

# Senate Calendar

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TUESDAY, APRIL 29, 2014

**SENATE CONVENES AT: 9:30 A.M.**

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**ACTION CALENDAR  
CONSIDERATION POSTPONED**

**Third Reading**

**H. 297.**

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

PENDING QUESTION: Shall the Senate proposal of amendment be amended as moved by Senator Rodgers?

(For text of amendment see Senate Journal of April 28, 2014, page 951)

**House Proposal of Amendment**

**S. 299.**

An act relating to sampler flights.

PENDING QUESTION: Shall the motion of Senator Mullin to concur in the House proposal of amendment with amendment, be amended as moved by Senator Galbraith?

(For text of amendment see Senate Journal of April 28, 2014, page 955)

**UNFINISHED BUSINESS OF MONDAY, APRIL 28, 2014**

**Second Reading**

**Favorable**

**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)

**NEW BUSINESS**

**Third Reading**

**H. 217.**

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

**H. 881.**

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

**H. 885.**

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

**Amendment to Senate proposal of amendment to H. 885 to be offered by Senator Baruth before Third Reading**

Senator Baruth moves to amend the Senate proposal of amendment in Sec. E.100.5, in subdivision (e)(2), by striking out “to participate in Board deliberations under this section in an advisory capacity” and inserting in lieu thereof the following: who, for purposes of this section only, shall be entitled to participate in deliberations and to vote on proposals submitted to the Board under this section.

**Amendment to Senate Proposal of amendment to H. 885 to be offered by Senator Galbraith before third reading**

Senator Galbraith moves to amend the Senate proposal of amendment in Sec. E.100.5(d)(1) by inserting a new subparagraph to be lettered (A) to read as follows:

(A) that it does not have cash on hand that exceeds by one hundred thousand percent the amount of the proposed investment or state incentive and either one of the following:

And by relettering the remaining subparagraphs to be alphabetically correct.

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 88.**

An act relating to parental rights and responsibilities involving a child conceived as a result of a sexual assault.

**Reported favorably with recommendation of proposal of amendment by Senator Benning 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. 15 V.S.A. § 665 is amended to read:

§ 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF THE CHILD

(a) In an action under this chapter, the ~~court~~ Court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The ~~court~~ Court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the ~~court~~ Court shall award parental rights and responsibilities primarily or solely to one parent.

(b) In making an order under this section, the ~~court~~ Court shall be guided by the best interests of the child, and shall consider at least the following factors:

(1) the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection, and guidance;

(2) the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs, and a safe environment;

(3) the ability and disposition of each parent to meet the child's present and future developmental needs;

(4) the quality of the child's adjustment to the child's present housing, school, and community and the potential effect of any change;

(5) the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;

(6) the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

(7) the relationship of the child with any other person who may significantly affect the child;

(8) the ability and disposition of the parents to communicate, cooperate with each other, and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and

(9) evidence of abuse, as defined in section 1101 of this title, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

\* \* \*

(f) The State has a compelling interest in not forcing a victim of sexual assault or sexual exploitation to continue an ongoing relationship with the perpetrator of the abuse. Such continued interaction can have traumatic psychological effects on the victim, making recovery more difficult, and negatively affect the victim's ability to parent and to provide for the best interests of the child. Additionally, the State recognizes that a perpetrator may use the threat of pursuing parental rights and responsibilities to coerce a victim into not reporting or assisting in the prosecution of the perpetrator for the sexual assault or sexual exploitation, or to harass, intimidate, or manipulate the victim.

(1) The Court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the Court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault. As used in this subdivision, sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, and aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions.

(A) An order issued in accordance with this subdivision (f)(1) shall be permanent and shall not be subject to modification.

(B) Upon issuance of a rights and responsibilities order pursuant to this subdivision (f)(1), the Court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent.

(2) The Court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the Court finds that such an order is in the best interest of the child and finds by clear and convincing evidence that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent. A conviction is not required under this subdivision and the Court may consider other evidence of sexual assault or sexual exploitation in making its determination.

(A) For purposes of this subdivision (f)(2):

(i) sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252, aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd

and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions; and

(ii) sexual exploitation shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

(B) Except as provided in subdivision (f)(2)(C), the Court shall not issue a parent-child contact order in a case in which a parental rights and responsibilities order has been issued pursuant to this subdivision (f)(2) and any existing parent-child contact order concerning the child and the nonmoving parent shall be terminated.

(C) A party may file a motion for modification of the order only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.

(3) Issuance of an order in pursuant to this subsection shall not affect the right of the custodial parent to seek child support from the noncustodial parent.

Sec. 2. 15 V.S.A. § 668 is amended to read:

#### § 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the ~~court~~ Court may annul, vary, or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

\* \* \*

(c) A final order related to parental rights and responsibilities and parent child contact issued pursuant to subdivision 665(f)(1) of this title shall not be subject to modification. A party may file a motion for modification of an order related to parental rights and responsibilities and parent child contact issued pursuant to subdivision 665(f)(2) of this title only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.

Sec. 3. 13 V.S.A. § 2651(3) is amended to read:

(3) “Commercial sex act” means any ~~sex~~ sexual act, sexual conduct, or sexually explicit performance on account of which anything of value is promised to, given to, or received by any person.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 7, 2014, page 342)

### **H. 681.**

An act relating to the professional regulation for veterans, military service members, and military spouses.

#### **Reported favorably with recommendation of proposal of amendment by Senator French for the Committee on Government Operations.**

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

First: In Sec. 1 (professional regulatory entities; military service licensure requirements), in subdivision (a)(1) (definition of “expedited temporary license by endorsement”), at the end of the subdivision following “licensure in another state”, by inserting or, in the case of EMS providers, based on current certification from the National Registry of Emergency Medical Technicians (NREMT)

Second: In Sec. 1, in subsection (b), at the beginning of the introductory paragraph, by striking out in its entirety “February 1, 2015” and inserting in lieu thereof July 1, 2015

Third: In Sec. 1, in subdivision (b)(2)(B) (expedited temporary licensure by endorsement; application requirements), at the end of subdivision (ii) following “issued in another state” by inserting or, in the case of EMS providers, proof that the applicant holds a current certification from the NREMT

Fourth: In Sec. 1, in subdivision (b)(3)(B) (renewal of licensure; eligibility), by inserting two new subdivisions to be subdivisions (i) and (ii) to read:

(i) The provisions of this subdivision (B) shall apply to an EMS licensee with a military deployment of less than two years, or greater than two years if the position served in the military was as an EMS provider or a substantially similar role.

(ii) For an EMS licensee with a military deployment of greater than two years and whose position served in the military was not as an EMS provider or a substantially similar role, the licensee shall be required to obtain certification with the NREMT prior to renewal of a license under this subdivision.



Fifth: In Sec. 2, 18 V.S.A. § 906c, in subdivision (b)(1), following “compensation upon his or her return from deployment”, by striking out “despite the lapse of licensure or certification” and inserting in lieu thereof once licensure is renewed

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 14, 2014, page 607)

#### **H. 740.**

An act relating to transportation impact fees.

#### **Reported favorably with recommendation of proposal of amendment by Senator Westman for the Committee on Transportation.**

The Committee recommends that the Senate propose to the House to amend the bill in Sec. 2, 10 V.S.A. chapter 151, subchapter 5 (transportation impact fees) as follows:

First: In § 6107 (transportation improvement district fund), by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read as follows:

(c) The Agency shall provide to the Treasurer an annual accounting of each TID and associated transportation impact fee for that district showing the source, the amount collected, each project that was funded or that will be funded with the fee, and the amount expended.

Second: By striking out § 6108 (payment of fees) in its entirety and inserting in lieu thereof a new § 6108 to read as follows:

#### § 6108. PAYMENT OF FEES

(a) An applicant shall pay a transportation impact fee assessed under this subchapter to the Agency, except that a District Commission may direct an applicant to pay a transportation impact fee to a municipality if the impacts of the applicant’s development or subdivision are limited to municipal highways and rights-of-way or other municipal transportation facilities.

(b) A municipality receiving a transportation impact fee under this subchapter shall place the fee into a separate account, with balances in the account carried forward from year to year and remaining within the account. Interest earned by the account shall be deposited into the account. The municipality shall provide to the voters an annual accounting of each fee received under this subchapter showing the source, the amount of each fee received, and each project that was funded or will be funded with the fee.

Third: In § 6109 (unspent fee amounts; refunds), by striking out the last sentence.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for April 3, 2014, page 1051-1061)

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

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

(Committee vote: 6-0-1)

**H. 823.**

An act relating to encouraging growth in designated centers and protecting natural resources.

**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. § 6001 (definitions), in subdivision (16)(A) (existing settlement), in subdivision (ii), after “an existing”, by striking out “community”.

Second: In Sec. 1, 10 V.S.A. § 6001 (definitions), by striking out subdivision (36) in its entirety and inserting in lieu thereof a new subdivision (36) to read as follows:

(36) “Strip development” means linear commercial development along a public highway that includes three or more of the following characteristics: broad road frontage, predominance of single-story buildings, limited reliance on shared highway access, lack of connection to any existing settlement except by highway, lack of connection to surrounding land uses except by highway, lack of coordination with surrounding land uses, and limited accessibility for pedestrians. In determining whether a proposed development or subdivision constitutes strip development, the District Commission shall consider the topographic constraints in the area in which the development or subdivision is to be located.

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

Sec. 2. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(a) Before granting a permit, the ~~district commission~~ District Commission shall find that the subdivision or development:

\* \* \*

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(B) Will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services, unless the District Commission affirmatively finds that such a strategy, access, or connection does not constitute a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

\* \* \*

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a ~~district commission~~ District Commission.

\* \* \*

~~(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage. Settlement patterns. To promote Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:~~

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure;

(ii) is designed in a manner consistent with the planning goals set forth in 24 V.S.A. § 4302(c)(1);

(iii) will conform to the land use element, map, and resource protection policies included in the municipal and regional plans applicable to the proposed location of the development or subdivision; and

(iv)(I) will neither establish nor contribute to a pattern of strip development along public highways; and

(II) if the development or subdivision will be located in an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to avoid or minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

\* \* \*

Fourth: By striking out Secs. 3, 4, and 5 in their entirety and inserting in lieu thereof new Secs. 3, 4, and 5 to read as follows:

Sec. 3. 10 V.S.A. § 6086b is added to read:

§ 6086b. DOWNTOWN DEVELOPMENT; FINDINGS

Notwithstanding any provision of this chapter to the contrary, each of the following shall apply to a development or subdivision that is completely within a downtown development district designated under 24 V.S.A. chapter 76A and for which a permit or permit amendment would otherwise be required under this chapter:

(1) In lieu of obtaining a permit or permit amendment, a person may request findings and conclusions from the District Commission, which shall approve the request if it finds that the development or subdivision will meet subdivisions 6086(a)(1) (air and water pollution), (2) (sufficient water available), (3) (burden on existing water supply), (4) (soil erosion), (5) (traffic), (8) (aesthetics, historic sites, rare and irreplaceable natural areas), (8)(A) (endangered species; necessary wildlife habitat), (9)(B) (primary agricultural soils), (9)(C) (productive forest soils), (9)(F) (energy conservation), and (9)(K) (public facilities, services, and lands) of this title.

(2) The request shall be complete as to the criteria listed in subdivision (1) of this subsection and need not address other criteria of subsection (a) of this section.

(A) The requestor shall file the request in accordance with the requirements of subsection 6084(a) of this title and the requestor shall provide a copy of the request to each agency and department listed in subdivision (3) of this section.

(B) Within five days of the request's filing, the District Coordinator shall determine whether the request is complete. Within five days of the date the District Coordinator determines the request to be complete, the District Commission shall provide notice of the complete request to each person required to receive a copy of the filing under subdivision (2)(A) of this section and to each adjoining property owner and shall post the notice and a copy of the request on the Board's web page. The computation of time under this subdivision (2)(B) shall exclude Saturdays, Sundays, and State legal holidays.

(3) Within 30 days of receiving notice of a complete request:

(A) The State Historic Preservation Officer or designee shall submit a written recommendation on whether the improvements will have an undue adverse effect on any historic site.

(B) The Commissioner of Public Service or designee shall submit a written recommendation on whether the improvements will meet or exceed the applicable energy conservation and building energy standards under subdivision 6086(a)(9)(F) of this title.

(C) The Secretary of Transportation or designee shall submit a written recommendation on whether the improvements will have a significant impact on any highway, transportation facility, or other land or structure under the Secretary's jurisdiction.

(D) The Commissioner of Buildings and General Services or designee shall submit a written recommendation on whether the improvements will have a significant impact on any adjacent land or facilities under the Commissioner's jurisdiction.

(E) The Secretary of Natural Resources or designee shall submit a written recommendation on whether the improvements will have a significant impact on any land or facilities under its jurisdiction or on any important natural resources, other than primary agricultural soils. In this subdivision (E), "important natural resources" shall have the same meaning as under 24 V.S.A. § 2791.

(F) The Secretary of Agriculture, Food and Markets or designee shall submit a written recommendation on whether the improvements will reduce or convert primary agricultural soils and on whether there will be appropriate mitigation for any reduction in or conversion of those soils.

(4) Any person may submit written comments or ask for a hearing within 30 days of the date on which the District Commission issues notice of a complete request. If the person asks for a hearing, the person shall include a petition for party status in the submission. The petition for party status shall meet the requirements of subdivision 6085(c)(2) of this title.

(5) The District Commission shall not hold a hearing on the request unless it determines that there is a substantial issue under one or more applicable criteria that requires a hearing. The District Commission shall hold any hearing within 20 days of the end of the comment period specified in subdivisions (3) and (4) of this section. Subdivisions 6085(c)(1)–(5) of this title shall govern participation in a hearing under this section.

(6) The District Commission shall issue a decision within 60 days of issuing notice of a complete request under this section or, if it holds a hearing, within 15 days of adjourning the hearing. The District Commission shall send a copy of the decision to each State agency listed in subdivision (3) of this section, to the municipality, to the municipal and regional planning commissions for the municipality, and to each person that submitted a comment, requested a hearing, or participated in the hearing, if any. The decision may include conditions that meet the standards of subsection 6086(c) of this title.

(7) The requestor may waive the time periods required under subdivisions (3), (4), and (6) of this section as to one or more agencies, departments, the District Commission, the District Coordinator, or other persons. Such a waiver shall extend the applicable and subsequent time periods by the amount of time waived. In the absence of a waiver under this subdivision, the failure of a State agency to file a written determination or a person to submit a comment or ask for a hearing within the time periods specified in subdivisions (3) and (4) of this section shall not delay the District Commission's issuance of a decision on a complete request.

Sec. 4. 10 V.S.A. § 6081(v) is added to read:

(v) A permit or permit amendment shall not be required for a development or subdivision in a designated downtown development district for which the District Commission has issued positive findings and conclusions under section 6086b of this title on all the criteria listed in that section. A person shall obtain new or amended findings and conclusions from the District Commission under section 6086b of this title prior to commencement of a material change, as defined in the rules of the Board, to a development or subdivision for which the District Commission has issued such findings and conclusions. A person may seek a jurisdictional opinion under section 6007 of this title concerning whether such a change is a material change.

Sec. 5. [Deleted.]

Fifth: By striking out Sec. 6 in its entirety and inserting in lieu thereof:

Sec. 6. [Deleted.]

Sixth: By striking out Secs. 7 and 8 in their entirety and inserting in lieu thereof new Secs. 7 and 8 to read as follows:

Sec. 7. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The Secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes, and the Board may take such action with respect to subdivision (10) of this subsection:

\* \* \*

(10) 10 V.S.A. chapter 151, relating to land use, and including findings and conclusions issued under section 6086b of this title;

\* \* \*

\* \* \* Nonappeal, Recommendation to District Commission \* \* \*

Sec. 8. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the Secretary, the Natural Resources Board, or a ~~district commission~~ District Commission under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the Environmental Division, except for an act or decision of the Secretary under subdivision 6086b(3)(E) of this title or governed by section 8506 of this title.

\* \* \*

Seventh: In Sec. 13 (wastewater rules; amendment), after “the Agency of Natural Resources shall amend its” by inserting the word application prior to “form”.

(Committee vote: 4-1-0)

(For House amendments, see House Journal for March 13, 2014, pages 582-600 and March 14, 2014, page 606)

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

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendment thereto:

By striking out the *third* proposal of amendment and inserting in lieu thereof the following:

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

Sec. 2. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

(a) Before granting a permit, the ~~district commission~~ District Commission shall find that the subdivision or development:

\* \* \*

(5)(A) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports and airways, and other means of transportation existing or proposed.

(B) As appropriate, will incorporate transportation demand management strategies and provide safe access and connections to adjacent lands and facilities and to existing and planned pedestrian, bicycle, and transit networks and services. In determining appropriateness under this subdivision (B), the District Commission shall consider whether such a strategy, access, or connection constitutes a measure that a reasonable person would take given the type, scale, and transportation impacts of the proposed development or subdivision.

\* \* \*

(9) Is in conformance with a duly adopted capability and development plan, and land use plan when adopted. However, the legislative findings of subdivisions 7(a)(1) through (19) of Act 85 of 1973 shall not be used as criteria in the consideration of applications by a ~~district commission~~ District Commission.

\* \* \*

~~(L) Rural growth areas. — A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be~~



~~made in accordance with subdivisions (9)(A) “impact of growth,” (G) “private utility service,” (H) “costs of scattered development” and (J) “public utility services” of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage. Settlement patterns. To promote Vermont’s historic settlement pattern of compact village and urban centers separated by rural countryside, a permit will be granted for a development or subdivision outside an existing settlement when it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision:~~

(i) will make efficient use of land, energy, roads, utilities, and other supporting infrastructure; and

(ii) (I) will not contribute to a pattern of strip development along public highways; or

(II) if the development or subdivision will be located in an area that already constitutes strip development, will incorporate infill as defined in 24 V.S.A. § 2791 and is designed to reasonably minimize the characteristics listed in the definition of strip development under subdivision 6001(36) of this title.

(Committee vote: 3-2-0)

### **House Proposal of Amendment**

#### **S. 211.**

An act relating to permitting of sewage holding and pumpout tanks for public buildings.

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

\* \* \* Sewage Holding and Pumpout Tanks for Public Buildings \* \* \*

Sec. 1. 10 V.S.A. § 1979 is amended to read:

§ 1979. HOLDING TANKS

(a) The ~~secretary~~ Secretary shall approve the use of sewage holding and pumpout tanks when he or she determines that:

(1) the existing or proposed buildings or structures to be served by the holding tank are publicly owned;

(2) the plan for construction and operation of the holding tank will not result in a public health hazard or environmental damage;

(3) a designer demonstrates that an economically feasible means of meeting current standards is significantly more costly than the construction and operation of sewage holding and pumpout tanks, based on a projected 20-year life of the project; and

(4) the design flows do not exceed 600 gallons per day.

(b)(1) The Secretary shall approve the use of sewage holding and pumpout tanks for existing buildings or structures that are owned by a charitable, religious, or nonprofit organization when he or she determines that:

(A) the plan for construction and operation of the holding tank will not result in a public health hazard or environmental damage;

(B) a designer demonstrates that an economically feasible means of meeting current standards is significantly more costly than the construction and operation of sewage holding and pumpout tanks, based on a projected 20-year life of the project; and

(C) the design flows do not exceed 600 gallons per day.

(2) Before constructing a holding tank permitted under this subsection, the applicant shall post a bond or other financial surety sufficient to finance maintenance of the holding tank for the life of the system, which shall be at least 20 years.

(3)(A) A permit issued under this subsection shall run with the land for the duration of the permit and shall apply to all subsequent owners of the property being served by the holding tank regardless of whether the owner is a charitable, religious, or nonprofit organization.

(B) All permit conditions, including the financial surety requirement of subdivision (b)(2), shall apply to a subsequent owner.

(C) A subsequent owner shall not increase the design flows of the holding and pumpout tank system without approval from the Secretary.

(c) A holding tank may also be used for a project that is eligible for a variance under section 1973 of this title, whether or not the project is publicly owned, if the existing wastewater system has failed, or is expected to fail, and in either instance, if there is no other cost-feasible alternative.

~~(e)~~(d) When a holding tank is proposed for use, a designer shall submit all information necessary to demonstrate that the holding tank will comply with the following requirements:

(1) ~~the~~ The holding tank shall be capable of holding at least 14 days of the ~~expected~~ design flow from the building;

(2) ~~the~~ The tank shall be constructed of durable materials that are appropriate for the site conditions and the nature of the sewage to be stored;.

(3) ~~the~~ The tank shall be watertight, including any piping connected to the tank and all access structures connected to the tank. The tank shall be leakage tested prior to being placed in service;.

(4) ~~the~~ The tank shall be designed to protect against floatation when the tank is empty, such as when it is pumped;.

(5) ~~the~~ The tank shall be equipped with audio and visual alarms that are triggered when the tank is filled to 75 percent of its design capacity;.

(6) ~~the~~ The tank shall be located so that it can be reached by tank pumping vehicles at all times when the structure is occupied; ~~and~~.

(7) ~~the~~ The analysis supports a claim under subdivision (a)(3) of this section.

~~(d)~~(e) The permit application shall specify the method and expected frequency of pumping.

~~(e)~~(f) Any building or structure served by a holding tank shall have a water meter, or meters, installed that measures all water that will be discharged as wastewater from the building or structure.

~~(f)~~(g) Any permit issued for the use of a holding tank will require a designer to periodically inspect the tank, visible piping, and alarms. The designer shall submit a written report to the ~~secretary~~ Secretary detailing the results of the inspection and any repairs or changes in operation that are required. The report also shall detail the pumping history since the previous report, giving the dates of pumping and the volume of wastewater removed. The frequency of inspections and reports shall be stated in the permit issued for the use of the tank, but shall be no less frequent than once per year. The designer also shall inspect the water meter or meters and verify that they are installed, calibrated, and measuring all water that is discharged as wastewater. The designer shall read the meters and compare the metered flow to the pumping records. Any significant deviation shall be noted in the report and explained to the extent possible.

~~(g)~~(h) The owner of a holding tank shall maintain a valid contract with a licensed wastewater hauler at all times. The contract shall require the licensed wastewater hauler to provide written notice of dates of pumping and volume of wastewater pumped. Copies of all such notices shall be submitted with the written inspection reports.

\* \* \* Municipal Water Connection Certification \* \* \*

Sec. 2. 10 V.S.A. § 1976 is amended to read:

§ 1976. DELEGATION OF AUTHORITY TO MUNICIPALITIES

(a)(1) If a municipality submits a written request for delegation of this chapter, the ~~secretary~~ Secretary shall delegate authority to the municipality to implement and administer provisions of this chapter, the rules adopted under this chapter, and the enforcement provisions of chapter 201 of this title relating to this chapter, provided that the ~~secretary~~ Secretary is satisfied that the municipality:

(A) has established a process for accepting, reviewing, and processing applications and issuing permits, which shall adhere to the rules established by the ~~secretary~~ Secretary for potable water supplies and wastewater systems, including permits, by rule, for sewerage connections;

(B) has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract, a licensed designer to perform technical work which must be done by a municipality under this section to grant permits;

(C) will take timely and appropriate enforcement actions pursuant to the authority of chapter 201 of this title;

(D) commits to reporting annually to the ~~secretary~~ Secretary on a form and date determined by the ~~secretary~~ Secretary; and

(E) will comply with all other requirements of the rules adopted under section 1978 of this title.

(2) Notwithstanding the provisions of this subsection, there shall be no delegation of this section or of section 1975 or 1978 of this title.

\* \* \*

(g) Notwithstanding the requirements of subsection (a) of this section, if a municipality submits a written request for partial delegation of this chapter, the Secretary shall delegate authority to the municipality to permit new or modified service connections to an existing municipally owned water main or sewer main, provided that the Secretary is satisfied that the municipality:

(1) shall only issue permits for connections under this subsection if it owns both the water main and the sewer main at the site of the connection;

(2) will provide notice to the Secretary of any new connection; and

(3) has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract, a licensed designer who is or will be responsible for designing and certifying the design of new service connections.

Sec. 3. WASTEWATER RULES; AMENDMENT

On or before June 1, 2015, the Agency of Natural Resources shall amend its rules under 10 V.S.A. § 1978 to conform to the provisions of Sec. 2 of this act.

Sec. 4. MUNICIPAL WATER CONNECTION PERMIT DELEGATION REPORT

On or before December 1, 2016, the Secretary of Natural Resources shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy a report that shall include:

(1) a list of municipalities that have accepted full or partial delegation of permitting authority under 10 V.S.A. § 1964;

(2) a summary of the cost of full and partial delegation of permitting authority under 10 V.S.A. § 1964 for the agency, permitting municipalities, and permit applicants; and

(3) a recommendation for whether to continue to exempt municipalities from the requirements of 10 V.S.A. § 1964(a) when permitting authority is partially delegated under 10 V.S.A. § 1964(g).

\* \* \* Effective Date \* \* \*

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

**House Proposal of Amendment**

**S. 247.**

An act relating to the regulation of medical marijuana dispensaries.

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

Sec. 1. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

As used in this subchapter:

(1) “Bona fide health care professional-patient relationship” means a treating or consulting relationship of not less than six months’ duration, in the course of which a health care professional has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination. The six-month requirement shall not apply if a patient has been diagnosed with:

(A) a terminal illness,

(B) cancer with distant metastases, or

(C) acquired immune deficiency syndrome.

\* \* \*

(4) “Debilitating medical condition,” provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision (4), reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms, means:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a disease, medical condition, or its treatment that is chronic, debilitating, and produces severe, persistent, and one or more of the following intractable symptoms: cachexia or wasting syndrome; severe pain; severe nausea; or seizures.

(5) “Dispensary” means a nonprofit entity registered under section 4474e of this title which acquires, possesses, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center and to his or her registered caregiver for the registered patient’s use for symptom relief. A dispensary may provide marijuana for symptom relief to registered patients at only one facility or location but may have a second location associated with the dispensary where the marijuana is cultivated or processed. Both locations are considered to be part of the same dispensary.

(6)(A) “Health care professional” means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a naturopathic physician under 26 V.S.A. chapter 81 who has a special license endorsement authorizing the individual to prescribe, dispense, and administer prescription medicines to the extent that a diagnosis provided by a naturopath under this chapter is within the scope of his or her practice, an individual certified as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as an advanced practice registered nurse under 26 V.S.A. chapter 28.

(B) Except for naturopaths, this definition includes individuals who are professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York.

\* \* \*

(14) “Transport” means the movement of marijuana and marijuana-infused products from registered growing locations to their associated dispensaries, between dispensaries, to registered patients and registered caregivers in accordance with delivery protocols, or as otherwise allowed under this subchapter.

(15) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

~~(15)~~(16) “Use for symptom relief” means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana, or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient’s debilitating medical condition which is in compliance with all the limitations and restrictions of this subchapter. ~~For the purposes of this definition, “transfer” is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.~~

Sec. 2. 18 V.S.A. § 4474 is amended to read:

§ 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS AND PROCEDURES

(a) A person may submit a signed application to the ~~department of public safety~~ Department of Public Safety to become a registered patient’s registered caregiver. The ~~department~~ Department shall approve or deny the application in writing within 30 days. In accordance with rules adopted pursuant to section 4474d of this title, the Department shall consider an individual’s criminal history record when making a determination as to whether to approve the application. An applicant shall not be denied solely on the basis of a criminal conviction that is not listed in subsection 4474g(e) of this title or 13 V.S.A. chapter 28. The ~~department~~ Department shall approve a registered caregiver’s application and issue the person an authorization card, including the caregiver’s name, photograph, and a unique identifier, after verifying:

~~(1) the person will serve as the registered caregiver for one registered patient only; and~~

~~(2) the person has never been convicted of a drug-related crime.~~

(b) Prior to acting on an application, the ~~department~~ Department shall obtain from the Vermont ~~criminal information center~~ Crime Information Center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. ~~For purposes of this subdivision, “criminal record” means a record of whether the person has ever been convicted of a drug-related crime.~~ Each applicant shall

consent to release of criminal records to the ~~department~~ Department on forms substantially similar to the release forms developed by the ~~center~~ Center pursuant to 20 V.S.A. § 2056c. The ~~department~~ Department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont ~~criminal information center~~ Crime Information Center shall send to the requester any record received pursuant to this section or inform the ~~department of public safety~~ Department that no record exists. If the ~~department~~ Department disapproves an application, the ~~department~~ Department shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont ~~criminal information center~~ Crime Information Center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(c)(1) A Except as provided in subdivision (2) of this subsection, a registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time.

(2) A registered patient who is under 18 years of age may have two registered caregivers.

Sec. 3. 18 V.S.A. § 4473(b) is amended to read:

(b) The ~~department of public safety~~ Department of Public Safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit, ~~under oath,~~ a signed application for registration to the ~~department~~ Department. A patient's initial application to the registry shall be notarized, but subsequent renewals shall not require notarization. If the patient is under ~~the age of~~ 18 years of age, the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant shall attach to the application a medical verification form developed by the ~~department~~ Department pursuant to subdivision (2) of this subsection.

\* \* \*

Sec. 4. 18 V.S.A. § 4474d(e)-(g) are added to read:



(e) The Department shall adopt rules for the issuance of a caregiver registry identification card that shall include standards for approval or denial of an application based on an individual's criminal history record. The rules shall address whether an applicant who has been convicted of an offense listed in subsection 4474g(e) of this title or 13 V.S.A. chapter 28 has been rehabilitated and should be otherwise eligible for a caregiver registry identification card.

(f) The Department shall adopt rules establishing protocols for the safe delivery of marijuana to patients and caregivers.

(g) The Department shall adopt rules for granting a waiver of the dispensary possession limits in section 4474e of this title upon application of a dispensary for the purpose of developing and providing a product for symptom relief to a registered patient who is under 18 years of age who suffers from seizures.

Sec. 5. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief. ~~For purposes of this section, "transport" shall mean the movement of marijuana or marijuana infused products from registered growing locations to their associated dispensaries, between dispensaries, or as otherwise allowed under this subchapter.~~

(A) Marijuana-infused products shall include tinctures, oils, solvents, and edible or potable goods. Only the portion of any marijuana-infused product that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient. ~~The department of public safety~~ Department of Public Safety shall establish by rule the appropriate method to establish the weight of marijuana that is attributable to marijuana-infused products.

(B) Marijuana-related supplies shall include pipes, vaporizers, and other items classified as drug paraphernalia under chapter 89 of this title.

(2) Acquire marijuana seeds or parts of the marijuana plant capable of regeneration from or dispense them to registered patients or their caregivers or acquire them from another registered Vermont dispensary, provided that records are kept concerning the amount and the recipient.

(3)(A) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana plants, seven immature plants, and ~~two~~ four ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary.

(B) Notwithstanding subdivision (A) of this subdivision, if a dispensary is designated by a registered patient under 18 years of age who qualifies for the registry because of seizures, the dispensary may apply to the Department for a waiver of the limits in subdivision (A) of this subdivision (3) if additional capacity is necessary to develop and provide an adequate supply of a product for symptom relief for the patient. The Department shall have discretion whether to grant a waiver and limit the possession amounts in excess of subdivision (A) of this subdivision (3) in accordance with rules adopted pursuant to section 4474d of this title.

\* \* \*

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in an enclosed, locked facility which is either indoors or otherwise not visible to the public and which can only be accessed by principal officers and employees of the dispensary who have valid registry identification cards. ~~The department of public safety~~ Department of Public Safety shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, ~~the department~~ Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' registry identification numbers to protect their confidentiality.

(2)(A) A registered patient or registered caregiver may obtain marijuana from the dispensary ~~facility~~ by appointment only.

(B) A dispensary may deliver marijuana to a registered patient or registered caregiver. The marijuana shall be transported in a locked container.

(3) The operating documents of a dispensary shall include procedures for the oversight of the dispensary and procedures to ensure accurate record-keeping.

(4) A dispensary shall submit the results of ~~an annual~~ a financial audit to the ~~department of public safety~~ Department of Public Safety no later than 60 days after the end of the dispensary's first fiscal year, and every other year thereafter. The ~~annual~~ audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The ~~department~~ Department may also periodically require, within its discretion, the audit of a dispensary's financial records by the ~~department~~ Department.

(5) A dispensary shall destroy or dispose of marijuana, marijuana-infused products, clones, seeds, parts of marijuana that are not usable for symptom relief or are beyond the possession limits provided by this subchapter, and marijuana-related supplies only in a manner approved by rules adopted by the ~~department of public safety~~ Department of Public Safety.

\* \* \*

(n) Nothing in this subchapter shall prevent a dispensary from acquiring, possessing, cultivating, manufacturing, transferring, transporting, supplying, selling, and dispensing hemp and hemp-infused products for symptom relief. "Hemp" shall have the same meaning as provided in 6 V.S.A. § 562. A dispensary shall not be required to comply with the provisions of 6 V.S.A. chapter 34.

Sec. 6. 18 V.S.A. § 4474f is amended to read:

§ 4474f. DISPENSARY APPLICATION, APPROVAL, AND REGISTRATION

\* \* \*

(b) Within 30 days of the adoption of rules, the ~~department~~ Department shall begin accepting applications for the operation of dispensaries. Within 365 days of the effective date of this section, the ~~department~~ Department shall grant registration certificates to four dispensaries, provided at least four applicants apply and meet the requirements of this section. No more than four dispensaries shall hold valid registration certificates at one time. ~~The total statewide number of registered patients who have designated a dispensary shall not exceed 1,000 at any one time.~~ Any time a dispensary registration certificate is revoked, is relinquished, or expires, the ~~department~~ Department shall accept applications for a new dispensary. If at any time after one year after the effective date of this section fewer than four dispensaries hold valid

registration certificates in Vermont, the ~~department of public safety~~ Department of Public Safety shall accept applications for a new dispensary.

\* \* \*

(g) After a dispensary is approved but before it begins operations, it shall submit the following to the ~~department of public safety~~ Department:

\* \* \*

(4) A registration fee of \$20,000.00 for the first year of operation, and an annual fee of \$30,000.00 in subsequent years.

Sec. 7. 18 V.S.A. § 4474m is added to read:

§ 4474m. DEPARTMENT OF PUBLIC SAFETY; PROVISION OF EDUCATIONAL AND SAFETY INFORMATION

The Department of Public Safety shall provide educational and safety information developed by Vermont Department of Health to each registered patient upon registration pursuant to section 4473 of this title, and to each registered caregiver upon registration pursuant to section 4474 of this title.

Sec. 8. DEPARTMENT OF HEALTH REPORT; POST-TRAUMATIC STRESS DISORDER

The Department of Health, in consultation with the Department of Mental Health, shall review and report on the existing research on the treatment of the symptoms of post traumatic stress disorder, as defined by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, as well as the existing research on the use of marijuana for relief of the symptoms of post traumatic stress disorder. The Department shall report its findings to the General Assembly on or before January 15, 2015.

Sec. 8a. TAXATION AND REGULATION OF MARIJUANA; REPORT

On or before January 15, 2015, the Secretary of Administration shall report to the General Assembly regarding the taxation and regulation of marijuana in Vermont. The report shall analyze:

(1) the possible taxing systems for the sale of marijuana in Vermont, including sales and use taxes and excise taxes, and the potential revenue each may raise;

(2) any savings or costs to the State that would result from regulating marijuana; and

(3) the experiences of other states with regulating and taxing marijuana.

Sec. 9. EFFECTIVE DATES

This section and Sec. 4 shall take effect on passage and the remaining sections shall take effect on July 1, 2014.

and that after passage the title of the bill be amended to read: “An act relating to the regulation of marijuana for symptom relief and dispensaries”

**House Proposal of Amendment**

**S. 275.**

An act relating to the Court’s jurisdiction over youthful offenders.

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

Sec. 1. YOUTHFUL OFFENDERS; LEGISLATIVE INTENT

The maximum age at which a person may be treated as a youthful offender varies under two different statutes under 33 V.S.A. chapters 51 and 52. A person may be treated as a youthful offender until the person reaches 22 years of age under 33 V.S.A. § 5104(a); however, in some circumstances, a person may be treated as a youthful offender until the person reaches 23 years of age under 33 V.S.A. § 5204a(b)(2)(A). This distinction is intentional.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**Report of Committee of Conference**

**H. 526.**

An act relating to the establishment of lake shoreland protection standards.

**TO THE SENATE AND HOUSE OF REPRESENTATIVES:**

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

H. 526 An act relating to the establishment of lake shoreland protection standards

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS AND LEGISLATIVE INTENT

The General Assembly finds and declares that:

- (1) Clean water is essential in Vermont’s quality of life.

(2) Preserving, protecting, and restoring the water quality of all lakes, ponds, rivers, and streams are necessary for the clean water, recreation, economic opportunity, wildlife habitat, and ecological value that such waters provide.

(3) Currently, there are multiple pressures on the protection of the water quality of the State's surface waters.

(4) The State has responded to the multiple pressures on water quality by implementing regulatory programs for stormwater, wastewater, and agricultural runoff, but water quality issues remain that need addressing.

(5) Vermont's lakes are among the State's most valuable and fragile economic and natural resources, and the protection of naturally vegetated shorelands adjacent to lakes is necessary to prevent water quality degradation, maintain healthy habitat, and promote flood resilience.

(6) Naturally vegetated shorelands and implementation of best management practices in lands adjacent to lakes function to:

(A) intercept and infiltrate surface water runoff, wastewater, and groundwater flows from upland sources;

(B) remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants;

(C) moderate the temperature of shallow water habitat;

(D) maintain the conditions that sustain the full support of aquatic biota, wildlife, and aquatic habitat uses; and

(E) promote stability and flood resilience by protecting shoreline banks from erosion.

(7) Healthy lakes and adjacent shorelands:

(A) support Vermont's tourism economy and promote widespread recreational opportunities, including swimming, boating, fishing, and hunting;

(B) support property values and tax base; and

(C) reduce human health risks.

(8) According to the Agency of Natural Resources Water Quality Remediation, Implementation, and Funding Report in 2013, review of the development, protection, and stabilization of shorelands is necessary because of the importance of shorelands to the health of lakes.

(9) A lake or pond of more than 10 acres is located in 184 of the State's 251 municipalities. However, only 48 municipalities have shoreland zoning

that requires vegetative cover. Scientifically based standards for impervious surface and cleared area adjacent to lakes are necessary to protect and maintain the integrity of water quality and aquatic and shoreland habitat, while also allowing for reasonable development of shorelands.

(10) The shorelands of the State owned by private persons remain private property, and this act does not extend the common-law public trust doctrine to private shoreland that is not currently public trust land. The State has an interest in protecting lakes and adjacent shorelands in a manner that respects existing rights of property owners to control access to land they own in lake shorelands, and the regulation of the creation of new impervious surface or cleared area in the shoreland areas should not and does not affect the ability of property owners to control access to their lands.

(11) In order to fulfill the State's role as trustee of its waters and promote public health, safety, and the general welfare, it is in the public interest for the General Assembly to establish lake shoreland protection standards for impervious surface and cleared area in the shorelands adjacent to the State's lakes.

Sec. 2. 10 V.S.A. chapter 49A is added to read:

#### CHAPTER 49A. LAKE SHORELAND PROTECTION STANDARDS

##### § 1441. PURPOSE

The purposes of this chapter shall be to:

(1) provide clear and adaptable standards for the creation of impervious surface or cleared area in lands adjacent to lakes;

(2) prevent degradation of water quality in lakes and preserve natural stability of shoreline;

(3) protect aquatic biota and protect habitat for wildlife and aquatic life;

(4) mitigate, minimize, and manage any impact of new impervious surface and new cleared area on the lakes of the State;

(5) mitigate the damage that floods and erosion cause to development, structures, and other resources in the lands adjacent to lakes;

(6) accommodate creation of cleared areas and impervious surfaces in protected shoreland areas in a manner that allows for reasonable development of existing parcels;

(7) protect shoreland owners' access to, views of, and use of the State's lakes; and

(8) preserve and further the economic benefits and values of lakes and their adjacent shorelands.

§ 1442. DEFINITIONS

As used in this chapter:

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

(2) “Best management practices” means approved activities, maintenance procedures, and other practices to prevent or reduce the effects of impervious surface or cleared area on water quality and natural resources.

(3) “Cleared area” means an area where existing vegetative cover, soil, tree canopy, or duff is permanently removed or altered. Cleared area shall not mean management of vegetative cover conducted according to the requirements of section 1447 of this title.

(4) “Duff” means leaf litter plus small fragments of plants and organic debris that provide a spongy substrate that absorbs the energy of falling water and allows runoff to infiltrate soil.

(5) “Expansion” means an increase or addition of impervious surface or cleared area.

(6) “Grass lawn” means land maintained in continuous plant coverage of grasses and similar plants that are closely and regularly mowed, including meadow or pasture on nonagricultural land. “Grass lawn” does not include pasture cropland, land used to grow sod, or similar land used for agricultural production.

(7) “Habitable structure” means a permanent assembly of materials built for the support, shelter, or enclosure of persons, animals, goods, or property, including a dwelling, a commercial or industrial building, and driveways, decks, and patios attached or appurtenant to a dwelling or commercial or industrial building. “Habitable structure” shall not mean a motor home, as that term is defined under 32 V.S.A. § 8902, tents, lean-tos, or other temporary structures.

(8) “Highway” shall have the same meaning as in 19 V.S.A. § 1(12).

(9) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(10) “Lake” means a body of standing water, including a pond or a reservoir, which may have natural or artificial water level control. Private ponds shall not be considered lakes.



(11) “Management road” shall have the same meaning as in 19 V.S.A. § 1(13).

(12) “Mean water level” means the mean water level of a lake as defined in the Mean Water Level Rules of the Agency of Natural Resources adopted under 29 V.S.A. § 410.

(13) “Parcel” means a portion of land or a tract of land with defined boundaries created by dividing the land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the records of the municipality where the act of division occurred.

(14) “Private pond” means a body of standing water that is a natural water body of not more than 20 acres located on property owned by a person or an artificial water body of any size located on property owned by one person. A “private pond” shall include a reservoir specifically constructed for one of the following purposes: snowmaking storage, golf course irrigation, stormwater management, or fire suppression.

(15) “Private road” means a road or street other than a highway, as that term is defined in 19 V.S.A. § 1(12), that is owned by one or more persons and that is used as a means of travel from a highway to more than one parcel of land.

(16) “Project” means an act or activity that results in cleared area or the creation of impervious surface in a protected shoreland area.

(17) “Protected shoreland area” means all land located within 250 feet of the mean water level of a lake that is greater than 10 acres in surface area.

(18) “Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative.

(19) “Slope” means the vertical rise divided by the horizontal run of a plane expressed as a percentage.

(20) “State forest highway” shall have the same meaning as in 19 V.S.A. § 1(19).

(21) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(22) “Vegetative cover” means mixed vegetation within the protected shoreland area, consisting of trees, shrubs, groundcover, and duff. “Vegetative cover” shall not mean grass lawns, noxious weeds designated by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 84, or nuisance

plants, such as poison ivy and poison oak, designated by the Secretary of Natural Resources.

§ 1443. INDIVIDUAL PERMIT REQUIREMENT FOR IMPERVIOUS SURFACE OR CLEARED AREA IN A PROTECTED SHORELAND AREA

(a) Permit requirement. A person shall not create cleared area or impervious surface in a protected shoreland area without a permit from the Secretary issued under this section, except for activities authorized to occur without a permit under section 1446 of this title.

(b) Permit issuance. The Secretary shall issue a permit under this section if the proposed impervious surface or cleared area meets the requirements of section 1444 or 1445 of this title.

(c) Permit process.

(1) A person applying for a permit shall do so on a form provided by the Secretary. The application shall be posted on the Agency's website.

(2) A person applying for a permit shall provide notice, on a form provided by the Secretary, to the municipal clerk of the municipality in which the construction of impervious surface or creation of cleared area is located at the time the application is filed with the Secretary.

(3) The Secretary shall provide an opportunity for written comment, regarding whether an application complies with the requirements of this chapter or any rule adopted by the Secretary, for 30 days following receipt of the application.

(d) Permit condition. A permit issued under this section may include permit conditions, including authorizing a permittee, no more frequently than two times per year, to clear vegetative cover within three feet of both sides of a footpath within the protected shoreland area in order to allow access to the mean water level for maintenance or repair of recreational structures or for other activity approved by the Secretary.

(e) Permit term. Individual permits issued under this section shall be for an indefinite term, provided that the permittee complies with the requirements of the permit and takes no additional action for which an individual permit is required.

(f) Recording. A permit or registration issued under this chapter shall, for the purposes of having the permit or registration run with the land, be recorded in the land records of the municipality in which the impervious surface or cleared area is located.

(g) Public recreational areas. Notwithstanding the requirements of sections 1444 and 1445 of this title, the Secretary shall issue a permit under this chapter for a public recreational area project if the permit applicant demonstrates and the Secretary finds that:

(1) the recreational activity provides access to the water for the general public and promotes the public trust uses of the water;

(2) the impervious surface or cleared area is necessary to achieve the recreational purpose of the project, and the project must be constructed within the protected shoreland area to achieve its recreational function; and

(3) the project conforms with best management practices approved by the Secretary that protect the habitat and water quality of the lake while achieving the public recreational purposes.

#### § 1444. PERMIT STANDARDS

(a) Permit standards; generally. Except for permits issued under section 1445 of this title, the Secretary shall issue a permit under this chapter if the permit applicant, including the State of Vermont, demonstrates that:

(1) cleared area or impervious surface shall be located at least 100 feet from the mean water level, except for for shoreland stabilization measures designed to repair or prevent erosion or flood risks and approved by the Secretary;

(2) cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that will have a stable slope with minimal erosion and minimal negative impacts to water quality;

(3)(A) no more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area;

(4)(A) no more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating impervious surface; or

(B) best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that

which would be provided by clearing less than 40 percent of the protected shoreland area; and

(5) vegetative cover shall be managed according to the requirements of section 1447 of this title.

(b) Repair of highway, State forest highway, management road, or private road. Under this chapter, when the repair, emergency repair, or replacement of a highway, management road, State forest highway, or private road results in the construction, creation, or expansion of impervious surface or cleared area on a property adjacent to the highway, management road, State forest highway, or private road, the impervious surface or cleared area constructed or created on the adjacent property shall not be calculated as square footage of impervious surface or cleared area for purposes of permitting or registration under this chapter.

(c) Calculation of area. Under this chapter, the area of constructed, created, or expanded impervious surface or cleared area shall be the square footage as measured on a horizontal plane.

#### § 1445. NONCONFORMING PARCELS; PERMIT STANDARDS

(a) Permit for nonconforming parcels. A permit applicant shall comply with the requirements of subsection (b) of this section if the applicant cannot meet the standard required under subdivision 1444(a)(1) of this title on a parcel of land in existence on July 1, 2014, due to one of the following limitations:

(1) parcel size;

(2) the site characteristic or site limitations of the parcel, including presence of highway or rights of way and soil type; or

(3) application of municipal setback requirement in a municipal bylaw adopted on or before July 1, 2014.

(b) Permit standards for nonconforming parcels.

(1) For a parcel on which there is no habitable structure, the cleared area or impervious surface shall be as far as possible from the mean water level, and at a minimum shall be no less than 25 feet from the mean water level, except for shoreland stabilization measures designed to repair or prevent erosion or flood risks and approved by the Secretary.

(2) For a parcel on which a habitable structure is located, the expansion of any portion of the structure within 100 feet of the mean water level shall be on the side of the structure farthest from the lake, unless the Secretary determines that:

(A) expansion on an alternate side of the structure will have an impact on water quality that is equivalent to or less than expansion of the structure on the side farthest from the lake; and

(B) the structure is not expanded toward the mean water level.

(3) Cleared area or impervious surface within the protected shoreland area shall be located on a site:

(A) with a slope of less than 20 percent; or

(B) that the permit applicant demonstrates will have a stable slope with minimal erosion and minimal negative impacts to water quality.

(4)(A) No more than 20 percent of the protected shoreland area of the parcel shall consist of impervious surface; or

(B) The permit applicant shall demonstrate that best management practices will be used to manage, treat, and control erosion due to stormwater runoff from that portion of impervious surface that exceeds 20 percent of the protected shoreland area.

(5)(A) No more than 40 percent of the protected shoreland area of the parcel shall consist of cleared area, including area cleared for the purposes of creating an impervious surface; or

(B) The permit applicant shall demonstrate that best management practices will be used to provide erosion control, bank stability, and wildlife habitat functionally equivalent to that which would be provided by clearing less than 40 percent of the protected shoreland area.

(c) Vegetation maintenance on nonconforming parcels. A permit issued under this section for creation of cleared area or impervious surface on a nonconforming parcel shall not require compliance with the requirements of section 1447 for the management of vegetative cover.

(d) Application process. An applicant for a permit under this section shall submit to the Secretary a form that identifies the basis of the nonconformity on the parcel. The Secretary may issue a permit under this section to an applicant who meets the requirements of subsection (b) of this section.

#### § 1446. REGISTERED PROJECTS; EXEMPTIONS FROM PERMITTING

(a)(1) Registered projects. The following projects in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(A) The creation of no more than 100 square feet of impervious surface or cleared area, or a combination of impervious surface or cleared area, within 100 feet of the mean water level, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary, on a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection (a);

(ii) the impervious surface or cleared area is located at least 25 feet from the mean water level; and

(iii) vegetative cover shall be managed according to the requirements of section 1447 of this title.

(B) The creation of 500 square feet or less of impervious surface, cleared area, or a combination of impervious surface and cleared area, provided that:

(i) the owner of the property on which the impervious surface or cleared area is created registers with the Secretary a form provided by the Secretary that contains the name of the property owner, the address of the property, and a certification that the project meets the requirements of this subsection;

(ii) the impervious surface or cleared area is at least 100 feet from the mean water level;

(iii) any proposed cleared area or area within the protected shoreland area where an impervious surface shall be sited has a slope of less than 20 percent;

(iv) after the completion of the project, the protected shoreland area shall consist of no more than 20 percent impervious surface; and

(v) after the completion of the project, the protected shoreland area shall consist of no more than 40 percent cleared area, including any area cleared for the purposes of creating impervious surface.

(2) Limit on registration per parcel. A person shall not use the registration process under this subsection to create more than a maximum total per parcel of:

(A) 100 square feet of impervious surface or cleared area within 100 feet of the mean water level; and

(B) 500 square feet of impervious surface or cleared area within the protected shoreland area that is at least 100 feet from the mean water level.

(3) Effect of registration. A registration shall take effect 15 days after being filed with the Secretary, unless the Secretary requests that the person registering submit additional information that the Secretary considers

necessary or the Secretary notifies the person registering that an individual permit is required.

(4) Term. Registrations shall be for an indefinite term, provided that the person complied with the requirements of this subsection and takes no action for which an individual permit is required.

(b) Exemptions. The following activities in a protected shoreland area do not require a permit under section 1444 or 1445 of this title:

(1) Management of vegetative cover. Management of vegetative cover conducted in compliance with section 1447 of this title.

(2) Removal of vegetation for recreational purposes. The cutting or removal of no more than 250 square feet of the existing vegetation under three feet in height within 100 feet of the mean water level to allow for recreational use in the protected shoreland area, provided that:

(A) the cutting or removal of vegetation occurs at least 25 feet from the mean water level; and

(B) other ground cover, including leaf litter and the forest duff layer, shall not be removed from the area in which cutting occurs.

(3) Maintenance of lawns. The maintenance, but not the enlargement, of lawns, gardens, landscaped areas, and beaches in existence as of July 1, 2014.

(4) Creation of footpaths. The creation of one footpath per parcel with a width of no greater than six feet that provides access to the mean water level. Under this subdivision, a footpath includes stairs, landings, or platforms within the authorized six-foot width.

(5) Construction within footprint. Construction within the footprint of an impervious surface, existing as of July 1, 2014, that does not result in a net increase in the amount of impervious surface on a parcel.

(6) Silvicultural activities. Silvicultural activities in a protected shoreland area if the silvicultural activities are in compliance with:

(A) a forest management plan, approved by the Commissioner of Forests, Parks and Recreation, for the land in the protected shoreland area in which the silvicultural activities occur; and

(B) the accepted management practices adopted by the Commissioner of Forests, Parks and Recreation under section 2622 of this title.

(7) Agricultural activities. Agricultural activities on land in agricultural production on July 1, 2014, provided that:

(A) no impervious surface shall be created or expanded in a protected shoreland area except: when no alternative outside the protected shoreland area exists, the construction of a best management practice is necessary to abate an agricultural water quality issue, and the best management practice is approved by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215; and

(B) the agricultural activities within the protected shoreland area comply with the rules adopted by the Secretary of Agriculture, Food and Markets under 6 V.S.A. chapter 215 regarding agricultural water quality, including accepted agricultural practices, best management practices, medium and small farm operation, and large farm operation.

(8) Transportation infrastructure and private roads. The maintenance, emergency repair, repair, and replacement of:

(A) Transportation infrastructure by the Vermont Agency of Transportation or by a municipality.

(B) A private road that does not require a permit under section 1264 of this title, provided that emergency repair, repair, and replacement of the private road shall comply with the applicable water quality best management practices approved by the Secretary under 19 V.S.A. § 996 and incorporated within the Vermont Agency of Transportation town road and bridge standards for controlling stormwater runoff and direct discharges to State waters. The requirement to comply with the water quality best management practices shall apply even if the municipality in which the private road is located has not adopted the town road and bridge standards. Under this subdivision, expansion of a private road in order to allow for passage of emergency vehicles shall be considered repair that does not require a permit under section 1443 of this title.

(9) Railroad activities. Railroad activities and facilities within the jurisdiction of federal law.

(10) Parcel intersected by public highway. The creation or expansion of impervious surface or cleared area on a parcel within the protected shoreland area when the parcel is intersected by a highway and the impervious surface or cleared area is created or expanded on that portion of the parcel on the side of the highway away from the mean water level.

(11) Wastewater systems and potable water supplies. Installation, maintenance, repair, or replacement of a wastewater system or potable water supply permitted by the Agency of Natural Resources under chapter 64 of this title.



(12) Stormwater treatment. Discharges of stormwater, stormwater treatment facilities or practices, including repair or maintenance, permitted by the Agency of Natural Resources under section 1264 of this title.

(13) Utility projects and utility lines.

(A) The construction of projects that require a certificate of public good under 30 V.S.A. § 248 subject to the Agency of Natural Resources Riparian Buffer Guidance for Act 250 and Section 248 projects.

(B) The routine repair and maintenance of utility lines and structures including vegetation maintenance in utility line corridors, in a protected shoreland area that are subject to 30 V.S.A. § 248, chapter 151 of this title, or a vegetation management plan approved by the Agency in a protected shoreland area. Vegetation management practices in a protected shoreland area shall be performed in accordance with a vegetation management plan approved by the Agency of Natural Resources.

(C) The emergency repair of utility lines and poles in protected shoreland areas, provided that such repair minimizes adverse impacts to vegetation in the protected shoreland area.

(14) Act 250 permit. Projects which have received a permit pursuant to chapter 151 of this title.

(15) Designated downtowns and village centers. Projects in downtowns and village centers designated pursuant to 24 V.S.A. chapter 76A.

(16) Urban and industrial redevelopment. Construction, creation, or expansion of impervious surface or cleared area within a protected shoreland area, provided that:

(A) the area in which the impervious surface or cleared area will be constructed, created, or expanded is:

(i) urban or industrial in nature;

(ii) contains as of July 1, 2014 impervious surface or cleared area; and

(iii) has been designated by municipal bylaw for redevelopment.

(B) the municipality has adopted a shoreland bylaw or ordinance that:

(i) is at least as stringent as the permitting requirements and exemptions of this chapter; or

(ii) requires best management practices or other controls that are, as determined by the Secretary, functionally equivalent to compliance with the permitting requirements and exemptions of this chapter.

(17) Mosquito control. Where mosquito populations create a public health hazard, as that term is defined in 18 V.S.A. § 2, physical practices or activities approved by the Secretary that create cleared area or remove vegetative cover in order to reduce mosquito breeding habitat, provided that any activity authorized under this subdivision shall comply with the Vermont Wetlands Rules.

(c) Application of vegetative cover requirements. Activities authorized under subdivisions (b)(2)–(13) of this section shall not be required to comply with the requirements for the management of vegetative cover under section 1447 of this title.

§ 1447. LAKE SHORELAND VEGETATION PROTECTION STANDARDS

(a) Within 100 feet of the mean water level, cutting of trees is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. Vegetation management that occurs within the protected shoreland area and that is conducted according to the requirements of this section shall not be counted toward the cleared area on a parcel.

(b) A “well-distributed stand of trees” shall be defined as maintaining a minimum rating score of 12, in each 25-foot by 25-foot area within 100 feet of the mean water level, as determined by the following rating system.

<u>(1) Diameter of tree at 4-1/2 feet above</u>	<u>Points</u>
<u>ground level (inches)</u>	
<u>2–&lt; 4 in.</u>	<u>1</u>
<u>4–&lt; 8 in.</u>	<u>2</u>
<u>8–&lt; 12 in.</u>	<u>4</u>
<u>12 in. or greater</u>	<u>8</u>

(2) The following shall govern in applying this point system:

(A) 25-foot by 25-foot plots shall be established for vegetation management purposes.

(B) Each successive plot must be adjacent to but not overlap a previous plot.

(C) Any plot not containing the required points must have no vegetative cover removed unless the removal is allowed pursuant to a registration or individual permit.

(D) Any plot containing the required points may have trees removed down to the minimum points allowed.

(E) Existing vegetative cover under three feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or as allowed pursuant to a registration or individual permit.

(F) Pruning of tree branches on the bottom one-third of a tree's height is allowed.

(G) Removal of dead, diseased, or unsafe trees shall be allowed regardless of points.

(c) As used in this section, "other natural vegetation" means retaining existing vegetation under three feet in height and other ground cover and retaining at least five saplings less than two inches in diameter at four and one-half feet above ground level for each 25-foot by 25-foot area. If five saplings do not exist, no woody stems less than two inches in diameter can be removed until five saplings have been planted or rooted in the plot.

#### § 1448. MUNICIPAL DELEGATION

(a) Municipal shoreland bylaws or ordinances. The Secretary shall delegate authority to permit the construction, creation, or expansion of impervious surface or cleared area under this chapter to a municipality that has adopted a shoreland bylaw or ordinance if:

(1) the municipality adopts a bylaw or ordinance regulating construction of impervious surface or creation of cleared area in a protected shoreland area;

(2) the municipal bylaw or ordinance is, as determined by the Secretary, functionally equivalent to the requirements under sections 1444, 1445, 1446, and 1447 of this title; and

(3) the Secretary determines that the municipality provides adequate resources for administration and enforcement of the bylaw or ordinance.

(b) Delegation agreement.

(1) Delegation under subsection (a) of this section shall be by agreement between the Secretary and the delegated municipality. The delegation agreement shall set the terms for revocation of delegation.

(2) Under the delegation agreement, the Secretary and the municipality may agree, in instances where a delegated municipality does not or cannot address noncompliance, that the Secretary, after consultation with the municipality, may institute enforcement proceedings under chapter 201 of this title.

(3) The delegation agreement shall require the municipality to:

(A) have or establish a process for accepting, reviewing, and processing applications and issuing permits for construction of impervious surface or creation of cleared area in protected shoreland areas;

(B) take timely and appropriate enforcement actions;

(C) commit to reporting annually to the Secretary on a form and date determined by the Secretary;

(D) comply with all other requirements of the rules adopted under this chapter; and

(E) cure any defects in such bylaw or ordinance or in the administration or enforcement of such bylaw or ordinance upon notice of a defect from the Secretary.

(4) A municipality that seeks delegation under subsection (a) of this section shall be presumed to satisfy the requirements of this subsection for a permit process and enforcement if the municipality has designated a municipal zoning administrator or other municipal employee or official as responsible for the permitting and enforcement of the construction, creation, or expansion of impervious surface or cleared area within the municipality.

§ 1449. COORDINATION OF AGENCY OF NATURAL RESOURCES'  
PERMITTING OF ACTIVITIES IN PROTECTED SHORELAND  
AREAS

(a) Coordination of permitting in protected shoreland area. During technical review of a permit application for a wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility that is proposed to be located in a protected shoreland area and that does not require a permit under this chapter, the Agency division issuing the wastewater system, potable water supply, stormwater discharge, or stormwater treatment facility permit shall consult with the Agency's Lakes and Ponds Section regarding practices or activities that could reduce the impact of the proposed activity on the protected shoreland area or water quality of lakes adjacent to the protected shoreland area.

(b) Agency guidance or procedure. The Agency may formalize the consultation process required by this section in a guidance document or internal agency procedure.

§ 1450. MUNICIPAL ZONING BYLAW OR ORDINANCE

(a) Construction of impervious surface or creation of cleared area occurring outside protected shoreland areas. Construction of impervious surface or

creation of cleared area occurring outside a protected shoreland area shall conform to duly adopted municipal zoning bylaws and applicable municipal ordinances and shall not be subject to regulation by the Secretary of Natural Resources under this chapter.

(b) Existing municipal bylaws and ordinances. The requirements of this chapter are in addition to existing municipal bylaws and ordinances, and proposed construction of impervious surface or creation of cleared area within the protected shoreland area shall comply with all relevant, existing municipal, State, and federal requirements.

#### § 1451. RULEMAKING

The Secretary may adopt rules necessary for the purposes of implementing, administering, or enforcing the requirements of this chapter, including best management practices for the construction of impervious surfaces or the creation of cleared area in a protected shoreland area, including standards for:

(1) managing vegetative cover that may be required as a best management practice in order to ensure that some level of the required vegetative cover is maintained in the protected shoreland area;

(2) allowing reasonable use of the protected shoreland area subject to a vegetative cover requirement for construction, creation, or expansion of an impervious surface or cleared area;

(3) minimizing and mitigating the creation of an impervious surface or cleared area in a protected shoreland area.

#### § 1452. EDUCATION AND OUTREACH; CITIZEN'S GUIDE

The Secretary shall conduct ongoing education and outreach to assist Vermont citizens with understanding and complying with the requirements of this chapter. The education and outreach activities shall include publication on or before January 1, 2015 of a Citizen's Guide to Shoreland Protection, which shall provide easily understood instructions on the requirements of this chapter, how to apply for a permit or registration, and the activities that are exempt from or otherwise not subject to the requirements of this chapter.

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

(a) The ~~secretary~~ Secretary may take action under this chapter to enforce the following statutes:

\* \* \*

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

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

(24) 10 V.S.A. chapter 49A, relating to lake shoreland protection standards.

#### Sec. 4. VOLUNTARY SHORELAND EROSION CONTROL CERTIFICATION

(a) Voluntary certification. Beginning on January 1, 2016, the Agency of Natural Resources, in consultation with the Associated General Contractors of Vermont, shall offer an optional shoreland erosion control certification program. The program shall include training related to development activities in a shoreland area, including best management practices for erosion control, clearance of vegetation, and construction of impervious surfaces in shoreland areas. The voluntary certification program shall be offered until January 1, 2018.

(b) Report. On or before January 1, 2018, the Secretary of Natural Resources shall report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources regarding the voluntary shoreland erosion control certification program created in subsection (a) of this section. The report shall include:

(1) a general summary and evaluation of the program's success, including an overview of the number of persons certified by the program and the projects constructed by certified persons;

(2) a recommendation of whether the State and the Associated General Contractors of Vermont should continue the shoreland erosion control certification program, including whether to make the erosion control certification program mandatory and whether to allow certified persons to certify compliance with the shoreland protection standards in this chapter in lieu of obtaining the permit required under 10 V.S.A. § 1444 or 1445; and

(3) any other recommendations for improving the program.

Sec. 5. 10 V.S.A. § 8503 is amended to read:

#### § 8503. APPLICABILITY

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

(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

(S) chapter 49A (lake shoreland protection standards).

\* \* \*

Sec. 6. 3 V.S.A. § 2822(j)(32) is added to read:

(32) For projects taking place in a protected shoreland area that require:

(A) a registration under 10 V.S.A. § 1446: \$100.00.

(B) a permit under 10 V.S.A. §§ 1443, 1444, and 1445: \$125.00 plus \$0.50 per square foot of impervious surface.

Sec. 7. REPORT ON PROGRESS OF LAKE SHORELAND PROTECTION PROGRAM

On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a report regarding implementation by the Agency of Natural Resources of the Lake Shoreland Protection Program under 10 V.S.A. chapter 49A. The report shall include:

(1) the number of lake shoreland protection registrations and permits issued by the Agency;

(2) the number of lots, if any, denied a shoreland protection registration or permit and the rationale for the denial of each application;

(3) an evaluation of the performance of the Lake Shoreland Protection Program, including the time frame for issuance of permits and landowner compliance;

(4) a list of the towns the Secretary delegated to implement the Lake Shoreland Protection Program, and a list of the towns that were denied delegation, including the rationale for denial;

(5) an evaluation of whether implementation of the Lake Shoreland Protection Program has achieved or is achieving the purposes of the Program set forth under 10 V.S.A. § 1441, including preventing degradation of water quality, preserving natural shoreline stability, protecting aquatic biota, protecting habitat for wildlife and aquatic life, and mitigating sediment and nutrient runoff to surface waters;

(6) the permit and registration fees collected by the Agency;

(7) the cost to the Agency of implementing the Lake Shoreland Protection Program; and

(8) any recommendations to improve the Lake Shoreland Protection Program, including how and whether to allow the use of off-site mitigation to offset the adverse impacts of creation or expansion of an impervious surface or cleared area on the water quality of lakes or on protected shoreland areas.

Sec. 8. 10 V.S.A. § 1454 is amended to read:

§ 1454. TRANSPORT OF AQUATIC PLANTS AND AQUATIC  
NUISANCE SPECIES

(a) No person shall transport an aquatic plant or aquatic plant part, zebra mussels (*Dreissena polymorpha*), quagga mussels (*Dreissena bugensis*), or other aquatic nuisance species identified by the ~~secretary~~ Secretary by rule to or from any Vermont waters on the outside of a vehicle, boat, personal watercraft, trailer, or other equipment. This section shall not restrict proper harvesting or other control activities undertaken for the purpose of eliminating or controlling the growth or propagation of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species.

(b) The ~~secretary~~ Secretary may grant exceptions to persons to allow the transport of aquatic plants, zebra mussels, quagga mussels, or other aquatic nuisance species for scientific or educational purposes. When granting exceptions, the ~~secretary~~ Secretary shall take into consideration both the value of the scientific or educational purpose and the risk to Vermont surface waters posed by the transport and ultimate use of the specimens. A letter from the ~~secretary~~ Secretary authorizing the transport must accompany the specimens during transport.

(c) A violation of this section may be brought by any law enforcement officer, as that term is defined in 23 V.S.A. § 4(11), in the Environmental Division of the Superior Court. When a violation is brought by an enforcement officer other than an environmental enforcement officer employed by the Agency of Natural Resources, the enforcement officer shall submit to the Secretary a copy of the citation for purposes of compliance with the public participation requirements of section 8020 of this title.

Sec. 9. TRANSITION

A permit or registration under 10 V.S.A. chapter 49A for the creation of impervious surface or cleared area within a protected shoreland area shall not be required on a parcel of land for a project for which:



(1) all necessary State, local, or federal permits have been obtained prior to the effective date of this act and the permit holder takes no subsequent act that would require a permit or registration under 10 V.S.A. chapter 49A; or

(2) a complete application for all applicable local, State, and federal permits has been submitted on or before the effective date of this act, provided that the applicant does not subsequently file an application for a permit amendment that would require a permit under 10 V.S.A. chapter 49A and substantial construction of the impervious surface or cleared area commences within two years of the date on which all applicable local, State, and federal permits become final.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

*ROBERT M. HARTWELL*

*DIANE B. SNELLING*

*JOHN S. RODGERS*

*Committee on the part of the Senate*

*DAVID L. DEEN*

*ROBERT C. KREBS*

*STEPHEN C. BEYOR*

*Committee on the part of the House*

**NOTICE CALENDAR**

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 555.**

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

**Reported favorably with recommendation of proposal of amendment by Senator Benning 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. § 4801 is amended to read:

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

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

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

(2) The terms ~~“mental disease or defect”~~ “mental illness, developmental disability, or traumatic brain injury” do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms “mental disease or defect” shall include congenital and traumatic mental conditions as well as disease.~~

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

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

§ 4814. ORDER FOR EXAMINATION

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

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

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

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

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

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

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

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

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

(b) The order for examination may provide for an examination at any jail or correctional center, or at the State Vermont Psychiatric Care Hospital or a designated hospital, ~~or at its successor in interest~~, or at such other place as the Court shall determine, after hearing a recommendation by the Commissioner of Mental Health.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the Court issuing the original order, on request of the ~~commissioner~~ Commissioner and upon good cause shown, may order placement at the hospital extended for additional periods of 15 days in order to

complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

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

(h) Except upon good cause shown, defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant’s residence or at another location agreed to by the defendant.

(i) As used in this section:

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

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

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

#### § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

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

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

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

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

State's Attorney, and to the respondent's attorney if the respondent is represented by counsel.

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

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

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

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

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

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

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

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

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

§ 4819. ACQUITTAL BY REASON OF INSANITY

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

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

§ 4820. HEARING REGARDING COMMITMENT

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

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

~~(2) Is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental disease or mental defect; or~~

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

~~(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the commissioner of mental health.~~

(a) The court before which a person is tried or is to be tried for a criminal offense shall hold a hearing for the purpose of determining whether the person should be committed to the custody of the Commissioner of Mental Health or, as provided in 18 V.S.A. chapter 206, to the Commissioner of Disabilities, Aging, and Independent Living, if the person is charged on information, complaint, or indictment with the offense and:

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

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

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

(4) upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense.

~~(b) Such~~ A person subject to a hearing under subsection (a) of this section may be confined in jail or some other suitable place by order of the ~~court~~ Court pending hearing for a period not exceeding 15 days.

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

§ 4821. NOTICE OF HEARING; PROCEDURES

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

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

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

(a) If the Court finds that ~~such~~ the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the ~~court~~ Court shall issue an order of commitment directed to the Commissioner of Mental Health, which shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing Court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

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

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the Commissioner of Mental Health shall give notice thereof to the committing Court and ~~state's attorney~~ State's Attorney of the county where the



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

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

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

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

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

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

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

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

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

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

§ 8839. DEFINITIONS

As used in this subchapter:

\* \* \*

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

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

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

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

Sec. 12. CONSTRUCTION

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

Sec. 13. REPORTS

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

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

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

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

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

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

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

(c) On or before October 1, 2014 and on or before February 1, 2015, the Department of Disabilities, Aging, and Independent Living shall report to the House and Senate Committees on Judiciary, the House Committee on Human Services, and the Senate Committee on Health and Welfare on the status of the Department's progress toward implementation of this act. The status reports shall include updates on the Department's progress in evaluating best practices for treatment of persons with traumatic brain injuries who are unable to conform their behavior to the requirements of the law, and in identifying appropriate programs and services to provide treatment to enable those persons to be fully reintegrated into the community consistent with public safety. The status reports shall also include updates on the Department's progress on the design of the programs and services needed to treat persons with traumatic brain injuries who have been found not guilty by reason of insanity or incompetent to stand trial as required by this act.

#### Sec. 14. IMPLEMENTATION

(a) On or before April 30, 2015, the Department of Disabilities, Aging, and Independent Living shall request approval and funding from the Senate and House Committees on Judiciary and on Appropriations for the Department's plan to implement this act. The Department shall commence implementation of the plan, including requesting that it be included under the Global Commitment Waiver by the Centers for Medicare and Medicaid Services, if the plan is approved by a majority vote of the Senate and House Committees

on Judiciary and funded by a majority vote of the Senate and House Committees on Appropriations.

#### Sec. 15. APPROPRIATION

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

#### Sec. 16. EFFECTIVE DATES

(a) Secs. 1–12 shall take effect on July 1, 2017.

(b) Secs. 13, 14, 15, and this section shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 26, 2014 pages 814-815 and March 27, 2014 page 851)

### 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)

Michael Keane of North Bennington – Member of the Vermont Economic Progress Council – By Sen. Bray for the Committee on Economic Development, Housing and General Affairs. (4/29/14)

Betsy Gentile of Brattleboro – Member of the Vermont Economic Progress Council – By Sen. Bray for the Committee on Economic Development, Housing and General Affairs. (4/29/14)

Frederick S. Kenney II of Jericho – Executive Director of the Vermont Economic Progress Council – By Sen. Bray for the Committee on Economic Development, Housing and General Affairs. (4/29/14)

David Luce of Waterbury Center – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (4/29/14)