requirements specified in the plan, all municipalities, and all certified solid waste management facilities to opt to be a collection facility.

(B) Provide, at a minimum, no fewer than two collection facilities in each county in the State that provide for collection throughout the year.

(C) Provide for the acceptance from a consumer of up to 100 batteries per visit. A collection facility may agree to accept more than 100 batteries per visit from a consumer.

(4) Method of disposition. Each primary battery stewardship plan shall include a description of the method that will be used to responsibly manage discarded primary batteries to ensure that the components of the discarded primary batteries, to the extent economically and technically feasible, are recycled.

(5) Roles and responsibilities. A primary battery stewardship plan shall list all key participants in the primary battery collection chain, including:

(A) the number and name of the collection facilities accepting primary batteries under the plan, including the address and contact information for each facility; and

(B) the name and contact information of a transporter or contractor collecting primary batteries from collection facilities.

(C) the name, address, and contact information of the recycling facilities that process the collected primary batteries.

(6) Education and outreach. A primary battery stewardship plan shall include an education and outreach program. The education and outreach program may include mass media advertising in radio or television broadcasts or newspaper publications of general circulation in the State, retail displays, articles in trade and other journals and publications, and other public educational efforts. The education and outreach program shall describe the outreach procedures that will be used to provide notice of the program to businesses, municipalities, certified solid waste management facilities, retailers, wholesalers, and haulers. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for all primary batteries; and

(B) the location of collection points and how to access the collection program.

(7) Reimbursement. A primary battery stewardship plan shall include a reimbursement procedure that is consistent with the requirements of subchapter 4 of this chapter.

(8) Performance goal; collection rate. A primary battery stewardship plan shall include a collection rate performance goal for the primary batteries subject to the plan.

(c) Implementation. A producer or a primary battery stewardship organization shall include provisions in the plan for the implementation of the program in conjunction with those retailers, municipalities, and certified solid waste management facilities acting as collection facilities under a program. No transportation or recycling cost shall be imposed on retailers, municipalities, or certified solid waste management facilities acting as collection facilities under a program. A producer or a primary battery stewardship organization shall provide retailers, municipalities, and certified solid waste management facilities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of collected primary batteries, including arranging for the management of those primary batteries.

§ 7585. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. On or before March 1, 2017, and annually thereafter, a producer or a primary battery stewardship organization shall submit a report to the Secretary that contains the following:

(1) the weight of primary batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(2) the collection rate achieved in the prior calendar year under the primary battery stewardship plan;

(3) the locations for all collection points set up by the primary battery producers covered by the primary battery stewardship plan and contact information for each location;

(4) examples and description of educational materials used to increase collection;

(5) the manner in which the collected primary batteries were managed;

(6) any material change to the primary battery stewardship plan

approved by the Secretary pursuant to section 7586 of this title; and

(7) the cost of implementation of the primary battery stewardship plan, including the costs of collection, recycling, education, and outreach.

(b) Plan audit. After five years of implementation of an approved primary battery stewardship plan, a primary battery producer or primary battery stewardship organization shall hire an independent third party to conduct a one-time audit of the primary battery stewardship plan and plan operation. The auditor shall examine the effectiveness of the primary battery stewardship plan in collecting and recycling primary batteries. The independent auditor shall examine the cost-effectiveness of the plan and compare it to that of collection plans or programs for primary batteries in other jurisdictions. The independent auditor shall submit the results of the audit to the Secretary as part of the annual report required under subsection (a) of this section.

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

(a) Approval of plan. Within 90 days after receipt of a proposed primary battery stewardship plan, not including the time required for public comment under subsection (c) of this section, the Secretary shall determine whether the plan complies with the requirements of section 7584 of this title. If the Secretary determines that a plan complies with the requirements of section 7584 of this title, the Secretary shall notify the applicant of the plan approval in writing. If the Secretary rejects a primary battery stewardship plan, the Secretary shall notify the applicant in writing of the reasons for rejecting the plan. An applicant whose plan is rejected by the Secretary shall submit a revised plan to the Secretary within 45 days of receiving notice of rejection. A primary battery stewardship plan that is not approved or rejected by the Secretary within 90 days, not including the time required for public comment under subsection (c) of this section, of submission by a producer shall be deemed approved.

(b) Plan amendment; changes. Any changes to a proposed primary battery stewardship plan shall be approved by the Secretary in writing. The Secretary, in his or her discretion or at the request of a producer, may require a producer or a primary battery stewardship organization to amend an approved plan.

(c) Public notice. The Secretary shall post all proposed primary battery stewardship plans and all proposed amendments to a primary battery stewardship plan on the Agency's website for 30 days from the date the application for a plan or a plan amendment is deemed complete by the Secretary, subject to the confidentiality provisions of section 7594 of this title.

(d) Public input. The Secretary shall establish a process under which a primary battery stewardship plan, prior to plan approval or amendment, is

available for public review and comment.

(e) Registrations. The Secretary shall accept, review, and approve or deny primary battery stewardship organization registrations submitted under section 7583 of this title.

(f) Agency website. The Secretary shall maintain a website that includes a copy of all approved primary battery stewardship plans, the names of producers with approved plans, participation in approved plans, or other compliance with this chapter. The website shall list all of an approved primary battery producer's brands covered by a primary battery stewardship plan filed with the Secretary. The Secretary shall update information on the website within 10 days of receipt of notice of any change to the listed information. The website shall list all known primary battery producers exempt from the requirements of this chapter under subsection 7582(d) of this title.

(g) Term of primary battery stewardship plan. A primary battery stewardship plan approved by the Secretary under this section shall have a term not to exceed five years, provided that the primary battery producer or primary battery stewardship organization remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7587. RETAILER OBLIGATIONS

(a) Sale prohibited. Except as set forth in subsection (b) of this section, no retailer shall sell or offer for sale a primary battery on or after January 1, 2016 unless the producer of the primary battery is implementing an approved primary battery stewardship plan, is a member of a primary battery stewardship organization implementing an approved primary battery stewardship plan, or is exempt from participation in an approved plan, as determined by review of the producers listed on the Agency website required in subsection 7586(f) of this title.

(b) Inventory exception; expiration or revocation of producer registration. A retailer shall not be responsible for an unlawful sale of a primary battery under this subsection if:

(1) the retailer purchased the primary battery prior to January 1, 2016 and sells the primary battery on or before January 1, 2017; or

(2) the producer's primary battery stewardship plan expired or was revoked, and the retailer took possession of the in-store inventory of primary batteries prior to the expiration or revocation of the producer's primary battery stewardship plan.

(c) Educational material. A producer or primary battery stewardship organization supplying primary batteries to a retailer shall provide the retailer

with educational materials describing collection opportunities for primary batteries. The retailer shall make the educational materials available to consumers.

Subchapter 3. Registration of Rechargeable Battery

Stewardship Organization

§ 7588. REGISTRATION OF RECHARGEABLE BATTERY

STEWARDSHIP ORGANIZATION

(a) A rechargeable battery steward or rechargeable battery stewardship organization shall register with the Secretary in order to seek reimbursement under subchapter 4 of this chapter.

(b) The Secretary shall register a rechargeable battery steward or rechargeable battery stewardship organization upon:

(1) submission of a registration form, provided by the Secretary, that includes:

(A) the name of a rechargeable battery steward implementing an individual program or a list of the producers participating in a rechargeable battery stewardship organization; and

(B) the name, address, and contact information of a person responsible for implementing the rechargeable battery stewardship program;

(2) a determination by the Secretary that the rechargeable battery steward or rechargeable battery stewardship organization offers to municipalities, certified solid waste management facilities, and retailers a year-round free collection and recycling program.

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of primary battery producers.

(1) A producer or a primary battery stewardship organization operating under an approved primary battery stewardship plan that collects primary batteries or rechargeable batteries that are not listed under its approved plan shall be entitled to reimbursement from the following entities of direct costs per unit of weight incurred in collecting the batteries:

(A) the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery; or

(B) the rechargeable battery steward responsible for the collected

rechargeable batteries, or where the rechargeable battery steward responsible for the collected rechargeable batteries is participating in a rechargeable battery stewardship organization, the stewardship organization.

(2) Reimbursement may be requested by a collecting primary battery producer or primary battery stewardship organization only after that producer has achieved the collection rate performance goal approved by the Secretary under section 7584 of this title.

(b) Reimbursement of rechargeable battery stewardship organization. A registered rechargeable battery steward or rechargeable battery stewardship organization shall be entitled to reimbursement from the producer of the collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery.

(c) Direct costs. Under this subchapter, reimbursement shall be allowed only for those direct costs incurred in collecting the batteries subject to the reimbursement request. Direct costs include costs of collection, transport, recycling, and other methods of disposition identified in a primary battery stewardship plan approved pursuant to section 7586 of this title, plus an additional negotiated amount not to exceed 10 percent of the direct costs.

§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

(1) A primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization that incurs reimbursable direct costs under section 7589 of this title shall submit a request to the producer of the collected primary battery or the primary battery stewardship organization in which the producer is participating or the rechargeable battery stewardship organization responsible for the collected rechargeable battery.

(2) A producer or primary battery stewardship organization or rechargeable battery stewardship organization that receives a request for reimbursement may, prior to payment and within 30 days of receipt of the request for reimbursement, request an independent audit of submitted reimbursement costs.

(3) The independent auditor shall be responsible for verifying the reasonableness of the reimbursement request, including the costs sought for reimbursement, the amount of reimbursement, and the direct costs assessed by each of the two programs.

(4) If the independent audit confirms the reasonableness of the reimbursement request, the producer, primary battery stewardship

organization, or rechargeable battery stewardship organization requesting the audit shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor. If the independent audit indicates the reimbursement request was not reasonable, the producer or primary battery stewardship organization that initiated the reimbursement request shall pay the cost of the audit and the amount of the reimbursement calculated by the independent auditor.

(b) Role of Agency. The Agency shall not be required to provide assistance or otherwise participate in a reimbursement request, audit, or other action under this section, unless subject to subpoena before a court of jurisdiction.

Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

(a) Action against producer with no primary battery stewardship plan. A producer or a primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the requirements of this chapter may bring a civil action against another producer or primary battery stewardship organization for damages when:

(1) the plaintiff producer or primary battery stewardship organization incurs more than \$1,000.00 in actual direct costs collecting, handling, recycling, or properly disposing of primary batteries sold or offered for sale in the State by that other producer;

(2) the producer from whom damages are sought:

(A) can be identified as the producer of the collected batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer or primary battery stewardship organization; and

(B) does not operate or participate in an approved primary battery stewardship organization in the State or is not otherwise in compliance with the requirements of this chapter.

(b) Action against producer with an approved primary battery stewardship plan. A producer or primary battery stewardship organization in compliance with the requirements of this chapter may bring a civil action for damages against another producer or primary battery stewardship organization in the State that is in compliance with the requirements of this chapter provided that the conditions of subsection (e) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer or primary battery stewardship organization implementing an approved primary battery stewardship plan in compliance with the

requirements of this chapter may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary provided that the conditions of subsection (e) of this section have been met.

(d) Action by rechargeable battery stewardship organization. A rechargeable battery steward may bring a civil action for damages against a primary battery producer or primary battery stewardship organization that is implementing an approved primary battery stewardship plan in the State provided that the conditions of subsection (e) of this section have been met.

(e) Condition precedent to cause of action. Except as authorized under subsection (a) of this section, a cause of action under this section shall be allowed only if:

(1) a plaintiff producer, primary battery stewardship organization or rechargeable battery stewardship organization submitted a reimbursement request to another producer, primary battery stewardship organization, or rechargeable battery stewardship organization under subchapter 4 of this chapter; and

(2) the plaintiff producer, primary battery stewardship organization or rechargeable battery stewardship organization does not receive reimbursement within:

(A) 90 days of the reimbursement request, if no independent audit is requested under subchapter 4 of this chapter; or

(B) 60 days after completion of an audit if an independent audit is requested under subchapter 4 of this chapter, and the audit confirms the validity of the reimbursement request.

(f) Action against individual producer or steward.

(1) A civil action under this section may be brought against an individual primary battery producer or an individual rechargeable battery steward only if the primary battery producer is implementing its own primary battery stewardship plan, the primary battery producer has failed to register to participate in a primary battery stewardship plan, or the rechargeable battery steward is implementing its own registered rechargeable battery stewardship organization.

(2) A primary battery producer participating in an approved primary battery stewardship plan covering multiple producers or a rechargeable battery steward participating in a rechargeable battery stewardship organization representing multiple stewards shall not be sued individually for reimbursement.

(3) An action against a primary battery producer participating in a

primary battery stewardship plan covering multiple producers or an action against a rechargeable battery steward participating in a rechargeable battery stewardship organization shall be brought against the stewardship organization implementing the plan.

(g) Role of Agency. The Agency shall not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under this section solely due to its regulatory requirements under this chapter, unless subject to subpoena before a court of jurisdiction.

(h) Damages; definitions. As used in this section, “damages” means the actual, direct costs a plaintiff producer, primary battery stewardship organization, or rechargeable battery stewardship organization incurs in collecting, handling, recycling, or properly disposing of primary batteries reasonably identified as having originated from another primary battery producer, primary battery stewardship organization, or rechargeable battery stewardship organization.

Subchapter 6. General Provisions

§ 7592. CONFIDENTIALITY OF SUBMITTED DATA

(a) Confidentiality. Reports and data submitted under this chapter shall be available for public inspection and copying, provided that:

(1) Information protected under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, or under the trade secret exemption under 1 V.S.A. § 317(c)(9) shall be exempt from public inspection and copying under the Public Records Act.

(2) The Secretary may publish information confidential under subdivision (1) of this subsection in a summary or aggregated form that does not directly or indirectly identify individual producers, battery stewards, distributors, or retailers.

(b) Omission of trade secret information. The Secretary may require, as a part of a report submitted under this chapter, that the producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization submit a report that does not contain trade secret information and is available for public inspection and review.

(c) Total weight of batteries. The total weight of batteries collected under an approved primary battery stewardship plan is not confidential business information under the Uniform Trade Secrets Act, as codified under 9 V.S.A. chapter 143, and shall be subject to inspection and review under the Public Records Act, 1 V.S.A chapter 5, subchapter 3.

§ 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries is individually or jointly immune from liability for the conduct under State laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or primary battery stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization's approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer's or primary battery stewardship organization's organized collection or recycling system for discarded batteries

(b) Limitations on anti-trust activity. Subsection (a) of this section shall not apply to an agreement among producers, groups of producers, retailers, wholesalers, or primary battery stewardship organizations affecting the price of primary batteries or any agreement restricting the geographic area in which, or customers to whom, primary batteries shall be sold.

§ 7594. ADMINISTRATIVE FEE

(a) Fees assessed. A primary battery producer or primary battery stewardship organization shall pay a fee of \$15,000.00 annually for operation under a primary battery stewardship plan approved by the Secretary under section 7586 of this title.

(b) Disposition of fees. The fees collected under subsection (a) of this section shall be deposited in the Environmental Permit Fund under 3 V.S.A. § 2805.

§ 7595. RULEMAKING; PROCEDURE

The Secretary may adopt rules or procedures to implement the requirements of this chapter.

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

On or before January 15, 2019, the Agency of Natural Resources shall submit to the House and Senate Committees on Natural Resources and Energy a report on the progress of the primary battery stewardship program under 10 V.S.A. chapter 168. The report shall include:

(1) the amount, by weight, of primary batteries and rechargeable

batteries collected under approved primary battery stewardship plans;

(2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery stewardship plan or participating in an approved primary battery stewardship organization; and

(3) recommendation for any amendments to the requirements of 10 V.S.A. chapter 168, including whether additional manufacturers of batteries or battery containing products should be required to implement primary battery stewardship plans.

Sec. 3. 10 V.S.A. § 8003(a) is amended to read:

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

* * *

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

(23) 24 V.S.A. § 2202a, relating to a municipality's adoption and implementation of a solid waste implementation plan that is consistent with the State Solid Waste Plan; and

(24) 10 V.S.A. chapter 168, relating to the collection and disposal of primary batteries.

Sec. 4. 10 V.S.A. § 8503(a) is amended to read:

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

(1) The following provisions of this title:

* * *

(Q) chapter 164A (collection and disposal of mercury-containing lamps).

(R) chapter 32 (flood hazard areas).

(S) chapter 168 (collection and disposal of primary batteries).

(2) 29 V.S.A. chapter 11 (management of lakes and ponds).

(3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

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

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 **Natural Resources and Energy**.

(**Committee Vote: 6-5-0**)

NOTICE CALENDAR

Committee Bill for Second Reading

H. 884

An act relating to miscellaneous tax changes.

(**Rep. Ancel of Calais** will speak for the Committee on **Ways and Means**.)

H. 885

An act relating to making appropriations for the support of government.

(**Rep. Heath of Westford** will speak for the Committee on **Appropriations**.)

Favorable with Amendment

H. 882

An act relating to compensation for certain State employees.

(**Rep. Townsend of South Burlington** will speak for the Committee on **Government Operations**.)

Rep. Johnson of South Hero, for the Committee on **Appropriations**, recommends the bill be amended as follows:

First: In Sec. 9 (Pay Act appropriations), in subsection (a) (Executive Branch), near the end of the introductory paragraph, after “June 30, 2016; and salary increases for” by inserting “classified employees not in a bargaining unit and”

Second: In Sec. 9, in subdivision (a)(1)(A), after “The amount of” by striking out “\$7,152,319.00” and inserting in lieu thereof “\$7,150,580.00”

Third: In Sec. 9, in subsection (b) (Judicial Branch), in subdivision (2)(A), after “The amount of” by striking out “\$877,897.00” and inserting in lieu thereof “\$1,004,585.00”

Fourth: In Sec. 9, in subsection (b), in subdivision (2)(B), after “The amount of” by striking out “\$1,112,090.00” and inserting in lieu thereof

“\$1,044,179.00”

Fifth: In Sec. 9, in subsection (c) (Legislative Branch), in subdivision (2), after “The amount of” by striking out “\$406,904.00” and inserting in lieu thereof “\$283,000.00”

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

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March (March 31, 2014). The Committees on Appropriations and Ways and Means bill may be drafted in standard form at any time, and Government Operations bills pertaining to city or town charters, may be drafted in standard form at any time.

Appropriations bill Amendments

The House Committee on Appropriations requests all members of the House, who intend to introduce amendments to the proposed FY 2015 omnibus appropriations bill (H.885), to meet with the committee in room 42 at 8:45 a.m. on Thursday, March 27, before 2nd reading, OR at 8:45 a.m. on Friday, March 28, before 3rd reading. If possible, please schedule a time with Theresa Utton-Jerman (828-5767, Room: 40 or tutton@leg.state.vt.us) to meet with the Committee.

The Joint Fiscal Committee recently received the following items:

JFO #2669 – Six (6) limited service positions in the Department of Children and Families. These positions will be responsible for cases in the Disability Determination Division, including claims receipt and eligibility decisions. The positions are 100% federally funded (salary and benefits) and funding has already been approved by the legislature.

[JFO received 03/07/14]

JFO #2670 – Donation of 212 acres of land (appraised value: \$215,100) from Vermont Electric Power Company (VELCO) to the Vermont Department of Fish & Wildlife. This donation will preserve public access for hunting, fishing, and wildlife viewing. The donation is being made to satisfy a condition of the Public Service Board. Duck Stamp Fund monies (\$3,000) will be used to pay associated legal fees.

[JFO received 03/14/14]

JFO #2671 – \$41,600 grant from WomenSafe, Inc. to the Vermont Department of State’s Attorneys and Sheriffs. These funds will be used to hire (via contract) a part time Victim Advocate in the Addison County office for advocacy for victims of domestic and sexual violence.

[JFO received 03/14/14]

JFO #2672 – \$10,000 grant from the National Alcohol Beverage Control Association to the Vermont Department of Liquor Control. These funds will be used to create and purchase wine bags containing educational messages (such as “Do Not Drink and Drive”). These bags will be distributed to first class establishments and then provided to customers who have purchased a bottle of wine and are taking the remainder of its contents home after their meal.

[JFO received 03/14/14]