

# Senate Calendar

FRIDAY, APRIL 05, 2013

SENATE CONVENES AT: 11:30 A.M.

## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### NEW BUSINESS

##### Third Reading

**H. 131** An act relating to forest harvesting guidelines and standards ..... 746

##### Second Reading

##### Favorable

**H. 51** An act relating to payment of workers' compensation benefits by electronic payroll card ..... 746

Econ. Dev., Housing and General Affairs Report - Sen. Baruth ..... 746

##### Favorable with Recommendation of Amendment

**S. 38** Expanding eligibility for driving and identification privileges in Vermont

Transportation Report - Sen. Kitchel ..... 746

Finance Report - Sen. MacDonald ..... 750

### NOTICE CALENDAR

#### Second Reading

##### Favorable with Proposal of Amendment

**H. 431** An act relating to mediation in foreclosure actions

Judiciary Report - Sen. Ashe ..... 750

### ORDERED TO LIE

**S. 82** Campaign finance law ..... 758

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Government Operations, as amended?

**CONCURRENT RESOLUTIONS FOR ACTION**

**S.C.R. 20** (For text of Resolution, see Addendum to House Calendar for April 4, 2013)..... 758

**H.C.R. 84 - 96** (For text of Resolutions, see Addendum to House Calendar for April 4, 2013) ..... 758

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**NEW BUSINESS**

**Third Reading**

**H. 131.**

An act relating to harvesting guidelines and procurement standards.

**Second Reading**

**Favorable**

**H. 51.**

An act relating to payment of workers' compensation benefits by electronic payroll card.

**Reported favorably by Senator Baruth for the Committee on Economic Development, Housing and General Affairs.**

(Committee vote: 5-0-0)

(For House amendments, see House Journal of February 6, 2013, page 115 and February 7, 2013, page 121)

**Favorable with Recommendation of Amendment**

**S. 38.**

An act relating to expanding eligibility for driving and identification privileges in Vermont.

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

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

Sec. 1. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

\* \* \*

(d) ~~In addition to any other requirement of law or rule, a~~ Except as provided in subsection (e) of this section:

(1) A citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal

presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. ~~Notwithstanding any other law or rule to the contrary, an~~

(2) An operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay.

(e)(1) A citizen of a foreign country unable to establish legal presence in the United States who furnishes reliable proof of Vermont residence and of name, date of birth, and place of birth, and who satisfies all other requirements of this chapter for obtaining a license or permit, shall be eligible to obtain an operator's privilege card, a junior operator's privilege card, or a learner's privilege card.

(2) The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant's name, date of birth, and place of birth. The Commissioner may prescribe the documents or combination of documents that meets these criteria. However, the Commissioner shall accept a combination of two or more of the following documents to establish the name, date of birth, and place of birth of an applicant:

(A) a valid foreign passport, with or without a U.S. Customs and Border Protection entry form or stamp;

(B) a valid consular identification document issued by the government of Mexico or of Guatemala or by any other government with comparable security standards and protocols, as determined by the Commissioner;

(C) a certified record of the applicant's birth, marriage, adoption, or divorce, including a translation if necessary.

(3) The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant's Vermont residence. The Commissioner may prescribe the documents or combination of documents that meets these criteria. However, the Commissioner shall accept the following combinations of documents as proof of Vermont residence:

(A)(i) two pieces of mail received by the applicant within the prior 30 days with the applicant's current name and residential Vermont address; and

(ii) at least one of the documents specified in subdivision (B) of this subdivision (3); or

(B) two of the following which show name and residential Vermont address:

(i) a vehicle title or registration;

(ii) a document issued by a financial institution, such as a bank statement;

(iii) a document issued by an insurance company or agent, such as an insurance card, binder, or bill;

(iv) a document issued by an educational institution, such as a transcript, report card, or enrollment confirmation;

(v) federal tax documents, such as W-2 or 1099 forms;

(vi) state tax documents, such as an IN-111; and

(vii) medical health records, receipts, or bills.

(f) Persons able to establish lawful presence in the United States but who otherwise fail to comply with the requirements of the REAL ID Act of 2005, Pub. L. No. 109-13, §§ 201–202, shall be eligible for an operator’s privilege card, a junior operator’s privilege card, or a learner’s privilege card, provided the applicant furnishes reliable proof of Vermont residence and of name, date of birth, and place of birth, and satisfies all other requirements of this chapter for obtaining a license or permit. The Commissioner shall require applicants under this subsection to furnish a document or a combination of documents that reliably proves the applicant’s Vermont residence and his or her name, date of birth, and place of birth.

(g) The Commissioner may adopt policies or rules related to the issuance of privilege cards under this section that balance accessibility with mechanisms to prevent fraud. The Commissioner shall consider adopting the appointment system procedures used in other states to prevent and deter fraud with regard to proof of residency.

(h) A privilege card issued under this section shall:

(1) on its face bear the phrase “privilege card” and text indicating that it is not valid for federal identification or official purposes; and

(2) expire at midnight on the eve of the second birthday of the applicant following the date of issuance.

(i) Every applicant for or holder of a privilege card under this section shall be subject to all of the provisions of this title that apply to applicants and holders of operator’s licenses, junior operator’s licenses, and learner permits, except where the context clearly requires otherwise.

Sec. 2. 23 V.S.A. § 115 is amended to read:

§ 115. NONDRIVER IDENTIFICATION CARDS

(a) Any Vermont resident may make application to the ~~commissioner~~ Commissioner and be issued an identification card which is attested by the ~~commissioner~~ Commissioner as to true name, correct age, and any other identifying data as the ~~commissioner~~ Commissioner may require which shall include, in the case of minor applicants, the written consent of the applicant's parent, guardian, or other person standing in loco parentis. Every application for an identification card shall be signed by the applicant and shall contain such evidence of age and identity as the ~~commissioner~~ Commissioner may require, consistent with subsection (l) of this section. The ~~commissioner~~ Commissioner shall require payment of a fee of \$20.00 at the time application for an identification card is made.

(b) ~~Every~~ Except as provided in subsection (l) of this section, every identification card shall expire, unless earlier canceled, on the fourth birthday of the applicant following the date of original issue, and may be renewed every four years upon payment of a \$20.00 fee. At least 30 days before an identification card will expire, the ~~commissioner~~ Commissioner shall mail first class to the cardholder an application to renew the identification card.

\* \* \*

(l)(1) The Commissioner shall issue identification cards to Vermont residents who are not U.S. citizens but are able to establish lawful presence in the United States if an applicant follows the procedures and furnishes documents as required under subsection 603(d) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section. The identification cards shall expire consistent with subsection 603(d) of this title.

(2) The Commissioner shall issue non-REAL ID compliant identification cards to Vermont residents unable to establish lawful presence in the United States if an applicant follows the procedures and furnishes documents as required under subsection 603(e) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section.

(3) The Commissioner shall issue non-REAL ID compliant identification cards to Vermont residents able to establish lawful presence in the United States but who otherwise fail to comply with the requirements of the REAL ID Act of 2005, Pub. L. No. 109-13, §§ 201-202, if the applicant follows the procedures and furnishes documents as required under subsection

603(f) of this title and any policies or rules adopted thereunder, and otherwise satisfies the requirements of this section.

(4) A non-REAL ID compliant identification card issued under subdivision (2) or (3) of this subsection shall:

(A) bear on its face text indicating that it is not valid for federal identification or official purposes; and

(B) expire at midnight on the eve of the second birthday of the applicant following the date of issuance.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2014.

(Committee vote: 4-1-0)

**Reported favorably by Senator MacDonald for the Committee on Finance.**

The Committee recommends that the bill ought to pass when amended as recommended by the Committee on Transportation.

(Committee vote: 6-0-1)

## NOTICE CALENDAR

### Second Reading

#### Favorable with Proposal of Amendment

#### H. 431.

An act relating to mediation in foreclosure actions.

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

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

Sec. 1. 12 V.S.A. chapter 163, subchapter 9 is amended to read:

Subchapter 9. Mediation in Foreclosure Actions

#### § 4631. MEDIATION PROGRAM ESTABLISHED

(a) This subchapter establishes a program to assure the availability of mediation and application of ~~the federal Home Affordable Modification Program (“HAMP”)~~ government loss mitigation program requirements in

actions for foreclosure of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence.

(b) The requirements of this subchapter shall apply ~~only~~ to all foreclosure actions ~~involving loans that are subject to the federal HAMP guidelines on~~ dwelling houses of four units or less that are occupied by the owner as a principal residence unless:

(1) the loan involved is not subject to any government loss mitigation program requirements;

(2) prior to commencing the foreclosure action, the mortgagee or a representative of the mortgagee met with or made reasonable efforts to meet with the mortgagor in person in Vermont to discuss any applicable loss mitigation options; and

(3) the plaintiff in the foreclosure action certifies in a separate document filed with its complaint that the requirements of subdivisions (1) and (2) of this subsection have been satisfied and describes its efforts to meet with the mortgagor in person to discuss applicable loss mitigation efforts.

(c) To be qualified to act as a mediator under this subchapter, an individual shall be licensed to practice law in the ~~state~~ State and shall be periodically required to ~~have taken a~~ take specialized, continuing legal education training ~~course~~ courses on foreclosure prevention or loss mitigation approved by the Vermont Bar Association.

(d) This subchapter shall not apply to a commercial loan.

(e) As used in this subchapter:

(1) "Commercial loan" means any loan described in 9 V.S.A. § 46(1), (2), or (3).

(2) "Government loss mitigation program" means:

(A) the federal Home Affordable Modification Program ("HAMP");

(B) any loss mitigation program for loans owned or guaranteed by government-sponsored entities such as the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the U.S. Federal Housing Administration, or the U.S. Department of Veterans Affairs;

(C) any loss mitigation program for loans guaranteed by the U.S. Department of Agriculture-Rural Development that are not owned by an instrumentality of the United States or the State of Vermont; or

(D) a settlement agreement with a government entity, or any state or federal law or regulation, regarding the notification, consideration, or offer of loss mitigation options.

§ 4632. OPPORTUNITY TO MEDIATE

(a) In an action for foreclosure ~~of a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence~~ subject to this subchapter, whenever the mortgagor ~~enters an appearance in the case or requests mediation prior to four months after judgment is entered and before the end of the redemption period specified in the decree~~, the court shall refer the case to mediation pursuant to this subchapter, except that the court may:

(1) for good cause, shorten the four-month period or thereafter decline to order mediation; or

(2) decline to order mediation if the mortgagor requests mediation after judgment has been entered and the court determines that the mortgagor is attempting to delay the case, or the court may for good cause decline to order mediation if the mortgagor requests mediation after judgment has been entered.

(b) Unless the mortgagee ~~agrees and mortgagor agree~~ otherwise or the court so orders for good cause shown, all mediation shall be completed prior to the expiration of the redemption period specified in the decree and within 120 days of the mediator's appointment. The redemption period shall not be stayed on account of pending mediation.

(c) In an action for foreclosure of a mortgage ~~on any dwelling house of four units or less that is occupied by the owner as a principal residence~~ subject to this subchapter, the mortgagee shall serve upon the mortgagor two copies of the notice described in subsection (d) of this section with the summons and complaint. The ~~supreme court~~ Supreme Court may by rule consolidate this notice with other foreclosure-related notices as long as the consolidation is consistent with the content and format of the notice under this subsection.

(d) The notice required by subsection (c) of this section shall:

(1) be on a form approved by the court administrator;

(2) advise the homeowner of the homeowner's rights in foreclosure proceedings under this subchapter;

(3) state the importance of participating in mediation even if the homeowner is currently communicating with the mortgagee or servicer;

(4) provide contact information for legal services; and

(5) incorporate a form that can be used by the homeowner to request mediation from the court.

~~(e) The court may, on motion of a party, find that the requirements of this subchapter have been met and that the parties are not required to participate in mediation under this subchapter if the mortgagee files a motion and establishes to the satisfaction of the court that it has complied with the applicable requirements of HAMP and supports its motion with sworn affidavits that:~~

~~(1) include the calculations and inputs required by HAMP and employed by the mortgagee; and~~

~~(2) demonstrate that the mortgagee or servicer met with the mortgagor in person or via videoconferencing or made reasonable efforts to meet with the mortgagor in person.~~

The Vermont Bar Association (VBA) shall have the authority to establish a fair and neutral mediator-selection process. If the mortgagee and mortgagor are unable to select a mediator through the selection process established by the VBA, the court shall appoint a qualified mediator for the case.

#### § 4633. MEDIATION

(a) During all mediations under this subchapter:

(1) The parties shall address the available foreclosure prevention tools and, if disputed, the amount due on the note for the principal, interest, and costs or fees.

~~(1)(2) the~~ The mortgagee shall use and consider available foreclosure prevention tools, including reinstatement, loan modification, forbearance, and short sale, and the calculations, assumptions, and forms established by the HAMP guidelines, including all HAMP-related applicable government loss mitigation program requirements and any related “net present value” calculations used in considering a loan modification conducted under this subchapter;

~~(2)(3) the~~ The mortgagee shall produce for the mortgagor and mediator documentation of its consideration of the options available in this subdivision and subdivision (1) of this subsection, including the data used in and the outcome of any HAMP-related “net present value” calculation; and:

(A) if a modification or other agreement is not offered, an explanation why the mortgagor was not offered a modification or other agreement; and

(B) for any applicable government loss mitigation program, the criteria for the program and the inputs and calculations used in determining the homeowner’s eligibility for a modification or other program.

~~(3)(4)~~ Where the mortgagee claims that a pooling and servicing or other similar agreement prohibits modification, the mortgagee shall produce a copy of the agreement. All agreement documents shall be confidential and shall not be included in the mediator's report.

(b)(1) In all mediations under this subchapter, the mortgagor shall make a good faith effort to provide to the mediator ~~20 days prior to the first mediation, or within a time determined by the mediator to be appropriate in order to allow for verification of the information provided by the mortgagee~~ court or mediator, information on his or her household income, and any other information required by HAMP ~~unless already provided~~ any applicable government loss mitigation program.

(2) Within 45 days of appointment, the mediator shall hold a premediation telephone conference to help the mortgagee and mortgagor complete any necessary document exchange and address other premediation issues. At the premediation telephone conference, the mediator shall at a minimum document and maintain records of the progress the mortgagee and mortgagor are making on financial document production, any review of information that occurs during the conference, any request for additional information, the anticipated time frame for submission of any additional information and the lender's review of the information, the scheduling of the mediation session, and which of the persons identified in subdivision (d)(1) of this section will be present in person at the mediation or that the parties and the mediator have agreed pursuant to subsection (e) of this section that personal presence at the mediation is not required.

(3) During the mediation, the mediator shall document and maintain records of:

(A) agreements about information submitted to the mediator;

(B) whether a modification or other foreclosure alternative is available and, if so, the terms of the modification;

(C) if a modification or other foreclosure alternative is not available, the reasons for the unavailability; and

(D) the steps necessary to finalize the mediation.

(c) The parties to a mediation under this subchapter shall cooperate in good faith under the direction of the mediator to produce the information required by subsections (a) and (b) of this section in a timely manner so as to permit the mediation process to function effectively.

(d)(1) The following persons shall participate in person or by telephone in any mediation under this subchapter:

(A) the mortgagee, or any other person, including the mortgagee's servicing agent, who meets the qualifications required by subdivision (2) of this subsection;

(B) counsel for the mortgagee; and

(C) the mortgagor, and counsel for the mortgagor, if represented.

(2) The mortgagee or mortgagee's servicing agent, if present, shall have:

(A) authority to agree to a proposed settlement, loan modification, or dismissal of the foreclosure action;

(B) real time access during the mediation to the mortgagor's account information and to the records relating to consideration of the options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section, including the data and factors considered in evaluating each such foreclosure prevention tool; and

(C) the ability and authority to perform ~~necessary HAMP-related~~ government loss mitigation program-related "net present value" calculations and to consider other options available in subdivisions ~~(a)(1) and (2)~~ (a)(2) and (a)(3) of this section during the mediation.

(e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or videoconferencing. The mortgagee and mortgagor shall each have at least one of the persons identified in subdivision (d)(1) of this section present in person at the mediation unless all parties and the mediator agree otherwise in writing.

(f) The mediator may include in the mediation process under this subchapter any other person the mediator determines would assist in the mediation.

(g) Unless the ~~parties~~ mortgagee and mortgagor agree otherwise, all mediations under this subchapter shall take place in the county in which the foreclosure action is brought pursuant to subsection ~~4523(a)~~ 4932(a) of this title.

#### § 4634. MEDIATION REPORT

(a) Within seven days of the conclusion of any mediation under this subchapter, the mediator shall report in writing the results of the process to the court and both parties, and shall provide a copy of the report to the Office of the Attorney General for data collection purposes. The report submitted to the Attorney General's office shall include, in addition to the information identified in subsection (b) of this section, all applicable government loss mitigation program criteria, inputs, and calculations performed prior to or

during the mediation and all information related to the requirements in subsection 4633(a) of this title. The report submitted to the Attorney General's office shall be confidential, and shall be exempt from public copying and inspection under 1 V.S.A. § 317, provided that any public report by the Attorney General may include information in aggregate form.

(b) The report required by subsection (a) of this section shall not disclose the mediator's assessment of any aspect of the case or substantive matters discussed during the mediation, except as is required to report the information required by this section. The report shall contain all of the following items:

(1) The date on which the mediation was held, including the starting and finishing times.

(2) The names and addresses of all persons attending, showing their role in the mediation and specifically identifying the representative of each party who had decision-making authority.

(3) A summary of any substitute arrangement made regarding attendance at the mediation.

(4) ~~All HAMP-related "net present value" calculations and other foreclosure avoidance tool calculations performed prior to or during the mediation and all information related to the requirements in subsection 4633(a) of this title. [Repealed.]~~

(5) The results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties.

(6)(A) A statement as to whether any person required under subsection ~~(d)~~ of section 4633(d) of this title to participate in the mediation failed to:

(i) attend the mediation;

(ii) make a good faith effort to mediate; or

(iii) supply documentation, information, or data as required by subsections 4633(a)–(c) of this title.

(B) If a statement is made under subdivision (6)(A) of this subsection (b), it shall be accompanied by a brief description of the applicable reason for the statement.

#### § 4635. COMPLIANCE WITH OBLIGATIONS

(a) Upon receipt of a mediator's report required by subsection 4634(a) of this title, the court shall determine whether the mortgagee or servicer has complied with all of its obligations under subsection 4633(a) of this title, and,

at a minimum, with any ~~modification obligations under HAMP~~ applicable government loss mitigation program requirements. The court may make such a determination without a hearing unless the court, in its discretion, determines that a hearing is necessary.

(b) If the mediator's report includes a statement under subdivision ~~4635(b)(6)~~ 4634(b)(6) of this title, or if the court makes a determination of noncompliance with the ~~obligations requirements~~ requirements under subsection 4635(a) of this title, the court may impose appropriate sanctions against the noncomplying party, including:

(1) tolling of interest, fees, and costs;

(2) reasonable attorney's fees;

(3) monetary sanctions;

(4) dismissal without prejudice; and

(5) prohibiting the mortgagee from selling or taking possession of the property that is the subject of the action with or without opportunity to cure as the court deems appropriate.

(c) No mediator shall be required to testify in an action subject to this subchapter.

§ 4636. ~~EFFECT OF MEDIATION PROGRAM ON FORECLOSURE ACTIONS FILED PRIOR TO EFFECTIVE DATE~~

~~The court shall, on request of a party prior to judgment or on request of a party and showing of good cause after judgment, require mediation in any foreclosure action on a mortgage on any dwelling house of four units or less that is occupied by the owner as a principal residence that was commenced prior to the effective date of this subchapter but only up to 30 days prior to the end of the redemption period. [Repealed.]~~

§ 4637. NO WAIVER OF RIGHTS; COSTS OF MEDIATION

(a) The parties' rights in a foreclosure action are not waived by their participation in mediation under this subchapter.

(b) The mortgagee shall pay the required costs for any mediation under this subchapter except that the mortgagor shall be responsible for mortgagor's own costs, including the cost of mortgagor's attorney, if any, and travel costs.

(c) If the foreclosure action results in a sale with a surplus, the mortgagee may recover the full cost of mediation to the extent of the surplus. Otherwise, the mortgagee may not shift to the mortgagor the costs of the mortgagee's or

the servicing agent's attorney's fees or travel costs related to mediation but may shift up to one-half of the costs of the mediator.

Sec. 2. REPEAL

2010 Acts and Resolves No. 132, Sec. 13 (repeal of Vermont mortgage foreclosure mediation program on date federal HAMP program is repealed) is repealed.

Sec. 3. EFFECTIVE DATE

This act shall take effect on December 1, 2013 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2013, page 340.)

**ORDERED TO LIE**

**S. 82.**

An act relating to campaign finance law.

**PENDING QUESTION:** Shall the bill be amended as recommended by the Committee on Government Operations, as amended?

**CONCURRENT RESOLUTIONS FOR ACTION**

**S.C.R. 20** (For text of Resolution, see Addendum to House Calendar for April 4, 2013)

**H.C.R. 84 - 96** (For text of Resolutions, see Addendum to House Calendar for April 4, 2013)

**CONFIRMATIONS**

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

Patrick Berry of Middlebury – Commissioner, Fish and Wildlife – By Sen. Hartwell for the Committee on Natural Resources and Energy. (3/27/13)

Ron Shems of Moretown – Chair of the Natural Resources Board – By Sen. Hartwell for the Committee on Natural Resources and Energy. (4/3/13)

### **PUBLIC HEARINGS**

**Wednesday, April 17, 2013** – Room 11 – 5:30 – 7:30 P.M. – Re: H.225 - Statewide policy on training requirement for Electronic Control Devices (Tasers) - House Committee on Government Operations.

**Thursday, April 18, 2013** - Room 11 - 6:00 - 8:00 P.M. Re: H. 208 Earned Sick Days - House Committee on General, Housing and Military Affairs.

### **REPORTS ON FILE**

#### **Reports 2013**

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont Legislative webpage.

1. Report by Secretary of Administration pursuant to Act 156, Adj. Sess. (2012), Sec. 8 regarding supervisory union size and structure.