

Senate Calendar

FRIDAY, APRIL 25, 2014

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**ACTION CALENDAR
CONSIDERATION POSTPONED**

Third Reading

H. 581.

An act relating to guardianship of minors.

PENDING ACTION: Third Reading of the bill.

**Amendment to Senate proposal of amendment to H. 581 to be offered by
Senator Galbraith before Third Reading**

Senator Galbraith moves to amend the Senate proposal of amendment in Sec. 1, 14 V.S.A. § 2630(a), after the second sentence, by inserting The order should permit the child to have contact of reasonable duration and frequency with the child's siblings.

UNFINISHED BUSINESS OF THURSDAY, APRIL 24, 2014

Second Reading

Favorable with Proposal of Amendment

H. 297.

An act relating to duties and functions of the Department of Public Service.

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

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:

* * * Legislative Purpose; Intent * * *

Sec. 1. LEGISLATIVE PURPOSE; FINDINGS

It is the intent of the General Assembly to maintain a robust and modern telecommunications network in Vermont by making strategic investments in improved technology for all Vermonters. To achieve that goal, it is the purpose of this act to upgrade the State's telecommunications objectives and reorganize government functions in a manner that results in more coordinated and efficient State programs and policies, and, ultimately, produces operational savings that may be invested in further deployment of broadband and mobile telecommunications services for the benefit of all Vermonters. In addition, it

is the intent of the General Assembly to update and provide for a more equitable application of the Universal Service Fund (USF) surcharge. Together, these operational savings and additional USF monies will raise at least \$1.45 million annually, as follows:

(1) \$650,000.00 from an increase in the USF charge to a flat two percent;

(2) \$500,000.00 from application of the USF charge to prepaid wireless telecommunications service providers; and

(3) \$300,000.00 in operational savings from the transfer and consolidation of State telecommunications functions.

* * * USF; Connectivity Fund; Prepaid Wireless; Rate of Charge * * *

Sec. 2. 30 V.S.A. § 7511 is amended to read:

§ 7511. DISTRIBUTION GENERALLY

(a) As directed by the ~~public service board~~, Public Service Board funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

(1) ~~To~~ to pay costs payable to the fiscal agent under its contract with the ~~public service board~~. Board;

(2) ~~To~~ to support the Vermont telecommunications relay service in the manner provided by section 7512 of this title;

(3) ~~To~~ to support the Vermont ~~lifeline~~ Lifeline program in the manner provided by section 7513 of this title;

(4) ~~To~~ to support ~~enhanced-911~~ Enhanced-911 services in the manner provided by section 7514 of this title; and

(5) ~~To reduce the cost to customers of basic telecommunications service in high cost areas, in the manner provided by section 7515 of this title to support the Connectivity Fund established in section 7516 of this chapter.~~

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the ~~public service board~~ Board shall conduct an expedited proceeding to allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 3. 30 V.S.A. § 7516 is added to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing access to Internet service that is capable of speeds of at least 4 Mbps download

and 1 Mbps upload to every E-911 business and residential location in Vermont, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Any new services funded in whole or in part by monies in this Fund shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

(b) The fiscal agent shall determine annually, on or before September 1, the amount of funds available to the Connectivity Fund. The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from service providers, the Vermont Telecommunications Authority, and the Division for Connectivity to deploy broadband to eligible census blocks. The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved locations; however, the Department also shall consider:

(1) the proposed data transfer rates and other data transmission characteristics of services that would be available to consumers;

(2) the price to consumers of services;

(3) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(4) whether the proposal would use the best available technology that is economically feasible;

(5) the availability of service of comparable quality and speed; and

(6) the objectives of the State's Telecommunications Plan.

Sec. 4. 30 V.S.A. § 7521 is amended to read:

§ 7521. CHARGE IMPOSED; WHOLESAL EXEMPTION

(a) A universal service charge is imposed on all retail telecommunications service provided to a Vermont address. Where the location of a service and the location receiving the bill differ, the location of the service shall be used to determine whether the charge applies. The charge is imposed on the person purchasing the service, but shall be collected by the telecommunications provider. Each telecommunications service provider shall include in its tariffs filed at the ~~public service board~~ Public Service Board a description of its billing procedures for the universal service fund charge.

(b) The universal service charge shall not apply to wholesale transactions between telecommunications service providers where the service is a component part of a service provided to an end user. This exemption includes;

~~but is not limited to,~~ network access charges and interconnection charges paid to a local exchange carrier.

(c) In the case of mobile telecommunications service, the universal service charge is imposed when the customer's place of primary use is in Vermont. The terms "customer," "place of primary use," and "mobile telecommunications service" have the meanings given in 4 U.S.C. § 124. All provisions of 32 V.S.A. § 9782 shall apply to the imposition of the universal service charge under this section.

(d)(1) Notwithstanding any other provision of law to the contrary, in the case of prepaid wireless telecommunications services, the universal service charge shall be imposed on the provider in the manner determined by the Public Service Board pursuant to subdivision (3) of this section.

(2) For purposes of this subsection, "prepaid wireless telecommunications service" means a telecommunications service as defined in section 203(5) of this title that a consumer pays for in advance and that is sold in predetermined units or dollars that decline with use.

(3) The Public Service Board shall establish a formula to ensure the universal service charge imposed on prepaid wireless telecommunications service providers reflects two percent of retail prepaid wireless telecommunications service in Vermont beginning on September 1, 2014.

Sec. 5. 30 V.S.A. § 7523 is amended to read:

§ 7523. ~~RATE ADJUSTED ANNUALLY~~ OF CHARGE

~~(a) Annually, after considering the probable expenditures for programs funded pursuant to this chapter, the probable service revenues of the industry and seeking recommendations from the department, the public service board shall establish a rate of charge to apply during the 12 months beginning on the following September 1. However, the rate so established shall not at any time exceed two percent of retail telecommunications service. The board's decision shall be entered and announced each year before July 15. However, if the general assembly does not enact an authorization amount for E-911 before July 15, the board may defer decision until 30 days after the E-911 authorization is established, and the existing charge rate shall remain in effect until the board establishes a new rate. Beginning on July 1, 2014, the annual rate of charge shall be two percent of retail telecommunications service.~~

(b) Universal service charges imposed and collected by the fiscal agent under this subchapter shall not be transferred to any other fund or used to support the cost of any activity other than in the manner authorized by section 7511 of this title.

Sec. 6. 30 V.S.A. § 7524 is amended to read:

§ 7524. PAYMENT TO FISCAL AGENT

(a) Telecommunications service providers shall pay to the fiscal agent all universal service charge receipts collected from customers. A report in a form approved by ~~the public service board~~ Public Service Board shall be included with each payment.

(b) Payments shall be made monthly, by the 15th day of the month, and shall be based upon amounts collected in the preceding month. If the amount is small, the ~~board~~ Board may allow payment to be made less frequently, and may permit payment on an accrual basis.

(c) Telecommunications service providers shall maintain records adequate to demonstrate compliance with the requirements of this chapter. The ~~board~~ Board or the fiscal agent may examine those records in a reasonable manner.

(d) When a payment is due under this section by a telecommunications service provider who has provided customer credits under the ~~lifeline~~ Lifeline program, the amount due may be reduced by the amount of credit granted.

(e) The fiscal agent shall examine the records of telecommunications service providers to determine whether their receipts reflect application of the universal service charge on all assessable telecommunications services under this chapter, including the federal subscriber line charge, directory assistance, enhanced services unless they are billed as separate line items, and toll-related services.

* * * State Telecommunications Plan; Division for Connectivity; VTA * * *

Sec. 7. 30 V.S.A. § 202c is amended to read:

§ 202C. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The General Assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the State communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

- (1) Strengthen the State's role in telecommunications planning.

(2) Support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers and promote open access among competitive service providers on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered.

(7) Support, ~~to the extent practical and cost effective,~~ the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the State.

(8) Support deployment of broadband infrastructure that:

(A) Uses the best commercially available technology.

(B) Does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation.

(9) In the deployment of broadband infrastructure, encourage the use of existing facilities, such as existing utility poles and corridors and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures.

(10) Support measures designed to ensure that by the end of the year 2024 every E-911 business and residential location in Vermont has infrastructure capable of delivering Internet access with service that has a minimum download speed of 100 Mbps and is symmetrical.

Sec. 8. 30 V.S.A. § 202d is amended to read:

§ 202D. TELECOMMUNICATIONS PLAN

(a) The ~~department of public service~~ Department of Public Service shall constitute the responsible planning agency of the ~~state~~ State for the purpose of obtaining for all consumers in the ~~state~~ State stable and predictable rates and a technologically advanced telecommunications network serving all service

areas in the ~~state~~ State. The ~~department of public service~~ Department shall be responsible for the provision of plans for meeting emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The ~~department of public service~~ Department shall prepare a ~~telecommunications plan~~ Telecommunications Plan for the ~~state~~ State. The ~~department of innovation and information~~ Department of Innovation and Information, the Division for Connectivity and the ~~agency of commerce and community development~~ Agency of Commerce and Community Development shall assist the ~~department of public service~~ Department of Public Service in preparing the ~~plan~~ Plan. The ~~plan~~ Plan shall be for a ~~seven-year~~ ten-year period and shall serve as a basis for ~~state~~ State telecommunications policy. Prior to preparing the ~~plan~~ Plan, the ~~department of public service~~ Department shall prepare:

(1) an overview, looking ~~seven~~ ten years ahead, of future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the ~~department of public service~~ Department of Public Service, will significantly affect ~~state~~ State telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the ~~agency of commerce and community development~~ Agency of Commerce and Community Development and the Division for Connectivity, to determine what telecommunications services are needed now and in the succeeding ~~seven~~ ten years;

(3) an assessment of the current state of telecommunications infrastructure;

(4) an assessment, conducted in cooperation with the ~~department of innovation and information~~ Department of Innovation and Information and the Division for Connectivity, of the current ~~state~~ State telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

(c) In developing the ~~plan~~ Plan, the ~~department~~ Department shall take into account the policies and goals of section 202c of this title.

(d) In establishing plans, public hearings shall be held and the ~~department of public service~~ Department shall consult with members of the public,

representatives of telecommunications utilities, other providers, and other interested ~~state~~ State agencies, particularly the ~~agency of commerce and community development~~ Agency of Commerce and Community Development, ~~the Division for Connectivity~~, and the ~~department of innovation and information~~ Department of Innovation and Information, whose views shall be considered in preparation of the ~~plan~~ Plan. To the extent necessary, the ~~department of public service~~ Department shall include in the ~~plan~~ Plan surveys to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the ~~department of public service~~ Department may require the submission of data by each company subject to supervision by the ~~public service board~~ Public Service Board.

(e) Before adopting a ~~plan~~ Plan, the ~~department~~ Department shall conduct public hearings on a final draft and shall consider the testimony presented at such hearings in preparing the final ~~plan~~ Plan. At least one hearing shall be held jointly with ~~committees~~ Committees of the ~~general assembly~~ General Assembly designated by the ~~general assembly~~ General Assembly for this purpose. The ~~plan~~ Plan shall be adopted by ~~September 1, 2004~~ September 1, 2014.

(f) The ~~department~~ Department, from time to time, but in no event less than every three years, institute proceedings to review a ~~plan~~ Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the ~~plan~~ Plan. For good cause or upon request by a ~~joint resolution~~ Joint Resolution passed by the ~~general assembly~~ General Assembly, an interim review and revision of any section of the ~~plan~~ Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with ~~committees~~ Committees of the ~~general assembly~~ General Assembly designated by the ~~general assembly~~ General Assembly for this purpose.

(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan.

Sec. 9. 3 V.S.A. § 2225 is added to read:

§ 2225. DIVISION FOR CONNECTIVITY

(a) Creation. The Division for Connectivity is created within the Agency of Administration as the successor in interest to and the continuation of the Vermont Telecommunications Authority. A Director for Connectivity shall be appointed by the Secretary of Administration. The Division shall receive administrative support from the Agency.

(b) Purposes. The purposes of the Division are to promote:

(1) access to affordable broadband service to all residences and businesses in all regions of the State, to be achieved in a manner that is consistent with the State Telecommunications Plan;

(2) universal availability of mobile telecommunication services, including voice and high-speed data along roadways, and near universal availability statewide;

(3) investment in telecommunications infrastructure in the State that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities;

(4) the continuous upgrading of telecommunications and broadband infrastructure in all areas of the State is to reflect the rapid evolution in the capabilities of available mobile telecommunications and broadband technologies, and in the capabilities of mobile telecommunications and broadband services needed by persons, businesses, and institutions in the State; and

(5) the most efficient use of both public and private resources through State policies by encouraging the development of open access telecommunications infrastructure that can be shared by multiple service providers.

(c) Duties. To achieve its purposes, the Division shall:

(1) provide resources to local, regional, public, and private entities in the form of grants, technical assistance, coordination, and other incentives;

(2) prioritize the use of existing buildings and structures, historic or otherwise, as sites for visually-neutral placement of mobile telecommunications and wireless broadband antenna facilities; and

(3) inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the State to enable broadband service in unserved areas of the State; take steps to promote the use of those licensed radio frequencies for that purpose; and recommend to the General Assembly any further legislative measures with respect to ownership, management, and use of these licenses as would promote the general good of the State.

(4) coordinate telecommunications initiatives among Executive Branch agencies, departments, and offices.

(5) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the State, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support the provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for the provision of these services to the unserved areas;

(6) identify the types and locations of infrastructure and services needed to carry out the purposes stated in subsection (b) of this section;

(7) formulate an action plan that conforms with the State Telecommunications Plan and carries out the purposes stated in subsection (b) of this section;

(8) coordinate the agencies of the State to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(9) support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and promote development of the infrastructure that enables the provision of these services; and

(10) through the Department of Innovation and Information, aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and waive or reduce State fees for access to State-owned rights-of-way in exchange for comparable value to the State, unless payment for use is otherwise required by federal law.

(11) receive all technical and administrative assistance as deemed necessary by the Director for Connectivity.

(d)(1) Deployment. The Director may request voluntary disclosure of information regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. Such information may include data identifying projected coverage areas, projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities.

(2) The Director may enter into a nondisclosure agreement with respect to any voluntary disclosures under this subsection and the information

disclosed pursuant thereto shall remain confidential. Alternatively, entities that voluntarily provide information requested under this subsection may select a third party to be the recipient of such information. The third party may aggregate information provided by the entities, but shall not disclose the information it has received to any person, including the Director. The third party shall only disclose the aggregated information to the Director. The Director may publicly disclose aggregated information based upon the information provided under this subsection. The confidentiality requirements of this subsection shall not affect whether information provided to any agency of the State or a political subdivision of the State pursuant to other laws is or is not subject to disclosure.

(e) Minimum technical service characteristics. The Division only shall promote the expansion of broadband services that offer actual speeds that meet or exceed the minimum technical service characteristic objectives contained in the State's Telecommunications Plan.

(f) Annual Report. Notwithstanding 2 V.S.A. § 20(d), on or before January 15 of each year, the Director shall submit a report of its activities for the preceding fiscal year to the General Assembly. Each report shall include an operating and financial statement covering the Division's operations during the year, including a summary of all grant awards and contracts and agreements entered into by the Division, as well as the action plan required under subdivision (c)(7) of this section. In addition, the report shall include an accurate map and narrative description of each of the following:

(1) the areas served and the areas not served by wireless communications service, as identified by the Department of Public Service, and cost estimates for providing such service to unserved areas;

(2) the areas served and the areas not served by broadband that has a download speed of at least 0.768 Mbps and an upload speed of at least 0.2 Mbps, as identified by the Department of Public Service, and cost estimates for providing such service to unserved areas;

(3) the areas served and the areas not served by broadband that has a combined download and upload speed of at least 5 Mbps, as identified by the Department of Public Service, and the costs for providing such service to unserved areas; and

(4) the areas served and the areas not served by broadband that has a download speed of at least 100 Mbps and is symmetrical, as identified by the Department of Public Service, and the costs for providing such service to unserved areas.

Sec. 10. REPEAL

3 V.S.A. § 2222b (Secretary of Administration responsible for coordination and planning); 3 V.S.A. § 2222c (Secretary of Administration to prepare deployment report); 30 V.S.A. § 8077 (minimum technical service characteristics); and 30 V.S.A. § 8079 (broadband infrastructure investment) are repealed.

Sec. 11. CREATION OF POSITIONS; TRANSFER OF VACANT POSITIONS; REEMPLOYMENT RIGHTS

(a) The following exempt positions are created within the Division for Connectivity: one full-time Director and up to six additional full-time employees as deemed necessary by the Secretary of Administration.

(b) The positions created under subsection (a) of this section shall only be filled to the extent there are existing vacant positions in the Executive Branch available to be transferred and converted to the new positions in the Division for Connectivity, as determined by the Secretary of Administration and the Commissioner of Human Resources, so that the total number of authorized positions in the State shall not be increased by this act.

(c) All full-time personnel of the Vermont Telecommunications Authority employed by the Authority on the day immediately preceding the effective date of this act, who do not obtain a position in the Division for Connectivity pursuant to subsection (a) of this section, shall be entitled to the same reemployment or recall rights available to non-management State employees under the existing collective bargaining agreement entered into between the State and the Vermont State Employees' Association.

Sec. 12. TRANSITIONAL PROVISIONS

(a) Personnel. The Secretary of Administration shall determine where the offices of the Division for Connectivity shall be housed.

(b) Assets and liabilities. The assets and liabilities of the Vermont Telecommunications Authority (VTA) shall become the assets and liabilities of the Agency of Administration.

(c) Legal and contractual obligations. The Executive Director of the VTA, in consultation with the Secretary of Administration, shall identify all grants and contracts of the VTA and create a plan to redesignate the Agency of Administration as the responsible entity. The plan shall ensure that all existing grantors, grantees, and contractors are notified of the redesignation.

* * * Conduit Standards; Public Highways * * *

Sec. 13. 3 V.S.A. § 2226 is added to read:

§ 2226. PUBLIC HIGHWAYS; CONDUIT STANDARDS

(a) Intent. The intent of this section is to provide for the construction of infrastructure sufficient to allow telecommunications service providers seeking to deploy communication lines in the future to do so by pulling the lines through the conduit and appurtenances installed pursuant to this section. This section is intended to require those constructing public highways, including State, municipal, and private developers, to provide and install such conduit and appurtenances as may be necessary to accommodate future telecommunications needs within public highways and rights-of-way without further excavation or disturbance.

(b) Rules; standards. On or before January 1, 2015, the Secretary of Administration, in consultation with the Commissioner of Public Service, the Secretary of Transportation, and the Vermont League of Cities and Towns, shall adopt rules requiring the installation of conduit and such vaults and other appurtenances as may be necessary to accommodate installation and connection of telecommunications lines within the conduit during highway construction projects. The rules shall specify construction standards with due consideration given to existing and anticipated technologies and industry standards. The standards shall specify the minimum diameter of the conduit and interducts to meet the requirements of this section. All conduit and appurtenances installed by private parties under this section shall be conveyed and dedicated to the State or the municipality, as the case may be, with the dedication and conveyance of the public highway or right-of-way. Any and all installation costs shall be the responsibility of the party constructing the public highway.

* * * Extension of 248a; Automatic Party Status * * *

Sec. 14. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with ~~subsection 202c(b) of this title~~ the State Telecommunications Plan. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other State and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

* * *

(i) Sunset of Board authority. Effective July 1, ~~2014~~ 2016, no new applications for certificates of public good under this section may be considered by the Board.

* * *

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

Sec. 15. 10 V.S.A. § 1264(j) is amended to read:

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, ~~2014~~ 2016 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The Secretary shall issue a decision on the application within 40 days of the date the Secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The Secretary shall issue a decision on the application within 60 days of the date the Secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 16. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the ~~secretary~~ Secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the ~~public service board~~ Public Service Board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the ~~secretary~~ Secretary regarding a telecommunications facility made on or after July 1, ~~2014~~ 2016.

* * *

Sec. 17. 2011 Acts and Resolves No. 53, Sec. 14d is amended to read:

Sec. 14d. PROSPECTIVE REPEALS; EXEMPTIONS FROM
MUNICIPAL BYLAWS AND ORDINANCES

Effective July 1, ~~2014~~ 2016:

(1) 24 V.S.A. § 4413(h) (limitations on municipal bylaws) shall be repealed; and

(2) 24 V.S.A. § 2291(19) (municipal ordinances; wireless telecommunications facilities) is amended to read:

* * *

Sec. 18. 3 V.S.A. § 2809 is amended to read:

§ 2809. REIMBURSEMENT OF AGENCY COSTS

(a)(1) The Secretary may require an applicant for a permit, license, certification, or order issued under a program that the Secretary enforces under 10 V.S.A. § 8003(a) to pay for the cost of research, scientific, programmatic, or engineering expertise provided by the Agency of Natural Resources, provided:

(A) ~~the~~ The Secretary does not have such expertise or services and such expertise is required for the processing of the application for the permit, license, certification, or order; ~~or,~~

(B) ~~the~~ The Secretary does have such expertise but has made a determination that it is beyond the ~~agency's~~ Agency's internal capacity to effectively utilize that expertise to process the application for the permit, license, certification, or order. In addition, the Secretary shall determine that such expertise is required for the processing of the application for the permit, license, certification, or order.

(2) The Secretary may require an applicant under 10 V.S.A. chapter 151 to pay for the time of Agency of Natural Resources personnel providing research, scientific, or engineering services or for the cost of expert witnesses when ~~agency~~ Agency personnel or expert witnesses are required for the processing of the permit application.

(3) In addition to the authority set forth under 10 V.S.A. chapters 59 and 159 and § section 1283, the Secretary may require a person who caused the ~~agency~~ Agency to incur expenditures or a person in violation of a permit, license, certification, or order issued by the Secretary to pay for the time of ~~agency~~ Agency personnel or the cost of other research, scientific, or

engineering services incurred by the ~~agency~~ Agency in response to a threat to public health or the environment presented by an emergency or exigent circumstance.

* * *

(g) Concerning an application for a permit to discharge stormwater runoff from a telecommunications facility as defined in 30 V.S.A. § 248a that is filed before July 1, ~~2014~~2016:

(1) Under subdivision (a)(1) of this section, the ~~agency~~ Agency shall not require an applicant to pay more than \$10,000.00 with respect to a facility.

(2) The provisions of subsection (c) (mandatory meeting) of this section shall not apply.

* * * Administration Report; E-911; Vermont Communications Board; VCGI; FirstNet * * *

Sec. 19. ADMINISTRATION REPORT; TRANSFERS AND CONSOLIDATION

(a) On January 1, 2015, the Secretary of Administration shall submit a report to the General Assembly proposing a plan for transferring the responsibilities and powers of the Enhanced 911 Board, including necessary positions, to the Division for Connectivity, the Department of Public Service, or the Department of Public Safety, as he or she deems appropriate. The plan shall include budgetary recommendations and shall strive to achieve annual operational savings of at least \$300,000.00, as well as enhanced coordination and efficiency, and reductions in operational redundancies. The report shall include draft legislation implementing the Secretary's plan. In addition, the report shall include a draft recommendation for transferring telecommunications-related positions, responsibilities, and resources of the Vermont Center for Geographic Information to the Department of Public Service.

(b) As part of the report required in subsection (a) of this section, the Secretary shall also make findings and recommendations regarding the status of the Vermont Communications Board, Department of Public Safety, and the Vermont Public Safety Broadband Network Commission (Vermont FirstNet). If not prohibited by federal law, the Secretary shall propose draft legislation creating an advisory board within the Division for Connectivity or the Department of Public Safety comprised of 15 members appointed by the Governor to assume functions of the current Enhanced 911 Board, the Vermont Communications Board, the Vermont Public Safety Broadband Network Commission (FirstNet), and relevant telecommunications-related

aspects of the Vermont Center for Geographic Information Board of Directors, as the Secretary deems appropriate. Upon establishment of the new advisory board and not later than July 1, 2015, the E-911 Board and the Vermont Communications Board shall cease to exist.

* * * DPS Deployment Report * * *

Sec. 20. DEPARTMENT OF PUBLIC SERVICE; DEPLOYMENT REPORT

On July 15, 2015, the Commissioner of Public Service shall submit to the General Assembly a report, including maps, indicating the service type and average speed of service of mobile telecommunications and broadband services available within the State by census block as of June 30, 2015.

* * * VTA; Dormant Status * * *

Sec. 21. 30 V.S.A. § 8060a is added to read:

§ 8060a. PERIOD OF DORMANCY

Beginning on July 1, 2015, the Division for Connectivity established under 3 V.S.A. § 2225 shall become the successor in interest to and the continuation of the Vermont Telecommunications Authority. The Authority shall cease all operations and shall not resume its duties as specified under this chapter or under any other Vermont law unless directed to do so by enactment of the General Assembly.

* * * Telecommunications; CPGs; Annual Renewals;
Retransmission Fees * * *

Sec. 22. 30 V.S.A. § 231 is amended to read:

§ 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF SERVICE; HEARING

(a) A person, partnership, unincorporated association, or previously incorporated association, which desires to own or operate a business over which the ~~public service board~~ Public Service Board has jurisdiction under the provisions of this chapter shall first petition the ~~board~~ Board to determine whether the operation of such business will promote the general good of the ~~state~~, State and conforms with the State Telecommunications Plan, if applicable, and shall at that time file a copy of any such petition with the ~~department~~ Department. The ~~department~~ Department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in subsection 225(b) of this title. Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the ~~department~~ Department requests a hearing on the petition, or, if the ~~board~~

Board deems a hearing necessary, it shall appoint a time and place in the county where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. The ~~director for public advocacy~~ Director for Public Advocacy shall represent the public at such hearing. If the ~~board~~ Board finds that the operation of such business will promote the general good of the ~~state~~, State and will conform with the State Telecommunications Plan, if applicable, it shall give such person, partnership, unincorporated association or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the ~~board~~ Board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the ~~board~~ Board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.

(b) A company subject to the general supervision of the ~~public-service board~~ Public Service Board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the ~~board~~ Board or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the ~~public-service board~~ Board, after notice and opportunity for hearing, and upon finding by the ~~board~~ Board that the abandonment or curtailment is consistent with the public interest and the State Telecommunications Plan, if applicable; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under section 209(b) and (c) of this title.

Sec. 23. 30 V.S.A. § 504 is amended to read:

§ 504. CERTIFICATES OF PUBLIC GOOD

(a) Certificates of public good granted under this chapter shall be for a period of 11 years.

(b) Issuance of a certificate shall be after opportunity for hearing and findings by the ~~board~~ Board that the applicant has complied or will comply with requirements adopted by the ~~board~~ Board to ensure that the system provides:

(1) designation of adequate channel capacity and appropriate facilities for public, educational, or governmental use;

(2) adequate and technically sound facilities and equipment, and signal quality;

(3) a reasonably broad range of public, educational, and governmental programming;

(4) the prohibition of discrimination among customers of basic service; ~~and~~

(5) basic service in a competitive market, and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with section 218 of this title; and

(6) service that conforms with the relevant provisions of the State Telecommunications Plan.

(c) In addition to the requirements set forth in subsection (b) of this section, the ~~board~~ Board shall ~~insure~~ ensure that the system provides or utilizes:

(1) a reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest, and cost;

(2) construction, including installation, which conforms to all applicable ~~state~~ State and federal laws and regulations and the National Electric Safety Code;

(3) a competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and ~~department~~ Department complaints and problems;

(4) unless waived by the ~~board~~ Board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received; and

(5) reasonable rules and policies for line extensions, disconnections, customer deposits, and billing practices.

(d) A certificate granted to a company shall represent nonexclusive authority of that company to build and operate a cable television system to serve customers only within specified geographical boundaries. Extension of service beyond those boundaries may be made pursuant to the criteria in ~~section 504 of this title~~ this section, and the procedures in section 231 of this title.

(e) Subdivision (b)(6) of this section (regarding conformity with the State Telecommunications Plan) shall apply only to certificates that expire or new applications that are filed after the year 2014.

Sec. 24. 30 V.S.A. § 518 is added to read:

§ 518. DISCLOSURE OF RETRANSMISSION FEES

A retransmission agreement entered into between a commercial broadcasting station and a cable company pursuant to 47 U.S.C. § 325 shall not include terms prohibiting the company from disclosing to its subscribers any fees incurred for program content retransmitted on the cable network under the retransmission agreement.

* * * Statutory Revision Authority * * *

Sec. 25. LEGISLATIVE COUNCIL STATUTORY REVISION AUTHORITY; LEGISLATIVE INTENT

(a) The staff of the Office of the Legislative Council in its statutory revision capacity is authorized and directed to amend the Vermont Statutes Annotated as follows:

(1) deleting all references to “by the end of the year 2013” in 30 V.S.A. chapter 91; and

(2) during the interim of the 2015 biennium of the General Assembly, in 30 V.S.A. § 227e, replacing every instance of the words “Secretary of Administration” and “Secretary” with the words “Director for Connectivity” and “Director,” respectively.

(b) Any duties and responsibilities that arise by reference to the Division for Connectivity in the Vermont Statutes Annotated shall not be operative until the Division is established pursuant to 3 V.S.A. § 2225.

* * * Effective Dates * * *

Sec. 26. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 9, 10, and 11 (regarding the Division for Connectivity) shall take effect on July 1, 2015.

And that after passage the title of the bill be amended to read: “An act relating to Vermont telecommunications policy”

(Committee vote: 7-0-0)

(For House amendments, see House Journal for April 4, 2013, page 662-668)

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

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Finance with the following amendments thereto:

First: In Sec. 3, 30 V.S.A. § 7516 (regarding the Connectivity Fund), by striking out subsection (a) in its entirety and by inserting in lieu thereof a new subsection (a) to read as follows:

(a) There is created a Connectivity Fund for the purpose of providing access to Internet service that is capable of speeds of at least 4 Mbps download and 1 Mbps upload to every E-911 business and residential location in Vermont, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of unserved Vermonters, priority shall be given to locations having access to only satellite or dial-up Internet service. Any new services funded in whole or in part by monies in this Fund shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

Second: By striking out Sec. 19 and the immediately preceding reader assistance in their entirety and by inserting in lieu thereof a new Sec. 19 and reader assistance as follows:

* * * Administration Report; E-911; Vermont USF Fiscal Agent; Vermont Communications Board; FirstNet * * *

Sec. 19. ADMINISTRATION REPORT; TRANSFERS AND CONSOLIDATION; VERMONT USF FISCAL AGENT

(a) On January 1, 2015, after receiving input from State and local agencies potentially impacted, the Secretary of Administration shall submit a report to the General Assembly proposing a plan for transferring the responsibilities and powers of the Enhanced 911 Board, including necessary positions, to the Division for Connectivity, the Department of Public Service, or the Department of Public Safety, as he or she deems appropriate. The plan shall include budgetary recommendations and shall strive to achieve annual operational savings of at least \$300,000.00, as well as enhanced coordination and efficiency, and reductions in operational redundancies. The report shall include draft legislation implementing the Secretary's plan. In addition, the report shall include findings and recommendations on whether it would be cost effective to select an existing State agency to serve as fiscal agent to the Vermont Universal Service Fund.

(b) As part of the report required in subsection (a) of this section, the Secretary shall also make findings and recommendations regarding the status of the Vermont Communications Board, Department of Public Safety, and the Vermont Public Safety Broadband Network Commission (Vermont FirstNet). If not prohibited by federal law, the Secretary shall propose draft legislation creating an advisory board within the Division for Connectivity or the Department of Public Safety comprised of 15 members appointed by the Governor to assume functions of the current Enhanced 911 Board, the Vermont Communications Board, and Vermont FirstNet, as the Secretary deems appropriate. Upon establishment of the new advisory board and not later than July 1, 2015, the E-911 Board and the Vermont Communications Board shall cease to exist.

(Committee vote: 6-1-0)

**Amendment to proposal of amendment of the Committee on Finance to
H. 297 to be offered by Senator Galbraith**

Senator Galbraith moves to amend the proposal of amendment of the Committee on Finance in Sec. 9, 3 V.S.A. § 2225 subsection (f) after the words “accurate map and” by inserting the word truthful

H. 699.

An act relating to temporary housing.

**Reported favorably with recommendation of proposal of amendment
by Senator McCormack for the Committee on Health and Welfare.**

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. 33 V.S.A. § 2103 is amended to read:

§ 2103. ELIGIBILITY

* * *

(f) An eligible participant for temporary housing shall not be required to furnish more than 30 percent of his or her income toward the cost of temporary housing. The Secretary of Human Services may adopt rules as necessary, pursuant to 3 V.S.A. chapter 25, to implement this subsection.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2014, page 712)

H. 795.

An act relating to victim's compensation and restitution procedures.

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. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

(a) A Restitution Unit is created within the Center for Crime Victim Services for purposes of ~~assuring~~ ensuring that crime victims receive restitution when it is ordered by the Court.

(b) The Restitution Unit shall administer the Restitution Fund established under section 5363 of this title.

(c) The Restitution Unit shall have the authority to:

(1) Collect restitution from the offender when it is ordered by the ~~court~~ Court under section 7043 of this title.

(2) ~~Bring an action to enforce~~ Enforce a restitution obligation as a civil judgment under section 7043 of this title. The Restitution Unit shall enforce restitution orders issued prior to July 1, 2004 pursuant to the law in effect on the date the order is issued.

(3)(A) Share and access information, including information maintained by the National Criminal Information Center, consistent with Vermont and federal law, from the Court, the Department of Corrections, the Department of Motor Vehicles, the Department of Taxes, and the Department of Labor, and law enforcement agencies in order to carry out its collection and enforcement functions. The Restitution Unit, for purposes of establishing and enforcing restitution payment obligations, is designated as a law enforcement agency for the sole purpose of requesting and obtaining access to information needed to identify or locate a person, including access to information maintained by the National Criminal Information Center.

(B) Provide information to the Department of Corrections concerning supervised offenders, including an offender's restitution payment history and balance, address and contact information, employment information, and information concerning the Restitution Unit's collection efforts.

(C) The Restitution Unit is specifically authorized to collect, record, use, and disseminate Social Security numbers as needed for the purpose of collecting restitution and enforcing restitution judgment orders issued by the Court, provided that the Social Security number is maintained on a separate form that is confidential and exempt from public inspection and copying under the Public Records Act.

(4) Investigate and verify losses as determined by the Restitution Unit, including losses that may be eligible for advance payment from the Restitution Special Fund, and verify the amount of insurance or other payments paid to or for the benefit of a victim, and reduce the amount collected or to be collected from the offender or disbursed to the victim from the Crime Victims' Restitution Special Fund accordingly. The Restitution Unit, when appropriate, shall submit to the ~~court~~ Court a proposed revised restitution order ~~stipulated to by the victim and the unit,~~ with copies provided to the victim and the offender. No hearing shall be required, ~~and the Court shall amend the judgment order to reflect the amount stipulated to by the victim and the Restitution Unit.~~

(5) Adopt such administrative rules as are reasonably necessary to carry out the purposes set forth in this section.

~~(6)(A) Report offenders' payment histories to credit reporting agencies; provided that the Unit shall not report information regarding offenders who are incarcerated.~~ The Unit shall not make a report under this subdivision (6) until after it has notified the offender of the proposed report by first class mail or other like means to give actual notice, and provided the offender a period not to exceed 20 days to contest the accuracy of the information with the Unit. The Unit shall immediately notify each credit bureau organization to which information has been furnished of any increases or decreases in the amount of restitution owed by the offender.

(B) Obtain offenders' credit reports from credit reporting agencies. The Unit shall not obtain a report under this subdivision (6) until after it has notified the offender by first class mail or other means likely to give actual notice of its intent to obtain the report.

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

(8) Contract with one or more sheriff's departments for the purposes of serving process, warrants, demand letters, and mittimus in restitution cases, and contract with one or more law enforcement agencies or other investigators for the purpose of investigating and locating offenders and enforcing restitution judgment orders.

(9) Collect from an offender subject to a restitution judgment order all fees and direct costs, including reasonable attorney's fees, incurred by the Restitution Unit as a result of enforcing the order and investigating and locating the offender.

Sec. 2. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIM'S RESTITUTION SPECIAL FUND

* * *

(d)(1) The Restitution Unit is authorized to advance up to ~~\$10,000.00~~ \$5,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the Court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative;

(C) has not been reimbursed under subdivision (2) of this subsection; and

(D) is a natural person and has been referred to the Restitution Unit by a diversion program pursuant to 3 V.S.A. § 164a.

(2) The Restitution Unit may make advances of up to ~~\$10,000.00~~ \$5,000.00 under this subsection to the following persons or entities:

(A) A victim service agency approved by the Restitution Unit if the agency has advanced monies which would have been payable to a victim under subdivision (1) of this subsection.

(B) A victim who is a natural person or the natural person's legal representative in a case where the defendant, before or after an adjudication of guilt, enters into a drug court contract requiring payment of restitution.

(3) An advance under this subsection shall not be made to the government or to any governmental subdivision or agency.

(4) An advance under this subsection shall not be made to a victim who:

(A) fails to provide the Restitution Unit with the documentation necessary to support the victim's claim for restitution; ~~or~~

(B) violated a criminal law of this State which caused or contributed to the victim's material loss; or

(C) has crime-related losses that are eligible for payment from the Victim Compensation Special Fund.

(5) An advance under this subsection shall not be made for the amount of cash loss included in a restitution judgment order.

(6) An advance under this subsection shall not be made for:

(A) jewelry or precious metals; or

(B) luxury items or collectibles identified in rules adopted by the Unit pursuant to subdivision 5362(c)(5) of this title.

* * *

Sec. 3. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

* * *

(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the Court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection ~~(k)(1)~~ of this section. Notwithstanding 12 V.S.A. chapter 113 or any other provision of law, interest shall not accrue on a restitution judgment.

(2)(A) Every order of restitution shall:

(i) include the offender's name, address, telephone number, and Social Security number, provided that the Social Security number is redacted pursuant to the Vermont Rules for Public Access to Court Records;

(ii) include the name, address, and telephone number of the offender's employer; and

(iii) require the offender, until his or her restitution obligation is satisfied, to notify the Restitution Unit within 30 days if the offender's address, telephone number, or employment changes, including providing the name, address, and telephone number of each new employer.

(B) [Repealed.]

(3) An order of restitution may require the offender to pay restitution for an offense for which the offender was not convicted if the offender knowingly and voluntarily executes a plea agreement which provides that the offender pay restitution for that offense. A copy of the plea agreement shall be attached to the restitution order.

(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

(2) The Department of Corrections shall work collaboratively with the Restitution Unit to assist with the collection of restitution. The Department shall provide the Restitution Unit with information about the location and employment status of the offender.

(g)(1) When restitution is requested but not ordered, the Court shall set forth on the record its reasons for not ordering restitution.

(2)(A) If restitution was not requested at the time of sentencing as the result of an error by the State, or if expenses arose after the entry of a restitution order, ~~the State may file a motion with the sentencing court to reopen the restitution case in order to consider a~~ the victim may request for restitution payable from the Restitution Fund. Restitution ~~ordered paid~~ under this subdivision shall be payable from the Restitution Fund and shall not be payable by the offender. If the restitution is for expenses that arose after the entry of a restitution order, the restitution shall be capped at \$1,000.00.

(B) A ~~motion~~ request under this subdivision shall be filed with the Restitution Unit within one year after the imposition of sentence or the entry of the restitution order.

(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

(i)(1) The ~~court~~ Court shall transmit a copy of a restitution order and the plea agreement, if any, to the Restitution Unit, which shall make payment to the victim in accordance with section 5363 of this title.

(2) To the extent that the Victims Compensation Board has made payment to or on behalf of the victim in accordance with chapter 167 of this title, restitution, if imposed, shall be paid to the Restitution Unit, which shall make payment to the Victims Compensation Fund.

(j) The Restitution Unit may bring an action, including a small claims procedure, on a form approved by the Court Administrator, to enforce a restitution judgment order entered by the Criminal Division of the Superior

Court. The action shall be brought against an the offender in the Civil Division of the Superior Court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the Criminal Division of the Superior Court shall be enforceable in the Civil Division of the Superior Court or in a small claims procedure in the same manner as a civil judgment. Superior and Small Claims Court filing fees shall be waived for an action brought under this subsection, and for an action to renew a restitution judgment.

* * *

~~(m)(1) If the offender fails to pay restitution as ordered by the court, the Restitution Unit may file an action to enforce the restitution order in Superior or Small Claims Court. After an enforcement action is filed pursuant to subsection (j) of this section, any further proceedings related to the action shall be heard in the court Court where it was filed. The court Court shall set the matter for hearing and shall provide notice to the Restitution Unit, the victim, and the offender. Upon filing of a motion for financial disclosure, the Court may order the offender to appear at the hearing and disclose assets and liabilities and produce any documents the Court deems relevant.~~

~~(2) If the court Court determines the offender has failed to comply with the restitution order, the court Court may take any action the Court deems necessary to ensure the offender will make the required restitution payment, including:~~

~~(1)(A) amending the payment schedule of the restitution order;~~

~~(2)(B) ordering, in compliance with the procedures required in Rule 4.1 of the Vermont Rules of Civil Procedure, the disclosure, attachment, and sale of assets and accounts owned by the offender;~~

~~(3)(C) ordering trustee process against the offender's wages withheld pursuant to subsection (n) of this section; or~~

~~(4)(D) ordering the suspension of any recreational licenses owned by the offender.~~

(3) If the Court finds that the offender has an ability to pay and willfully refuses to do so, the offender may be subject to civil contempt proceedings under 12 V.S.A. chapter 5.

* * *

(p) An obligation to pay restitution is part of a criminal sentence and is:

(1) nondischargeable in the United States Bankruptcy Court to the maximum extent provided under 11 U.S.C. §§ 523 and 1328; and

- (2) not subject to any statute of limitations; and
(3) not subject to the renewal of judgment requirements of 12 V.S.A. § 506.

* * *

Sec. 4. 13 V.S.A. § 5573 is amended to read:

§ 5573. COMPLAINT

(a) A complaint filed under this subchapter shall be supported by facts and shall allege that:

(1) the complainant has been convicted of a felony crime, been sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility; and

(2) the complainant was exonerated ~~pursuant to subchapter 1 of this chapter~~ through the complainant's conviction being reversed or vacated, the information or indictment being dismissed, the complainant being acquitted after a second or subsequent trial, or the granting of a pardon.

(b) The court may dismiss the complaint, upon its own motion or upon motion of the ~~state~~ State, if it determines that the complaint does not state a claim for which relief may be granted.

Sec. 5. 13 V.S.A. § 5574 is amended to read:

§ 5574. BURDEN OF PROOF; JUDGMENT; DAMAGES

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each of the following by ~~a preponderance of the~~ clear and convincing evidence:

(1) The complainant was convicted of a felony crime, was sentenced to a term of imprisonment, and served ~~all or any part~~ at least six months of the sentence in a correctional facility.

(2) ~~As a result of DNA evidence:~~

(A) The complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; ~~or.~~

(B) The complainant was pardoned for the crime for which he or she was sentenced.

(3) ~~DNA evidence establishes that the complainant did not commit the crime for which he or she was sentenced~~ The complainant is actually innocent of the felony or felonies that are the basis for the claim. As

used in this chapter, a person is “actually innocent” of a felony or felonies if he or she did not engage in any illegal conduct alleged in the charging documents for which he or she was charged, convicted, and imprisoned.

(4) The complainant did not fabricate evidence or commit or suborn perjury during any proceedings related to the crime with which he or she was charged.

* * *

Sec. 6. VICTIM’S COMPENSATION FUND; BILLING OF HEALTH CARE FACILITIES IN FY 2015; SUNSET

(a) Notwithstanding 13 V.S.A. § 5356(c) and 32 V.S.A. § 1407, during fiscal year 2015, the Victim’s Compensation Fund shall reimburse health care facilities and health care providers at 50 percent of the billed charges for compensation. The health care facility or health care provider shall not bill any balance to the crime victim.

(b) This section shall be repealed on July 1, 2015.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2014 and shall apply to restitution orders issued after that date.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 11, 2014, page 539)

Reported favorably by Senator Sears for the Committee on Appropriations.

(Committee vote: 6-0-1)

Resolution for Action

J.R.H. 22.

Joint resolution authorizing the use of the State House on June 18, 2014 for the 2014 Green Mountain Girls State Day.

(For text of resolution, see Senate Journal of April 23, 2014, page 748)

NEW BUSINESS

Third Reading

H. 809.

An act relating to designation of new town centers and growth centers.

S.R. 8.

Senate resolution reaffirming the friendly bilateral relationships between Taiwan and both the United States and Vermont and the important role of Taiwan in the international community.

Second Reading

Favorable with Proposal of Amendment

H. 325.

An act relating to a bill of rights for children of arrested and incarcerated parents.

Reported favorably with recommendation of proposal of amendment by Senator Cummings for the Committee on Health and Welfare.

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. LEGISLATIVE FINDINGS

(a) Children of incarcerated parents have committed no crime, yet they pay a steep penalty. They often forfeit their homes, their safety, their public status and private self-image, and their primary source of comfort and affection.

(b) The General Assembly and the State have a strong interest in assuring that children of incarcerated parents are provided with the services and support necessary to thrive despite the hardship they face due to their parent's status.

Sec. 2. REPORT

(a) The Secretary of Human Services, Commissioner of Corrections, and the Commissioner for Children and Families shall study and develop recommendations, within the Integrated Family Services Initiative (IFS), on the following issues:

(1) the capacity needed to identify and connect children and families of incarcerated individuals to appropriate services within the Integrated Family Services Initiative;

(2) existing services available to children with incarcerated parents and the need for any additional services to:

(A) build and maintain healthy relationships between children and incarcerated parents, including parent-child visits, parenting classes, and supervised visits;

(B) develop child- and family-centered tools or strategies that can be used throughout the criminal justice system to mitigate unintended consequences on children; and

(C) support children and their families or caregivers by including the use of Family Impact Statements in the Court process;

(3) appropriate physical settings for children to visit incarcerated parents and services while the parent is incarcerated;

(4) a mechanism to ensure that coordinated services are provided to children of incarcerated parents by the Department for Children and Families and the Department of Corrections;

(5) agency data systems to track and coordinate services for children of incarcerated parents; and

(6) the cost of services necessary to implement a comprehensive system of care addressing the unique needs of children of incarcerated parents.

(b) Recommendations shall be developed in consultation with the following stakeholders:

(1) the Department of Corrections;

(2) the Department for Children and Families;

(3) the Department of Mental Health;

(4) the Prisoners' Rights Office;

(5) LUND;

(6) the Parent Child Center Network; and

(7) kinship organizations.

(c) The Secretary and Commissioners shall consider the Inmate Family Survey Project and its recommendations for best practices.

(d) On or before January 15, 2015, the Secretary shall submit a report and recommendations to the Senate Committee on Health and Welfare, Senate Committee on Institutions, House Committee on Human Services, and House Committee on Corrections and Institutions.

Sec. 3. 28 V.S.A. § 204(d) is amended to read:

(d) Any presentence report, pre-parole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone

outside the Department other than the judge or the Parole Board, except that the Court or Board may in its discretion permit the inspection of the report or parts thereof by the state's attorney, the defendant or inmate, or his or her attorney, or other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful. Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that after passage the title of the bill be amended to read: "An act relating to the rights of children of arrested and incarcerated parents".

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 19, 2014, page 701)

H. 350.

An act relating to the posting of medical unprofessional conduct decisions and to investigators of alleged unprofessional conduct.

Reported favorably with recommendation of proposal of amendment by Senator Ayer for the Committee on Health and Welfare.

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

First: By adding a new section to be numbered Sec. 5a to read as follows:

Sec. 5a. 18 V.S.A. § 4631a is amended to read:

§ 4631a. EXPENDITURES BY MANUFACTURERS OF PRESCRIBED PRODUCTS

(a) As used in this section:

(1) "Allowable expenditures" means:

* * *

(H) Sponsorship of an educational program offered by a medical device manufacturer at a national or regional professional society meeting at which programs accredited by the Accreditation Council for Continuing Medical Education, or a comparable professional accrediting entity, are also offered, provided:

(i) no payment is made directly to a health care professional or pharmacist; and

(ii) the funding is used solely for bona fide educational purposes, except that the manufacturer may provide meals and other food for program participants.

(I) Other reasonable fees, payments, subsidies, or other economic benefits provided by a manufacturer of prescribed products at fair market value.

* * *

(7)(C) “Regularly practices” means to practice at least periodically under contract with, as an employee of, or as the owner of, a medical practice, health care facility, nursing home, hospital, or university located in Vermont.

* * *

(12) “Prescribed product” means a drug ~~or device~~ as defined in section 201 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. § 321, a compound drug or drugs, a medical device as defined in this subsection, a biological product as defined in section 351 of the Public Health Service Act, 42 U.S.C. § 262, for human use, or a combination product as defined in 21 C.F.R. § 3.2(e), but shall not include prescription eyeglasses, prescription sunglasses, or other prescription eyewear.

* * *

(15) “Medical device” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official National Formulary or the United States Pharmacopeia, or any supplement to them;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals; or

(C) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve its primary intended purposes through chemical action within or on such body and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

Second: By striking out Sec. 6 (Effective Dates) in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. EFFECTIVE DATES

This act shall take effect on passage, except:

(1) Secs. 1 (amending 26 V.S.A. § 1318), 3 (amending 26 V.S.A. § 1351), and 5a (amending 18 V.S.A. § 4631a) shall take effect on July 1, 2014; and

(2) Sec. 2 (amending 26 V.S.A. § 1368) shall take effect on July 1, 2015.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for January 23, 2014, page 121)

H. 690.

An act relating to the definition of serious functional impairment.

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

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 2, by striking out “July 1, 2014” and inserting in lieu thereof passage

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 14, 2014, page 608)

NOTICE CALENDAR

Second Reading

Favorable

H. 881.

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

Reported favorably by Senator Pollina for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

H. 888.

An act relating to approval of amendments to the charter of the Town of Milton.

Reported favorably by Senator McAllister for the Committee on Government Operations.

(Committee vote: 5-0-0)

(No House amendments)

Favorable with Recommendation of Amendment

S. 308.

An act relating to regulating precious metal dealers.

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

The Committee recommends that the bill be amended as follows:

By striking out Secs. 3–7 in their entirety and inserting in lieu thereof new Secs. 3–6 to read:

Sec. 3. 9 V.S.A. chapter 97A is added to read:

CHAPTER 97A. PRECIOUS METAL DEALERS

§ 3881. DEFINITIONS

As used in this chapter:

(1) “Antique” means an item, including a collectible coin, that is:

(A) collected or desired due to age, rarity, condition, or other similar unique feature;

(B) purchased for the purpose of resale; and

(C) sold in the same unique form or condition as when it was purchased, and not for scrap.

(2) “Criminal history record” means all information documenting a natural person’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Disqualifying offense” means:

(A) a felony under:

(i) 13 V.S.A. chapter 47 (fraud);
(ii) 13 V.S.A. chapter 49 (fraud in commercial transaction);
(iii) 13 V.S.A. chapter 57 (larceny and embezzlement); or
(iv) 13 V.S.A. chapter 84 (possession and control of regulated drugs); or

(B) a violent felony under 18 V.S.A. § 4474g(e); or

(C) one of the following misdemeanors, if a conviction for the misdemeanor occurred within the ten years preceding the date on which the convicted person applies for a certification to do business as a precious metal dealer:

(i) petit larceny in violation of 13 V.S.A. § 2502;

(ii) receipt of stolen property in violation of 13 V.S.A. § 2561;

(iii) false pretenses or tokens in violation of 13 V.S.A. § 2002; or

(iv) false tokens in violation of 13 V.S.A. § 2003; or

(D) a violation of this chapter punishable under subdivision 3890(c)(2) of this title.

(4) “Engaged in the business of purchasing or selling precious metal” means conducting a regular course of trade in precious metal with retail buyers or sellers, and does not include:

(A) retail trade in new precious metal;

(B) trade in precious metal that is exclusively wholesale, including business-to-business transactions for precious metal used in medical and dental applications; or

(C) trade in precious metal commodities for the purpose of investment, including bullion, commodities funds, or commodities futures.

(5) “Precious metal” means used gold, silver, platinum, palladium, coins sold for more than face value, jewelry, or similar items, but does not include an antique.

(6)(A) “Precious metal dealer” means a person who:

(i) has a physical presence in this State, whether temporary or permanent;

(ii) is engaged in the business of purchasing or selling precious metal; and

(iii) purchases or sells \$2,500.00 or more of precious metal in a consecutive 12-month period.

(B) "Precious metal dealer" does not include a charitable organization that is qualified as tax exempt under 26 U.S.C. § 501.

(7) "Principal" means a natural person who is a director, officer, member, manager, partner, or creditor.

§ 3882. CERTIFICATION REQUIRED

(a) Certification from the Department of Public Safety is required to conduct business as a precious metal dealer in this State.

(b) An application for certification shall include for each applicant and its principals:

(1) the name, address, telephone number, and valid e-mail address or other electronic contact information;

(2) the name of, and the nature of the affiliation with, any business involving the purchase or sale of precious metal within the past five years;

(3) the age, date, and place of birth of each natural person;

(4) the residential address and place of employment of each natural person; and

(5) any crime of which a natural person has been convicted and the date and place of conviction.

(c) The Department shall not issue or renew a certification if an applicant or one of its principals has been convicted on or after January 1, 2015 of a disqualifying offense.

(d)(1) Prior to issuing or renewing a certification pursuant to this section, the Department shall obtain a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation for an applicant and each of its principals.

(2) A person for whom a record is requested shall consent to the release of criminal history records to the Department on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c.

(3) Upon obtaining a criminal history record, the Department shall promptly provide a copy of the record to the person who is the subject of the record and shall inform the person of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Department.

(4) The Department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy.

(5) No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this chapter.

§ 3883. FEES; RENEWAL; REVOCATION OF CERTIFICATION

(a)(1) A person who applies for certification pursuant to section 3882 of this title shall pay a nonrefundable fee of \$200.00 to the Department of Public Safety.

(2) A certification shall expire two years from the date it is issued, and may be renewed upon payment of \$200.00 and approval of the Department.

(3) A fee collected under this section shall be used to administer the precious metal dealer certification process established pursuant to section 3882 of this title.

(b) The Department may revoke a certification for cause at any time during the period of the certification after notice and a hearing pursuant to 3 V.S.A. chapter 25.

(c)(1) The Department shall revoke a certification upon the conviction, on or after January 1, 2015, for a disqualifying offense by a precious metal dealer or one of its principals.

(2) The Department may revoke a certification upon the conviction, on or after January 1, 2015, for a disqualifying offense by an employee of a precious metal dealer acting within his or her scope of employment when he or she committed the offense.

(d) A precious metal dealer shall prominently display his or her certification number at his or her place of business, and shall include his or her certification number in each advertisement, in any medium, that promotes the business or services of the precious metal dealer.

§ 3884. PRIVATE RIGHT OF ACTION

A person injured by a precious metal dealer's violation of this chapter may bring an action against the dealer for damages arising from the violation.

§ 3885. RECORDS OF A PRECIOUS METAL DEALER

(a) For each item of precious metal sold to a precious metal dealer, he or she shall:

(1) assign a distinct entry number or, in the case of a lot of items, an entry number for the lot and a sub-lot number for each unmatched item in the lot;

(2) maintain the following records for each item or lot of items:

(A) the amount of money paid and the date and time of the transaction;

(B) the name, current address, and telephone number of the seller;

(C) a legible description written on the day of the transaction that includes for each item any distinguishing mark and name of any kind, such as brand and model name, model and serial number, engraving, etching, affiliation with any institution or organization, date, initials, color, vintage, or image represented;

(D) a digital photograph or video, taken at the time of the transaction, that references the entry number required under subdivision (a)(1) of this section and the date of the transaction;

(E)(i) a government-issued identification card issued to the seller that bears his or her photograph; or

(ii) a government-issued identification card and a digital photograph of the seller's face; and

(F) documentation of lawful ownership, including a bill of sale, receipt, letter of authorization, or similar evidence, provided that if these forms of documentation are unavailable, the seller shall submit an affidavit of ownership.

(b) A precious metal dealer who sells \$50,000.00 or more of precious metal in a consecutive 12-month period shall maintain the records required in this section in a computerized format that can be readily accessed, electronically transmitted, and reproduced in physical form.

(c)(1) A precious metal dealer shall retain the records required in this section for at least three years at his or her normal place of business or other readily accessible and secure location.

(2) At all reasonable times, the records required under this section shall be open to the inspection of law enforcement.

§ 3886. HOLDING PERIOD

A precious metal dealer shall retain precious metal that he or she purchases for no fewer than 10 days before offering an item for sale or for scrap, and he

or she shall not remove an item from the State prior to the expiration of this 10-day period.

§ 3887. PURCHASE OF PRECIOUS METAL FROM PERSONS UNDER 18 YEARS OF AGE

A precious metal dealer shall not purchase precious metal offered for sale by a person under 18 years of age.

§ 3888. METHOD OF PAYMENT

In each transaction of \$25.00 or more, a precious metal dealer shall pay only by check, draft, or money order for precious metal purchased for the purpose of resale.

§ 3889. STOLEN PROPERTY NOTIFICATION SYSTEM

(a) The Department of Public Safety shall develop and implement a statewide stolen property notification system, the purpose of which shall be to facilitate timely electronic communication concerning the reported theft of precious metal among precious metal dealers and law enforcement agencies throughout the State.

(b)(1) Upon receiving an official report of theft of precious metal, the Department shall use the System to contact each precious metal dealer at the e-mail address provided pursuant to subdivision 3882(c)(1) of this title and each law enforcement agency that provides an e-mail address for that purpose.

(2) The Department shall include in its notification any information it determines in its discretion is appropriate to assist precious metal dealers and law enforcement agencies in identifying stolen precious metal and in expediting both the return of the stolen property to its owner and the identification and apprehension of suspects.

(3) Notwithstanding subdivision (2) of this subsection, the Department shall redact any personally identifiable information in a notification issued pursuant to this section concerning the identity or any communications with a purported victim and any precious metal dealer unless the victim or dealer expressly waives confidentiality in a writing submitted to the Department for that purpose.

§ 3890. PENALTIES

(a) Except as otherwise provided in this section, a person who violates a provision of this chapter shall be assessed a civil penalty of not more than \$1,000.00.

(b) A person who operates as precious metal dealer without the certification required by section 3882 of this title shall be:

(1) for a first offense, imprisoned for not more than six months or fined not more than \$10,000.00, or both;

(2) for a second or subsequent offense, imprisoned not more than three years or fined not more than \$50,000.00, or both.

(c) A person who violates a provision of sections 3885–3888 of this title shall be:

(1) for a first offense, imprisoned for not more than six months or fined not more than \$10,000.00, or both;

(2) for a second or subsequent offense, imprisoned not more than three years or fined not more than \$50,000.00, or both.

(d) The Attorney General or a State’s Attorney shall have the authority to pursue an injunction to prohibit the conduct of a person in violation of this chapter.

(e) For purposes of this section, each transaction in which a person violates a provision of this chapter shall constitute a single violation, regardless of the number of violations of this chapter that occur in the transaction.

Sec. 4. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A ~~judicial bureau~~ Judicial Bureau is created within the ~~judicial branch~~ Judicial Branch under the supervision of the Supreme Court.

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(25) Violations of 9 V.S.A. chapter 97A that are subject to civil penalties pursuant to 9 V.S.A. § 3890(a), relating to the purchase and sale of precious metal by a precious metal dealer, as defined in 9 V.S.A. § 3881.

Sec. 5. IMPLEMENTATION

The Department of Public Safety:

(1) shall create an application and certification process for the certification required under 9 V.S.A. § 3882; and

(2) may adopt rules necessary to implement his or her duties under this act.

Sec. 6. EFFECTIVE DATES

(a) This section, Sec. 5, and 9 V.S.A. § 3889 in Sec. 3 (stolen property notification system) shall take effect on July 1, 2014.

(b) Secs. 1-4, other than 9 V.S.A. § 3889, shall take effect on January 1, 2015.

(Committee vote: 4-1-0)

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

The Committee recommends that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs, with the following amendments thereto:

First: In Sec. 3, in 9 V.S.A § 3883, by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read:

(3) A fee collected under this section shall be deposited into a precious metal dealers certification special fund which shall be used by the Commissioner of Public Safety to administer the precious metal dealer certification process established in section 3882 of this title.

Second: In Sec. 5, in subdivision (1), by striking “and” following the semicolon and by inserting prior to the final period ; and and a subdivision (3) to read:

(3) shall have the authority to re-designate one existing administrative position within the Department of Public Safety as a position charged with the duty to administer the precious metal dealer certification process created in this Act and such other duties as the Commissioner shall assign in his or her discretion, and shall have the additional authority to use a portion of the fees collected from the certification process and deposited into the precious metal dealers certification fund under 9 V.S.A. § 3883 for the purpose of providing compensation and benefits for the position re-designated pursuant to this section

And that when so amended the bill ought to pass.

(Committee vote: 4-2-1)

Favorable with Proposal of Amendment

H. 217.

An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Health and Welfare.

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

First: In Sec. 2, 18 V.S.A. § 1741, by striking out subdivision (2)(R) in its entirety and relettering the remaining subdivisions to be alphabetically correct.

Second: In Sec. 3, 18 V.S.A. § 1742, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) The possession of lighted tobacco products in any form is prohibited in:

(1) the common areas of all enclosed indoor places of public access and publicly owned buildings and offices;

(2) all enclosed indoor places in lodging establishments used for transient traveling or public vacationing, such as resorts, hotels, and motels, including sleeping quarters and adjoining rooms rented to guests;

(3) designated smoke-free areas of property or grounds owned by or leased to the State; and

(4) any other area within 25 feet of State-owned buildings and offices, except that to the extent that any portion of the 25-foot zone is not on State property, smoking is prohibited only in that portion of the zone that is on State property unless the owner of the adjoining property chooses to designate his or her property smoke-free.

Third: By striking out Sec. 4, 16 V.S.A. § 140, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 16 V.S.A. § 140 is amended to read:

§ 140. TOBACCO USE PROHIBITED ON PUBLIC SCHOOL GROUNDS

No person shall be permitted to use tobacco or tobacco substitutes as defined in 7 V.S.A. § 1001 on public school grounds ~~and no student shall be permitted to use tobacco~~ or at public school sponsored functions. ~~Each public school board shall adopt policies prohibiting the possession and use of tobacco products by students at all times while under the supervision of school staff.~~

~~These policies shall~~ Public school boards may adopt policies that include confiscation and appropriate referrals to law enforcement authorities.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 27, 2014, page 487-491)

H. 448.

An act relating to Act 250 and primary agricultural soils.

Reported favorably with recommendation of proposal of amendment by Senator Hartwell for the Committee on Natural Resources and Energy.

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

First: In Sec. 1, 10 V.S.A. § 6093, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Suitable mitigation; outside designated areas. This subsection sets out requirements for and factors to be considered in determining suitable mitigation for development or subdivision of primary agricultural soils outside a designated area listed in subdivision (a)(1)(B)(i) of this section.

(1) Findings. In determining suitable mitigation, the District Commission shall consider and make findings on each requirement and factor described in subdivisions (2) through (4) of this subsection.

(2) General.

(A) Mitigation for the conversion of primary agricultural soils shall comply with 24 V.S.A. § 2791(13)(A) (smart growth principles; historic development patterns) and (E) (agricultural and forest industries).

(B) The determination of suitable mitigation shall be consistent with the agricultural elements of the applicable local and regional plans and the goals of 24 V.S.A. § 4302.

(C) The applicant shall demonstrate that the development or subdivision makes efficient use of the project tract through compact development.

(3) Mitigation entirely on-site. The District Commission shall require mitigation that is entirely on-site if the Commission finds that:

(A) the project tract supports an agricultural operation or has been in active production or rotation within the last seven years;

(B) the primary agricultural soils on the project tract consist predominantly of NRCS agricultural value groups 1–5; or

(C) after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets, the project tract has site-specific characteristics that warrant on-site mitigation.

(4) Off-site or combined mitigation. The District Commission may allow off-site mitigation, either alone or combined with on-site mitigation, if none of the factors in subdivision (3) of this subsection applies and the Commission finds that:

(A) payment of an off-site mitigation fee, or requiring a combination of on-site and off-site mitigation, will best further the preservation of primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils;

(B) after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets, devoting the tract to agricultural uses is impractical based on its size or relationship to other land uses or site-specific characteristics;

(C) the project tract is surrounded by or adjacent to high density development with supporting infrastructure and the project will contribute to the existing compact development patterns in the area; and

(D) the project tract is within an area that contains a mixture of uses, including commercial and industrial, and a significant residential component supported by municipal water, wastewater, and roadway infrastructure.

(c) Easements required for protected lands. All primary agricultural soils preserved for commercial or economic agricultural use by the Vermont ~~housing and conservation board~~ Housing and Conservation Board pursuant to this section shall be protected by permanent conservation easements (grant of development rights and conservation restrictions) conveyed to a qualified holder, as defined in section 821 of this title, with the ability to monitor and enforce easements in perpetuity. Off-site mitigation fees may be used by the Vermont ~~housing and conservation board~~ Housing and Conservation Board and shall be used by the Agency of Agriculture, Food and Markets to pay reasonable staff or transaction costs, or both, of the ~~board and agency of agriculture, food, and markets~~ Board and Agency related to preserve the preservation of primary agricultural soils or to implement the implementation of section 6086(a)(9)(B) or 6093 of this title.

Second: In Sec. 3, 10 V.S.A. § 6086(a)(9)(B), by striking out (iii) in its entirety and inserting in lieu thereof a new subdivision (iii) to read as follows:

(iii) ~~except in the case of an application for a project located in a designated growth center, unless the reduction in agricultural potential of the primary agricultural soils is to be mitigated entirely off-site pursuant to subdivision (iv) of this subdivision (9)(B),~~ the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through ~~innovative~~ land use design ~~resulting that results in~~ compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and

(Committee vote: 4-1-0)

(For House amendments, see House Journal for March 21, 2014, page 747-754.)

H. 695.

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

Reported favorably with recommendation of proposal of amendment by Senator Rodgers for the Committee on Natural Resources and Energy.

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

First: In Sec. 1, in 10 V.S.A. § 7581, by striking out subdivisions (10) and (11) in their entirety and inserting in lieu thereof the following to read as follows:

(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:

(A) batteries intended for industrial, business-to-business, warranty or maintenance services, or nonpersonal use;

(B) a battery that is sold in a computer, computer monitor, computer peripheral, printer, television, or device containing a cathode ray tube;

(C) a battery that is not easily removable or is not intended to be removed from a consumer product; and

(D) a battery that is sold or used in a medical device, as that term is defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(h), as may be amended.

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

(A) a person who manufactures a primary battery and who sells or offers for sale 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 or offered for sale 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.

and in subdivision (18)(B), before “medical device” by striking out “an implanted” and inserting in lieu thereof a

Second: In Sec. 1, in 10 V.S.A. § 7582, by striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following to read as follows:

(a) Sale prohibited. Except as set forth under subsections (b) and (c) 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:

(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.

and by relettering the remaining subsections to be alphabetically correct.

Third: In Sec. 1, in 10 V.S.A. § 7584, by striking out subdivision (b)(8) in its entirety and inserting in lieu thereof the following to read as follows:

(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. The collection rate includes the estimated total weight of primary batteries that will be sold or offered for sale in the State by the producer or the producers participating in the primary battery stewardship plan.

Fourth: In Sec. 1, in 10 V.S.A. § 7585, by striking out subsection (a) in its entirety and inserting in lieu thereof the following to read as follows:

(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 estimated percentage, by weight, of rechargeable batteries collected by the producer or the primary battery stewardship organization in the prior calendar year;

(3) the percentage of primary batteries collected in the prior calendar year that are from producers who are not participating in any approved stewardship plan, based on periodic sorting of primary batteries by the reporting producer;

(4) the collection rate achieved in the prior calendar year under the primary battery stewardship plan, including a report of the estimate total sales data by weight for primary batteries sold in the State for the previous three calendar years;

(5) 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;

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

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

(8) any material change to the primary battery stewardship plan approved by the Secretary pursuant to section 7586 of this title; and

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

Fifth: In Sec. 1, in 10 V.S.A. § 7586, in subsection (f), in the last sentence, by striking out “7582(d)” where it appears and inserting in lieu thereof 7582(c)

Sixth: In Sec. 1, in 10 V.S.A. § 7589, in subdivision (a)(1), after “reimbursement from the following entities of” and before “costs per unit” by striking out “direct” and inserting in lieu thereof reimbursable

and by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Reimbursable costs. Under this subchapter, reimbursement shall be allowed only for those costs incurred in collecting the batteries subject to the reimbursement request. Reimbursable costs include:

(1) 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; and

(2) reasonable educational, promotional, or administrative costs.

Seventh: In Sec. 1, in 10 V.S.A. § 7590, in subdivision (a)(1), after “organization that incurs reimbursable” and before “costs under section 7589” by striking out “direct”

and in subdivision (a)(3), after “the amount of reimbursement, and the” and before “costs assessed by each” by striking out “direct” and inserting in lieu thereof reimbursable

Eighth: In Sec. 1, in 10 V.S.A. § 7591, by striking out subsections (a)–(e) in their entirety and inserting in lieu thereof the following to read:

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

(1) the plaintiff producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable battery stewardship organization incurs more than \$1,000.00 in actual reimbursable 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 primary batteries from a brand or marking on the discarded battery or from other information available to the plaintiff producer, primary battery stewardship organization, rechargeable battery steward, or rechargeable 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, a primary battery stewardship organization in compliance

with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a primary 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 (d) of this section have been met.

(c) Action against rechargeable battery stewardship organization. A producer, a primary battery stewardship organization in compliance with the requirements of this chapter, a rechargeable battery steward, or a rechargeable battery stewardship organization may bring a civil action for damages against a rechargeable battery stewardship organization registered by the Secretary, provided that the conditions of subsection (d) of this section have been met.

(d) 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.

and by relettering the remaining subsections to be alphabetically correct

and in the new subsection (g) (Damages; definition), after “means the actual,” and before “costs a plaintiff producer” by striking out “direct” and inserting in lieu thereof reimbursable

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 26, 2014, pages 829-847)

House Proposal of Amendment

S. 299.

An act relating to sampler flights.

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

Sec. 1. PURPOSE

The purpose of this act is to allow wholesale dealers to offer tastings of malt or vinous beverages to the management and staff of businesses who have applied for first- or second-class licenses but have yet to receive the license from the Department of Liquor Control, provided that the local control commission has approved the liquor license. This will enable the management of new businesses to taste and choose malt or vinous beverages and to print their menus and otherwise make the start-up of their businesses easier.

Sec. 2. 7 V.S.A. § 67 is amended to read:

§ 67. ALCOHOLIC BEVERAGE TASTINGS; PERMIT; PENALTIES

* * *

(d) Promotional alcoholic beverage tasting:

* * *

(4) Upon receipt of a first- or second-class application by the Department, a holder of a wholesale dealer's license may dispense malt or vinous beverages for promotional purposes without charge to invited management and staff of a business that has applied for a first- or second-class license, provided they are of legal drinking age. The event shall be held on the premises of the first- or second-class applicant. The first- or second-class applicant shall be responsible for complying with all applicable laws under this title. No malt or vinous beverages shall be left behind. No permit is required under this subdivision, but the wholesale dealer shall provide written notice of the event to the Department at least five days prior to the date of the tasting. The Department shall post notice of the pending application on its website.

* * *

Sec. 3. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words as used in this title, unless a contrary meaning is required by the context, shall have the following meaning:

* * *

(37) “Sampler flight” means a flight, ski, paddle, or any similar device by design or name intended to hold alcoholic beverage samples for the purpose of comparison.

Sec. 4. 7 V.S.A. § 222 is amended to read:

§ 222. ~~FIRST AND SECOND CLASS~~ FIRST- AND SECOND-CLASS
LICENSES, GRANTING OF; SALE TO MINORS; CONTRACTING
FOR FOOD SERVICE

With the approval of the Liquor Control Board, the Control Commissioners may grant to a retail dealer for the premises where the dealer carries on business the following:

* * *

(5)(A) The holder of a first-class license may serve a sampler flight of up to 32 ounces in the aggregate of malt beverages to a single customer at one time;

(B) The holder of a first-class license may serve a sampler flight of up to 12 ounces in the aggregate of vinous beverages to a single customer at one time; and

(C) The holder of a third-class license may serve a sampler flight of up to four ounces in the aggregate of spirituous liquors to a single customer at one time.

Sec. 5. 7 V.S.A. § 66 is amended to read:

§ 66. MALT AND VINOUS BEVERAGE SHIPPING LICENSE; IN STATE;
OUT OF STATE; PROHIBITIONS; PENALTIES

* * *

(c) A manufacturer or rectifier of vinous beverages that is licensed in-state or out-of-state and holds valid ~~state~~ State and federal permits and operates a winery in the United States, may apply for a retail shipping license by filing with the Department of Liquor Control an application in a form required by the Department accompanied by a copy of its in-state or out-of-state license and the fee as required by subdivision 231(a)(7)(C) of this title. The retail shipping license may be renewed annually by filing the renewal fee as required by subdivision 231(a)(7)(C) of this title accompanied by the licensee’s current in-state or out-of-state manufacturer’s license. This license permits the holder, which includes the holder’s affiliates, franchises, and subsidiaries, to sell up to 5,000 gallons of vinous beverages a year directly to ~~first first- or second-class~~ second-class licensees and deliver the beverages by common carrier ~~or~~, the manufacturer’s or rectifier’s own ~~vehicles~~ vehicle, or the vehicle of an

employee of a manufacturer or rectifier, provided that the beverages are sold on invoice, and no more than 100 gallons per month are sold to any single ~~first~~ ~~first- or second-class~~ second-class licensee. The retail shipping license holder shall report to the Department documentation of the annual and monthly number of gallons sold. Vinous beverages under this section may be delivered by the vehicle of a second-class license holder if the second-class licensee cannot obtain the vinous beverages from a wholesale dealer.

* * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

CONCURRENT RESOLUTIONS FOR ACTION

H.C.R. 330-340 (For text of Resolutions, see Addendum to House Calendar for April 24, 2014)

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.

Emma Marvin of Hyde Park – Member of the Economic Progress Council – By Sen. Collins for the Committee on Economic Development, Housing and General Affairs. (4/25/14)

Linda Ryan of St. Albans – Member of the Vermont State Housing Authority – By Sen. Collins for the Committee on Economic Development, Housing and General Affairs. (4/25/14)

Samuel Hoar, Jr. of South Burlington – Superior Court Judge – By Sen. Ashe for the Committee on Judiciary. (4/25/14)

Martha O'Connor of Brattleboro – Member of the Vermont State Lottery Commission – By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (4/25/14)