

Journal of the House

Wednesday, March 26, 2014

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Cut, Split and Delivered trio, Mike Dever, Jeremy Perfect and David Brynn.

House Bills Introduced

House bills of the following titles were severally introduced, read the first time and referred to committee or placed on the Calendar as follows:

H. 886

By Reps. Lanpher of Vergennes and Van Wyck of Ferrisburgh,
House bill, entitled

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

To the committee on Government Operations.

H. 887

By Rep. Klein of East Montpelier,
House bill, entitled

An act relating to approval of the adoption and the codification of the charter of the Town of East Montpelier;

To the committee on Government Operations.

H. 888

By Reps. Hubert of Milton, Turner of Milton, Johnson of South Hero and Krebs of South Hero,

House bill, entitled

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

To the committee on Government Operations.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 175

Senate bill, entitled

An act relating to permitting a student to remain enrolled in a Vermont public school after moving to a new school district;

To the committee on Education.

S. 261

Senate bill, entitled

An act relating to electrical installations;

To the committee on Commerce and Economic Development.

S. 293

Senate bill, entitled

An act relating to reporting on population-level outcomes and indicators and on program-level performance measures;

To the committee on Government Operations.

Joint Resolution Referred to Committee**J.R.S. 27**

By Senators Lyons, Ashe, Baruth, Cummings, Fox, Hartwell, Pollina and Rodgers,

J.R.S. 27. Joint resolution relating to an application of the General Assembly for Congress to call a convention for proposing amendments to the U.S. Constitution.

Whereas, it was the stated intention of the framers of the Constitution of the United States of America that the Congress of the United States of America should be “dependent on the people alone” (James Madison or Alexander Hamilton, Federalist 52), and

Whereas, that dependency has evolved from a dependency on the people alone to a dependency on those who spend excessively in elections through campaigns or third-party groups, and

Whereas, the U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), removed restrictions on amounts of independent political spending, and

Whereas, the removal of those restrictions has resulted in the corrupting influence of powerful economic forces, which have supplanted the will of the people by undermining our ability to choose our political leadership, write our own laws, and determine the fate of our State, and

Whereas, the State of Vermont believes that a convention called pursuant to Article V of the U.S. Constitution should be convened to consider amendments to that Constitution to limit the corrupting influence of money in our political system and desires that said convention should be so limited, and

Whereas, the Congress of the United States has failed to propose, pursuant to Article V of the Constitution, amendments that would adequately address the concerns of Vermont, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly, pursuant to Article V of the U.S. Constitution, hereby petitions the U.S. Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States of America that would limit the corrupting influence of money in our electoral process, including, inter alia, by overturning the *Citizens United* decision, *and be it further*

Resolved: That this petition shall not be considered by the U.S. Congress until 33 other states submit petitions for the same purpose as proposed by Vermont in this resolution and unless the Congress determines that the scope of amendments to the Constitution of the United States considered by the convention shall be limited to the same purpose requested by Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vice President of the United States; the President Pro Tempore and the Secretary of the Senate of the United States; the Speaker and Clerk of the House of Representatives of the United States; the Archivist of the United States; and the Vermont Congressional Delegation.

Which was read and, in the Speaker's discretion, treated as a bill and referred to the Committee on Government Operations.

Joint Resolution Adopted in Concurrence**J.R.S. 50**

By Senators Baruth and Benning,

J.R.S. 50. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 28, 2014, it be to meet again no later than Tuesday, April 1, 2014.

Was taken up read and adopted in concurrence.

House Resolution Referred to Committee**H.R. 18**

House resolution, entitled

House resolution relating to passenger rail service to Montreal

Offered by: Representatives Bissonnette of Winooski, Russell of Rutland City, Brennan of Colchester, Browning of Arlington, Carr of Brandon, Connor of Fairfield, Consejo of Sheldon, Corcoran of Bennington, Fisher of Lincoln, Gallivan of Chittenden, Jerman of Essex, Lanpher of Vergennes, McCarthy of St. Albans City, Potter of Clarendon, and Ralston of Middlebury

Whereas, the Massachusetts Department of Transportation and the Vermont Agency of Transportation, with support from the Federal Railroad Administration and in collaboration with the Connecticut Department of Transportation and the Ministère des Transports Quebec, have undertaken the Northern New England Intercity Rail Initiative, which includes a detailed study of intercity rail service opportunities between Boston and Montreal, known as the Boston-to-Montreal Route, and

Whereas, the Boston-to-Montreal Route would run from Boston to Springfield, then north to Vermont into White River Junction, then northwest to Essex Junction, then north through St. Albans to the Canadian border at Alburg, and then to Montreal's Central Station, and

Whereas, critical to the potential success of the Boston-to-Montreal Route is a seamless crossing of the U.S.–Canada border authorized through a preclearance agreement between the United States and Canada to enable clearance of customs at Montreal's Central Station rather than at the border, and

Whereas, on February 4, 2011, Prime Minister Stephen Harper and President Barack Obama announced the Beyond the Border Declaration and launched the Canada–United States Regulatory Cooperation Council, and

Whereas, the Beyond the Border Action Plan outlines specific initiatives that include negotiating a new preclearance agreement for land, rail, and marine modes, now therefore be it

Resolved by the House of Representatives:

That this legislative body urges the Vermont Congressional Delegation to encourage the Administration of President Barack Obama to complete negotiations with Canada and finalize a preclearance agreement for rail that will enable clearance of Boston-to-Montreal Route passengers at Montreal's Central Station, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to Administrator Joseph C. Szabo of the Federal Railroad Administration, Director of Rail Policy Carolyn Crook of Transport Canada, the Vermont Congressional Delegation, Minister of Transport Sylvain Gaudreault of Transports Quebec, Commissioner James P. Redeker of the Connecticut Department of Transportation, Secretary and Chief Executive Officer Richard A. Davey of the Massachusetts Department of Transportation, and Secretary Brian Searles of the Vermont Agency of Transportation.

Which was read and referred to the committee on Transportation.

House Resolution Referred to Committee

H.R. 19

House resolution, entitled

House resolution relating to intercity passenger rail connecting New York to the Western Corridor of Vermont

Offered by: Representatives Bissonnette of Winooski, Russell of Rutland City, Brennan of Colchester, Browning of Arlington, Carr of Brandon, Connor of Fairfield, Consejo of Sheldon, Corcoran of Bennington, Fisher of Lincoln, Gallivan of Chittenden, Jerman of Essex, Lanpher of Vergennes, McCarthy of St. Albans City, Nuovo of Middlebury, Potter of Clarendon, and Ralston of Middlebury

Whereas, in 2010, the Federal Railroad Administration awarded Vermont a \$500,000.00 grant to assess routing options for intercity passenger rail service connecting the southwestern part of Vermont to adjacent areas of New York, with Vermont and New York contributing local match amounts, and

Whereas, the Vermont Agency of Transportation (VTrans) undertook the study jointly with the New York State Department of Transportation (NYDOT), and

Whereas, multiple service alternatives were considered during the study, with the best alternative identified consisting of preserving the existing Ethan Allen Service and establishing a new service from Albany to Rutland with stops in Schenectady, New York; Mechanicville, New York; North Bennington, Vermont; and Manchester, Vermont, and

Whereas, the total capital costs of upgrading existing tracks, installing new siding track, constructing and improving crossings, and making other investments necessary to establish the new intercity passenger service from Albany to Rutland amounts to over \$130 million, with roughly equal capital investments required in New York and Vermont, and

Whereas, residents of, and visitors to, both New York and Vermont would benefit from the new service, and

Whereas, for the new service to become a reality, New York and Vermont need to work together to secure federal funding that may become available for the necessary capital upgrades to the rail line from Mechanicville to Rutland, now therefore be it

Resolved by the House of Representatives:

That this legislative body urges VTrans to engage with NYDOT to prepare a joint application for a federal grant for capital upgrades to the rail line from Mechanicville to Rutland, so that both agencies are prepared to submit a strong grant application in the event that federal grant funds for intercity passenger rail service become available, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to Administrator Joseph C. Szabo of the Federal Railroad Administration; the Vermont Congressional Delegation; M. William Hollister, Principal Officer, Government Affairs Department, AMTRAK; Commissioner Joan McDonald of the New York State Department of Transportation; Secretary Brian Searles of the Vermont Agency of Transportation; U.S. Congressman Paul Tonko, representing New York's 20th District; U.S. Congressman William Owens, representing New York's 21st District; New York State Senator Joseph E. Robach, Chair, Committee on Transportation; and New York State Assemblyman David F. Gantt, Chair, Committee on Transportation.

Which was read and referred to the committee on Transportation.

House Resolution Referred to Committee**H.R. 20**

House resolution, entitled

House resolution relating to support of Agency of Transportation's TIGER grant application for Western Corridor rail improvements

Offered by: Representatives Bissonnette of Winooski, Russell of Rutland City, Brennan of Colchester, Browning of Arlington, Carr of Brandon, Connor of Fairfield, Consejo of Sheldon, Corcoran of Bennington, Fisher of Lincoln, Gage of Rutland City, Gallivan of Chittenden, Jerman of Essex, Lanpher of Vergennes, McCarthy of St. Albans City, Nuovo of Middlebury, Potter of Clarendon, and Ralston of Middlebury

Whereas, the Transportation Investment Generating Economic Recovery or "TIGER" discretionary grants program was created by the American Recovery and Reinvestment Act of 2009, and

Whereas, the Consolidated Appropriations Act of 2014 appropriated \$600 million to be awarded by the Department of Transportation for national infrastructure investments through a sixth round of TIGER grants, and

Whereas, on February 25, 2014, Anthony R. Foxx, Secretary of the U.S. Department of Transportation, issued a Notice of Funding Availability for a federal Fiscal Year 2014 round of TIGER grants, with grant applications to be accepted starting on April 3, 2014, and due on or before April 28, 2014, and

Whereas, as with the previous five rounds of TIGER grants, funds for the Fiscal Year 2014 round of TIGER grants are to be awarded on a competitive basis for projects that will have a significant impact on the nation, a metropolitan area, or a region, and

Whereas, in 2013, in recognition of the importance of the State-owned Western Corridor rail line to the region's freight system, the Agency of Transportation was awarded an \$8.9 million TIGER grant for rehabilitation of 20 miles of State-owned track from Rutland to Leicester, including replacement of nine miles of track with continuously welded rail, upgrading 11 at-grade farm crossings, and making other improvements allowing for unrestricted Federal Railroad Administration (FRA) Class 3 speed operations of up to 40 mph on this track segment, which improvements for freight rail would have auxiliary benefits of enabling expansion of passenger rail service in the Western Corridor, and

Whereas, the competitive TIGER program offers one of the only federal funding possibilities for large rail projects, which are not eligible for other federal funding, now therefore be it

Resolved by the House of Representatives:

That this legislative body encourages the Agency of Transportation to submit an application and supports the Agency's efforts to obtain a Fiscal Year 2014 TIGER grant for installation of continuously welded rail and for other necessary improvements along State-owned track from Leicester to New Haven, and be it further

Resolved: That the Clerk of the House be directed to send a copy of this resolution to Administrator Joseph C. Szabo of the Federal Railroad Administration; Howard Hill, TIGER Discretionary Grant Program staff; the Vermont Congressional Delegation; and Secretary Brian Searles of the Vermont Agency of Transportation.

Which was read and referred to the committee on Transportation.

Motion Disagreed to

At one o'clock and twenty-two minutes in the afternoon **Rep. Cross of Winooski** moved to recess, which was disagreed to.

Third Reading; Bill Passed

H. 239

House bill, entitled

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

Was taken up, read the third time and passed.

Bill Amended, Read Third Time and Passed

H. 876

House bill, entitled

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

Was taken up and pending third reading of the bill, **Rep. Goodwin of Weston** moved to amend the bill as follows:

Representative Goodwin of Weston moved that the bill be amended by adding a new section to be Sec. 36 with a related reader assistance heading to read:

* * * Audits * * *

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

§ 323. AUDIT BY PUBLIC ACCOUNTANT

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

and by renumbering the remaining sections to be numerically correct.

Pending the question, Shall the bill be amended as proposed by Rep. Goodwin of Weston? **Rep. Goodwin of Weston** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as proposed by Rep. Goodwin of Weston? was decided in the affirmative. Yeas, 135. Nays, 6.

Those who voted in the affirmative are:

Ancel of Calais	Corcoran of Bennington	Gallivan of Chittenden
Bartholomew of Hartland	Cross of Winooski	Goodwin of Weston
Batchelor of Derby	Cupoli of Rutland City	Grad of Moretown
Beyor of Highgate	Dakin of Chester	Greshin of Warren
Bissonnette of Winooski	Davis of Washington	Haas of Rochester
Botzow of Pownal	Deen of Westminster	Head of South Burlington
Bouchard of Colchester	Devereux of Mount Holly	Heath of Westford
Branagan of Georgia	Dickinson of St. Albans	Hebert of Vernon
Brennan of Colchester	Town	Helm of Fair Haven
Browning of Arlington	Donaghy of Poultney	Higley of Lowell
Burditt of West Rutland	Donovan of Burlington	Hooper of Montpelier
Burke of Brattleboro	Ellis of Waterbury	Hoyt of Norwich
Campion of Bennington	Emmons of Springfield	Hubert of Milton
Canfield of Fair Haven	Evans of Essex	Huntley of Cavendish
Carr of Brandon	Fagan of Rutland City	Jerman of Essex
Christie of Hartford	Fay of St. Johnsbury	Jewett of Ripton
Clarkson of Woodstock	Feltus of Lyndon	Johnson of South Hero
Cole of Burlington	Fisher of Lincoln	Johnson of Canaan
Condon of Colchester	Frank of Underhill	Juskiewicz of Cambridge
Conquest of Newbury	French of Randolph	Keenan of St. Albans City
Consejo of Sheldon	Gage of Rutland City	Kilmartin of Newport City

Kitzmiller of Montpelier	Miller of Shaftsbury	Smith of New Haven
Koch of Barre Town	Mitchell of Fairfax	South of St. Johnsbury
Komline of Dorset	Mook of Bennington	Spengler of Colchester
Krebs of South Hero	Moran of Wardsboro	Stevens of Waterbury
Krowinski of Burlington	Morrissey of Bennington	Stevens of Shoreham
Kupersmith of South Burlington	Mrowicki of Putney	Stuart of Brattleboro
Larocque of Barnet	Myers of Essex	Sweaney of Windsor
Lawrence of Lyndon	O'Brien of Richmond	Terenzini of Rutland Town
Lenes of Shelburne	O'Sullivan of Burlington	Till of Jericho
Lewis of Berlin	Partridge of Windham	Toleno of Brattleboro
Lippert of Hinesburg	Pearce of Richford	Townsend of South Burlington
Macaig of Williston	Pearson of Burlington	Trieber of Rockingham
Malcolm of Pawlet	Peltz of Woodbury	Turner of Milton
Manwaring of Wilmington	Poirier of Barre City	Van Wyck of Ferrisburgh
Marcotte of Coventry	Potter of Clarendon	Vowinkel of Hartford
Marek of Newfane	Pugh of South Burlington	Waite-Simpson of Essex
Martin of Springfield	Quimby of Concord	Webb of Shelburne
Martin of Wolcott	Ralston of Middlebury	Weed of Enosburgh
Masland of Thetford	Ram of Burlington	Wilson of Manchester
McCarthy of St. Albans City	Russell of Rutland City	Winters of Williamstown
McCormack of Burlington	Ryerson of Randolph	Woodward of Johnson
McCullough of Williston	Savage of Swanton	Yantachka of Charlotte
McFaun of Barre Town	Scheuermann of Stowe	Young of Glover
Michelsen of Hardwick	Sharpe of Bristol	Zagar of Barnard
	Shaw of Pittsford	

Those who voted in the negative are:

Buxton of Tunbridge	Lanpher of Vergennes	Rachelson of Burlington
Donahue of Northfield	Nuovo of Middlebury	Toll of Danville

Those members absent with leave of the House and not voting are:

Connor of Fairfield	Klein of East Montpelier	Wizowaty of Burlington
Copeland-Hanzas of Bradford	Shaw of Derby	Wright of Burlington
	Strong of Albany	

Pending third reading of the bill, **Reps. Kupersmith of South Burlington, Botzow of Pownal, Marcotte of Coventry, Kitzmiller of Montpelier, Carr of Brandon, Young of Glover, Bouchard of Colchester, Cross of Winooski, Dickinson of St. Albans Town and Scheuermann of Stowe,** moved that the bill be amended as follows:

First: In Sec. 8, 16 V.S.A. § 176, in subsection (d), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read:

(1) Programs of education sponsored by a trade, labor, business, or professional organization that are conducted solely for that organization's membership or for members of the particular industries or professions served by that organization.

Second: In Sec. 9, 16 V.S.A. § 176a(e), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read:

(1) Programs of education sponsored by a trade, labor, business, or professional organization that are conducted solely for that organization's membership or for members of the particular industries or professions served by that organization.

Third: By striking out Sec. 12, 16 V.S.A. § 1521(a), in its entirety and inserting in lieu thereof a new Sec. 12 to read:

Sec. 12. 16 V.S.A. § 1521(a) is amended to read:

(a) It is the policy of the ~~state~~ State of Vermont that all Vermonters should ~~receive have access to~~ educational services that ~~enable them to master the skills essential for further education and training or~~ provide them with the knowledge, skills, and work habits needed for further education and training, increase their employment options, and prepare them for successful entry into or advancement in the workplace.

Fourth: In Sec. 13, 16 V.S.A. § 1522, in subdivision (15), in the second sentence, after the final semicolon and before the words "and leads to" by inserting the following: "prepares students for successful entry into or advancement in the workplace;"

Fifth: In Sec. 16, 16 V.S.A. § 1533, in subsection (b), by striking out subdivisions (7) and (8) in their entirety and inserting in lieu thereof four new subdivisions to be subdivisions (7) through (10) to read:

(7) the adequacy and effectiveness of the center in meeting the educational and employment needs of all its eligible students, including its success in taking steps to encourage each student to consider enrolling in courses not traditional for that student's ~~sex~~ gender;

(8) faculty development policies and instruction;

(9) the center's alignment with and responsiveness to State and regional workforce needs as identified by the Department of Labor in its then-current long-term and short-term occupational projections; and

(10) the center's alignment with the State's economic development policies and initiatives.

Sixth: In Sec. 17, 16 V.S.A. § 1534, in subsection (b), by striking out subdivisions (8) through (10) in their entirety and inserting in lieu thereof four new subdivisions to be subdivisions (8) through (11) to read:

(8) participation and completion rates in the program;

(9) compliance with State Board rules;

(10) the program's alignment with and responsiveness to State and regional workforce needs as identified by the Department of Labor in its then-current long-term and short-term occupational projections; and

(11) the program's alignment with the State's economic development policies and initiatives.

Which was agreed to.

Pending third reading of the bill, **Rep. Lewis of Berlin** moved to amend the bill as follows:

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

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

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

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

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

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

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

§ 301. APPORTIONMENT OF EXPENSES

Unless otherwise agreed upon, ~~each school district shall pay a~~ the portion of the supervisory union budget to be voted upon by each school district shall

represent that district's proportionate share of the salary and expenses of the superintendent and the expenses of the supervisory union based on the number of enrolled students in each member school district. "Enrolled students" shall be defined by the State Board by rule, including the treatment of tuition students, special education students, students enrolled in career technical centers, and other particular circumstances.

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

§ 305. ESTABLISHMENT OF A SUPERVISORY UNION BUDGET

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

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

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

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

(e) The supervisory union budget is established if all school district clerks within a supervisory union certify that a majority of the commingled votes were in favor of the budget. If a proposed budget is rejected, then the supervisory union board shall prepare a revised budget and shall identify a date on which all districts will vote whether to approve it. The board of each member school district shall warn the vote on the revised budget, which shall be by Australian ballot and shall take place in the same locations as the original vote. If the revised budget is rejected, then the boards shall repeat the

procedure in this subsection until the budget is adopted. If the voters fail to approve a supervisory union budget by July 1 of any year, then the most recently adopted budget shall be the budget for the fiscal year beginning on that July 1 and the supervisory union shall assess each member district for payment of a proportionate share.

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

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

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

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

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

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

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

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

* * *

* * * Effective Date * * *

Sec. 41. EFFECTIVE DATE

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

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

(A) a distance education course or program; or

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

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

Which was disagreed to.

Pending third reading of the bill, **Rep. Lewis of Berlin** moved to amend the bill as follows:

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

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

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

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

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

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

and by renumbering the remaining sections to be numerically correct.

Thereupon, **Rep Lewis of Berlin** asked and was granted leave of the House to withdraw the amendment.

Pending third reading of the bill, **Rep. Kupersmith of South Burlington** moved to amend the bill as follows:

First: By striking out Sec. 29 (tuition paid to University of Vermont) and inserting in lieu thereof two new sections to be Secs. 29 and 29a to read:

Sec. 29. 16 V.S.A. § 2282(b) is amended to read:

(b) Except for ~~those attending students enrolled in the college of medicine~~ College of Medicine and students enrolled in distance education courses or programs, the amount of tuition ~~for paid by an eligible Vermont residents~~ resident for attendance during each academic year shall be not more than 40 percent of the tuition charged to ~~nonresident students. Tuition for eligible Vermont residents for shorter terms shall be no more per credit hour than that charged eligible Vermont residents during the academic year~~ a nonresident

student. As used in this subsection, “distance education” means a course or program that can be completed in whole or in part through electronic media and does not require the student to be physically present on the University’s campus at any time. Distance education does not include any course in which a full-time undergraduate student is enrolled.

Sec. 29a. UNIVERSITY OF VERMONT; TUITION; GRADUATE PROGRAMS; REPORT

(a) Notwithstanding the provisions of 16 V.S.A. § 2282(b), the University of Vermont may select no more than 12 graduate programs for which Vermont residents shall not receive the 60 percent tuition discount required by that subsection; provided, however, that a Vermont resident enrolled in one of the selected programs on the effective date of this act shall continue to receive the § 2282(b) discount until he or she completes the degree.

(b) Annually in January 2015 through 2019, the University shall report to the House Committee on Commerce and Economic Development, the Senate Committee on Economic Development, Housing and General Affairs, and the House and Senate Committees on Education regarding subsection (a) of this section, including:

(1) the identity of the graduate programs selected by the University and the reasons they were selected;

(2) the number of Vermont residents enrolled in the selected graduate programs and the tuition they paid for the programs;

(3) the number of out-of-state students enrolled in the selected graduate programs and the tuition they paid for the programs; and

(4) the ways in which the alternative tuition structure authorized by this section has allowed the University to be more innovative and competitive in the global market and has increased educational opportunities, including by making education more affordable, for Vermont residents.

Second: In Sec. 36, after “University of Vermont”, by striking out everything to the period and inserting in lieu thereof the words “in a distance education course or program”

Pending the question, Shall the bill be amended as proposed by Rep. Kupersmith of South Burlington? **Rep. Turner of Milton** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be amended as proposed by Rep. Kupersmith of South Burlington? was decided in the negative. Yeas, 32. Nays, 108. Abstained, 1

Those who voted in the affirmative are:

Ancel of Calais	Kupersmith of South Burlington	Stuart of Brattleboro
Burke of Brattleboro	Marcotte of Coventry	Till of Jericho
Consejo of Sheldon	Martin of Wolcott	Toleno of Brattleboro
Davis of Washington	McCarthy of St. Albans City	Townsend of South Burlington
Fay of St. Johnsbury	Michelsen of Hardwick	Waite-Simpson of Essex
French of Randolph	O'Sullivan of Burlington	Weed of Enosburgh
Gage of Rutland City	Pearson of Burlington *	Woodward of Johnson
Haas of Rochester	Poirier of Barre City	Young of Glover
Keenan of St. Albans City	Savage of Swanton	Zagar of Barnard
Kitzmillier of Montpelier	South of St. Johnsbury	
Komline of Dorset	Spengler of Colchester *	
Krebs of South Hero		

Those who voted in the negative are:

Bartholomew of Hartland	Ellis of Waterbury	Macaig of Williston
Batchelor of Derby	Emmons of Springfield	Malcolm of Pawlet
Beyor of Highgate	Evans of Essex	Manwaring of Wilmington
Bissonnette of Winooski	Fagan of Rutland City	Marek of Newfane
Botzow of Pownal	Feltus of Lyndon	Martin of Springfield
Bouchard of Colchester	Fisher of Lincoln	Masland of Thetford
Branagan of Georgia	Frank of Underhill	McCormack of Burlington
Brennan of Colchester	Gallivan of Chittenden	McCullough of Williston
Browning of Arlington	Goodwin of Weston	McFaun of Barre Town
Burditt of West Rutland	Grad of Moretown	Miller of Shaftsbury
Buxton of Tunbridge	Greshin of Warren	Mitchell of Fairfax
Campion of Bennington	Head of South Burlington	Mook of Bennington
Canfield of Fair Haven	Heath of Westford	Moran of Wardsboro
Carr of Brandon	Hebert of Vernon	Morrissey of Bennington
Christie of Hartford	Helm of Fair Haven	Myers of Essex
Clarkson of Woodstock	Higley of Lowell	Nuovo of Middlebury
Cole of Burlington	Hooper of Montpelier	O'Brien of Richmond
Condon of Colchester	Hoyt of Norwich	Partridge of Windham
Connor of Fairfield	Hubert of Milton	Pearce of Richford
Conquest of Newbury	Huntley of Cavendish	Peltz of Woodbury
Copeland-Hanzas of Bradford	Johnson of South Hero	Potter of Clarendon
Corcoran of Bennington	Johnson of Canaan	Quimby of Concord
Cross of Winooski	Juskiewicz of Cambridge	Rachelson of Burlington
Cupoli of Rutland City	Kilmartin of Newport City	Ralston of Middlebury
Dakin of Chester	Klein of East Montpelier	Ram of Burlington
Deen of Westminster	Koch of Barre Town	Russell of Rutland City
Devereux of Mount Holly	Krowinski of Burlington	Ryerson of Randolph
Dickinson of St. Albans Town	Lanpher of Vergennes	Scheuermann of Stowe
Donaghy of Poultney	Larocque of Barnet	Sharpe of Bristol
Donahue of Northfield	Lawrence of Lyndon	Shaw of Pittsford
Donovan of Burlington	Lenes of Shelburne	Smith of New Haven
	Lewis of Berlin	Stevens of Waterbury
	Lippert of Hinesburg	Stevens of Shoreham

Sweaney of Windsor	Turner of Milton	Winters of Williamstown
Terenzini of Rutland Town	Vowinkel of Hartford	Wizowaty of Burlington
Toll of Danville	Webb of Shelburne	Yantachka of Charlotte
Trieber of Rockingham	Wilson of Manchester	

Those members absent with leave of the House and not voting are:

Jerman of Essex	Shaw of Derby	Van Wyck of Ferrisburgh
Mrowicki of Putney	Smith of Morristown	Wright of Burlington
	Strong of Albany	

Those members abstained are:

Pugh of South Burlington

Rep. Pearson of Burlington explained his vote as follows:

“Mr. Speaker:

The trend is clear, Mister Speaker, we listen to the needs of our institutions and we listen to the needs of Vermont’s working families. When the two are at odds, overboard go our working families.”

Rep. Spengler of Colchester explained her vote as follows:

“Mr. Speaker:

Removing the 40% Rule for Vermont graduate students may decrease the affordability of graduate courses and hence graduate degrees for Vermonters. We want more Vermonters striving for and affording a graduate education.”

Thereupon, the bill was read the third time and passed.

Third Reading; Bill Passed

H. 880

House bill, entitled

An act relating to universal college savings accounts

Was taken up, read the third time and passed.

Bill Committed

H. 878

House bill, entitled

An act relating to prevailing wages

Pending second reading of the bill, on motion of **Rep. Jewett of Ripton**, the bill was committed to the committee on Appropriations.

Bill Amended; Third Reading Ordered**H. 555**

Rep. Koch of Barre Town, for the committee on Judiciary, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

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

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

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

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

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

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

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

§ 4814. ORDER FOR EXAMINATION

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

(1) ~~When~~ when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a ~~mental disease, defect,~~ mental illness, intellectual disability, traumatic brain injury or other

condition bearing upon the issue of whether he or she had the mental state required for the offense charged;

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

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

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

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

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

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

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

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

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

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

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the Court, the Court may ~~forego~~ 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~~ an intellectual disability or traumatic brain injury shall include a current evaluation by a psychologist or other appropriate medical professional skilled in assessing individuals with ~~developmental disabilities~~ those conditions.

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

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

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

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

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

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

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

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the ~~state~~ State, at any time before final judgment, raises before the court before which ~~such the~~ 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 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~~ such the court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that ~~such the~~ such the person may be incompetent to stand trial due to a ~~mental disease or mental defect, such~~ illness, intellectual disability, or traumatic brain injury, 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~~ illness, intellectual disability, or traumatic brain injury.

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

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

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

§ 4821. NOTICE OF HEARING; PROCEDURES

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

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

§ 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

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

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

apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. §§ 7611-7622.

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

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

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

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

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

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

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

Independent Living for care and habilitation of such person for an indefinite or limited period in a designated program.

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

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

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

§ 8839. DEFINITIONS

As used in this subchapter:

* * *

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

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

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

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

Sec. 12. CONSTRUCTION

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

Sec. 13. REPORTS

(a) On or before September 1, 2014 the Court Administrator shall report to the House and Senate Committees on Judiciary on the number of cases from July 1, 2011 through June 30, 2013 in which the Court ordered the Department of Mental Health to examine a defendant pursuant to 13 V.S.A. § 4814 to determine if he or she was insane at the time of the offense or is incompetent to

stand trial. The report shall include a break-down indicating how many orders were based on mental illness, intellectual disability, and traumatic brain injury, and shall include the number of persons who were found to be in need of custody, care, and habilitation under 13 V.S.A. § 4823. A copy of the report shall be provided to the Department of Disabilities, Aging, and Independent Living.

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

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

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

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

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

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

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

Sec. 14. EFFECTIVE DATES

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

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

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

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

Sec. 14. APPROPRIATION

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

Sec. 15. EFFECTIVE DATES

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

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

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Judiciary and Appropriations agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 590

Rep. McCullough of Williston, for the committee on Fish, Wildlife & Water Resources, to which had been referred House bill, entitled

An act relating to the safety and regulation of dams

Reported in favor of its passage when amended as follows:

* * * Registration and Inspection of Dams * * *

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

CHAPTER 43. DAMS

§ 1080. DEFINITIONS

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

§ 1081. JURISDICTION OF DEPARTMENT AND PUBLIC SERVICE

BOARD

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

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

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

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

§ 1082. AUTHORIZATION

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

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

§ 1083. APPLICATION

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

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

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

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

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

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

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

§ 1083a. ~~AGRICULTURAL DAMS~~

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

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

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

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

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

§ 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

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

§ 1085. NOTICE OF APPLICATION

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

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

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

§ 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

(a) “Public good” means the greatest benefit of the people of the State. In determining whether the public good is served, the ~~state agency having jurisdiction~~ Department or the Public Service Board shall give due

consideration to, among other things, ~~to~~ the effect the proposed project will have on:

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

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

(5) the need for a minimum water discharge flow rate schedule to protect the natural rate of flow and the water quality of the affected waters;

(6) the existing uses of the waters by the public for boating, fishing, swimming, and other recreational uses;

(7) the creation of any hazard to navigation, fishing, swimming, or other public uses;

(8) the need for cutting clean and removal of all timber or tree growth from all or part of the flowage area;

(9) the creation of any public benefits;

(10) consistency with the Vermont water quality standards and the classification, if any, of the affected waters under chapter 47 of this title;

(11) any applicable ~~state~~ State, regional, or municipal plans;

(12) municipal grand lists and revenues;

(13) public safety; and

(14) in the case of proposed removal of a dam that formerly related to or was incident to the generation of electric energy, but which was not subject to a memorandum of understanding dated prior to January 1, 2006 relating to its removal, the potential for and value of future power production.

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

necessary to protect any element of the public good listed above. Otherwise it shall issue its order disapproving the application.

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

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

§ 1087. REVIEW OF PLANS AND SPECIFICATIONS

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

§ 1089. EMPLOYMENT OF HYDRAULIC ENGINEER

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

§ 1090. CONSTRUCTION SUPERVISION

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

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten persons in interest or the legislative body of a municipality, the ~~agency having jurisdiction~~ Department or the Public Service Board shall, or upon its own motion it may,

institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing dam or portion of a dam, of any size. The ~~agency~~ Department or the Public Service Board may fix a time and place for hearing and shall give notice in the manner it directs to all parties interested. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the ~~agency~~ Department or the Public Service Board finds that the dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to make the dam safe.

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

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

* * *

§ 1098. REMOVAL OF OBSTRUCTIONS; APPROPRIATION

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

§ 1099. APPEALS

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

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

* * *

§ 1104. DAM REGISTRATION

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

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

(c) Department identification of dam.

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

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

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

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

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

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

to inspect, the dam. The cost to the Department of the inspection shall be assessed against the owner of the dam.

§ 1104a. ABANDONED DAMS

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

(1) has identified an owner of the dam, but the owner fails to comply with the requirements of section 1104 of this title or the owner fails to comply with an action or order required under this chapter; or

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

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

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

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

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

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

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

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

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

* * *

* * * Disclosure of Dam at Conveyance * * *

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

§ 617. DISCLOSURE OF DAM ON PROPERTY AT CONVEYANCE

(a) Definitions. As used in this section, “dam” shall have the same meaning as provided for in 10 V.S.A. § 1080(7).

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

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

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

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

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

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

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

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

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

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

* * * Dam Registration Fees * * *

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

§ 2805. ENVIRONMENTAL PERMIT FUND

(a) There is hereby established a special fund to be known as the Environmental Permit Fund. Within the Fund, there shall be two accounts: the Environmental Permit Account and the Air Pollution Control Account. Unless otherwise specified, fees collected in accordance with subsections 2822(i) and (j) of this title, and 10 V.S.A. § 2625 and gifts and appropriations shall be deposited in the Environmental Permit Account. Fees collected in accordance with subsections 2822(j)(1), (k), (l), and (m) of this title shall be deposited in the Air Pollution Control Account. The Environmental Permit Fund shall be used to implement the programs specified under section 2822 of this title. The Secretary of Natural Resources shall be responsible for the fund and shall account for the revenues and expenditures of the Agency of Natural Resources. The Environmental Permit Fund shall be subject to the provisions of 32 V.S.A. chapter 7, subchapter 5. The Environmental Permit Fund shall be used to cover a portion of the costs of administering the Environmental Division established under 4 V.S.A. chapter 27. The amount of \$143,000.00 per fiscal year shall be disbursed for this purpose.

(b) Any fee required to be collected under subdivision 2822(j)(1) of this title shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the operating permit program authorized under 10 V.S.A. chapter 23. Any fee required to be collected under subsection 2822(k), (l), or (m) of this title for air pollution control permits or registrations or motor vehicle registrations shall be utilized solely to cover all reasonable (direct or indirect) costs required to support the programs authorized under 10 V.S.A. chapter 23. Fees collected pursuant to subsections 2822(k), (l), and (m) of this title shall be used by the Secretary to fund activities related to the Secretary's hazardous or toxic contaminant monitoring programs and motor vehicle-related programs.

(c) Any fee required to be collected under subdivision 2822(j)(12) of this title for dam registrations shall be used solely to cover all direct or indirect costs required to support the programs authorized under 10 V.S.A. chapter 43. When the fees collected under subdivision 2822(j)(12) of this title exceed the annual funding needs of 10 V.S.A. chapter 43, the excess funds shall be deposited into the Unsafe Dam Revolving Loan Fund under 10 V.S.A. § 1106.

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

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

(B) For dam registration forms submitted under 10 V.S.A. chapter 43, a person registering a dam shall pay an annual registration fee. The annual fee shall be based on the hazard classification of the dam as follows:

- (i) Low hazard dam \$200.00;
- (ii) Unknown hazard dam \$200.00;
- (iii) Significant hazard dam \$350.00; and
- (iv) High hazard dam \$1,000.00.

* * * Dam Registration Report * * *

Sec. 5. DAM REGISTRATION PROGRAM REPORT

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

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

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

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

* * * Effective Date * * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

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

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

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

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

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

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

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

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

(b) Dam registration.

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. DAM REGISTRATION PROGRAM REPORT

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

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

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

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

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

and by renumbering the remaining subdivisions to be numerically correct.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Fish, Wildlife & Water Resources and Ways and Means agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 695

Rep. Yantachka of Charlotte, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

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

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

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

CHAPTER 168. PRODUCT STEWARDSHIPFOR PRIMARY BATTERIES AND RECHARGEABLE BATTERIESSubchapter 1. Definitions§ 7581. DEFINITIONS

As used in this chapter:

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

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

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

(4) “Collection rate” means a percentage by weight that each producer or primary battery stewardship organization collects by an established date. The collection rate shall be calculated by dividing the total weight of the primary batteries that are collected during a calendar year by the average annual weight of primary batteries that were estimated to have been sold in the State by participating producers during the previous three calendar years. Estimates of primary batteries sold in the State may be based on a reasonable pro rata calculation based on national sales.

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

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

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

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

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

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

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

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

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

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

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

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

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

(15)(A) “Rechargeable battery” means:

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

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

(B) “Rechargeable battery” shall not mean:

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

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

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

(I) is sealed;

(II) contains no liquid electrolyte; and

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

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

(16) "Rechargeable battery steward" means a person who:

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

(B) owns or licenses a trademark or brand under which a rechargeable battery or rechargeable product is sold, offered for sale, or distributed in the State, whether or not the trademark is registered; or

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

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

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

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

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

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

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

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

Subchapter 2. Primary Battery Stewardship Program

§ 7582. SALE OF PRIMARY BATTERIES

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

(b) Requirements for sale. No producer shall sell, offer for sale, or deliver to a retailer for subsequent sale a primary battery in the State unless:

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

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

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

(c) New producers.

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

(2) The Secretary shall list a producer who supplies notice under this subsection as a “new producer” on the Agency’s website. A producer that supplies notice under this subsection shall have 90 days, not including the time

required for public comment under subsection 7586(c) of this section, to either join an existing primary battery stewardship organization or submit a primary battery stewardship plan for approval to the State.

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

§ 7583. PRIMARY BATTERY STEWARDSHIP ORGANIZATION;
REQUIREMENTS; REGISTRATION

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

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

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

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

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

(c) Registration requirements.

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

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

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

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

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

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

§ 7584. PRIMARY BATTERY STEWARDSHIP PLAN

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

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

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

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

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

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

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

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

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

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

(4) Method of disposition. Each primary battery stewardship plan shall include a description of the method that will be used to responsibly manage discarded primary batteries to ensure that the components of the discarded

primary batteries, to the extent economically and technically feasible, are recycled.

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

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

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

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

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

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

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

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

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

(c) Implementation. A producer or a primary battery stewardship organization shall include provisions in the plan for the implementation of the program in conjunction with those retailers, municipalities, and certified solid waste management facilities acting as collection facilities under a program. No transportation or recycling cost shall be imposed on retailers, municipalities, or certified solid waste management facilities acting as

collection facilities under a program. A producer or a primary battery stewardship organization shall provide retailers, municipalities, and certified solid waste management facilities acting as collection facilities products or equipment for setting up a collection point and for providing for the pickup of collected primary batteries, including arranging for the management of those primary batteries.

§ 7585. ANNUAL REPORT; PLAN AUDIT

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

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

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

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

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

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

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

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

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

§ 7586. AGENCY RESPONSIBILITIES; APPROVAL OF PLANS

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

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

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

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

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

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

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

§ 7587. RETAILER OBLIGATIONS

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

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

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

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

(c) Educational material. A producer or primary battery stewardship organization supplying primary batteries to a retailer shall provide the retailer with educational materials describing collection opportunities for primary batteries. The retailer shall make the educational materials available to consumers.

Subchapter 3. Registration of Rechargeable Battery

Stewardship Organization

§ 7588. REGISTRATION OF RECHARGEABLE BATTERY

STEWARDSHIP ORGANIZATION

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

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

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

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

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

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

Subchapter 4. Reimbursement

§ 7589. REIMBURSEMENT; AUTHORIZATION

(a) Reimbursement of primary battery producers.

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

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

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

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

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

collected primary battery or the primary battery stewardship organization representing the producer of the collected primary battery.

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

§ 7590. REIMBURSEMENT PROCESS

(a) Reimbursement request.

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

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

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

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

(b) Role of Agency. The Agency shall not be required to provide assistance or otherwise participate in a reimbursement request, audit, or other

action under this section, unless subject to subpoena before a court of jurisdiction.

Subchapter 5. Private Right of Action

§ 7591. PRIVATE RIGHT OF ACTION

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

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

(2) the producer from whom damages are sought:

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

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

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

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

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

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

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

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

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

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

(f) Action against individual producer or steward.

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

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

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

(g) Role of Agency. The Agency shall not be a party to or be required to provide assistance or otherwise participate in a civil action authorized under

this section solely due to its regulatory requirements under this chapter, unless subject to subpoena before a court of jurisdiction.

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

Subchapter 6. General Provisions

§ 7592. CONFIDENTIALITY OF SUBMITTED DATA

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

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

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

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

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

§ 7593. ANTITRUST; CONDUCT AUTHORIZED

(a) Activity authorized. A producer, group of producers, or primary battery stewardship organization implementing or participating in an approved primary battery stewardship plan under this chapter for the collection, transport, processing, and end-of-life management of primary batteries is individually or jointly immune from liability for the conduct under State laws

relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce under 9 V.S.A. chapter 63, subchapter 1, to the extent that the conduct is reasonably necessary to plan, implement, and comply with the producer's, group of producers', or primary battery stewardship organization's chosen system for managing discarded primary batteries. This subsection shall also apply to conduct of a retailer or wholesaler participating in a producer or primary battery stewardship organization's approved primary battery stewardship plan when the conduct is necessary to plan and implement the producer's or primary battery stewardship organization's organized collection or recycling system for discarded batteries

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

§ 7594. ADMINISTRATIVE FEE

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

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

§ 7595. RULEMAKING; PROCEDURE

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

Sec. 2. AGENCY OF NATURAL RESOURCES REPORT ON

IMPLEMENTATION OF PRIMARY BATTERY STEWARDSHIP

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

(1) the amount, by weight, of primary batteries and rechargeable batteries collected under approved primary battery stewardship plans;

(2) the percentage of collected batteries not covered by or attributable to a primary battery producer implementing an approved primary battery

stewardship plan or participating in an approved primary battery stewardship organization; and

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

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

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

* * *

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

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

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

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

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

(1) The following provisions of this title:

* * *

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

(R) chapter 32 (flood hazard areas).

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

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

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

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Rep. Masland of Thetford, for the committee on Ways and Means recommended that the bill ought to pass when amended as recommended by the committee on Natural Resources and Energy.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Natural Resources and Energy and Ways and Means agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Klein of East Montpelier** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 90. Nays, 39.

Those who voted in the affirmative are:

Ancel of Calais	Head of South Burlington	O'Sullivan of Burlington
Bartholomew of Hartland	Heath of Westford	Partridge of Windham
Bissonnette of Winooski	Hooper of Montpelier	Pearson of Burlington
Botzow of Pownal	Huntley of Cavendish	Potter of Clarendon
Browning of Arlington	Jerman of Essex	Pugh of South Burlington
Burke of Brattleboro	Johnson of South Hero	Rachelson of Burlington
Buxton of Tunbridge	Keenan of St. Albans City	Ralston of Middlebury
Campion of Bennington	Klein of East Montpelier	Ram of Burlington
Canfield of Fair Haven	Koch of Barre Town	Russell of Rutland City
Carr of Brandon	Krebs of South Hero	Ryerson of Randolph
Christie of Hartford	Krowinski of Burlington	Sharpe of Bristol
Clarkson of Woodstock	Kupersmith of South	Smith of Morristown
Cole of Burlington	Burlington	Spengler of Colchester
Connor of Fairfield	Lanpher of Vergennes	Stevens of Shoreham
Consejo of Sheldon	Larocque of Barnet	Stuart of Brattleboro
Copeland-Hanzas of	Lenes of Shelburne	Sweaney of Windsor
Bradford	Lippert of Hinesburg	Till of Jericho
Cross of Winooski	Macaig of Williston	Toleno of Brattleboro
Dakin of Chester	Malcolm of Pawlet	Toll of Danville
Davis of Washington	Manwaring of Wilmington	Townsend of South
Deen of Westminster	Marek of Newfane *	Burlington
Donovan of Burlington	Martin of Springfield	Trieber of Rockingham
Emmons of Springfield	Masland of Thetford	Waite-Simpson of Essex
Evans of Essex	McCarthy of St. Albans City	Webb of Shelburne
Feltus of Lyndon	McCormack of Burlington	Weed of Enosburgh
Fisher of Lincoln	McCullough of Williston	Wilson of Manchester
Frank of Underhill	Michelsen of Hardwick	Wizowaty of Burlington
French of Randolph	Miller of Shaftsbury	Woodward of Johnson
Gallivan of Chittenden	Moran of Wardsboro	Yantachka of Charlotte
Grad of Moretown	Mrowicki of Putney	Young of Glover
Haas of Rochester	Nuovo of Middlebury	Zagar of Barnard

Those who voted in the negative are:

Batchelor of Derby	Gage of Rutland City	Mook of Bennington
Beyor of Highgate	Goodwin of Weston	Morrissey of Bennington
Bouchard of Colchester	Greshin of Warren	Myers of Essex
Branagan of Georgia	Helm of Fair Haven	Pearce of Richford
Brennan of Colchester	Higley of Lowell	Quimby of Concord
Burditt of West Rutland	Hubert of Milton	Savage of Swanton
Condon of Colchester	Johnson of Canaan	Scheuermann of Stowe
Corcoran of Bennington	Juskiewicz of Cambridge	Shaw of Pittsford
Cupoli of Rutland City	Kilmartin of Newport City	Smith of New Haven
Devereux of Mount Holly	Komline of Dorset	South of St. Johnsbury
Dickinson of St. Albans Town	Lawrence of Lyndon	Turner of Milton
Donahue of Northfield	Lewis of Berlin *	Van Wyck of Ferrisburgh
Fagan of Rutland City	Marcotte of Coventry	
	McFaun of Barre Town	

Those members absent with leave of the House and not voting are:

Conquest of Newbury	Martin of Wolcott	Strong of Albany
Donaghy of Poultney	Mitchell of Fairfax	Terenzini of Rutland Town
Ellis of Waterbury	O'Brien of Richmond	Vowinkel of Hartford
Fay of St. Johnsbury	Peltz of Woodbury	Winters of Williamstown
Hebert of Vernon	Poirier of Barre City	Wright of Burlington
Hoyt of Norwich	Shaw of Derby	
Kitzmiller of Montpelier	Stevens of Waterbury	

Rep. Lewis of Berlin explained her vote as follows:

“Mr. Speaker:

I oppose this bill for two reasons. First, we should be focusing on educating consumers on how batteries should be recycled, not potentially restricting their consumption. Second, the committee limited their testimonies. Central Vermont Solid Waste District is doing an incredible job of recycling, and the committee failed to receive their input.”

Rep. Marek of Newfane explained his vote as follows:

“Mr. Speaker:

We have reached a new level of minimalism in impeding Vermont business – battery manufacturers who support the idea now will be able to recycle their product at their own expense; retailers who choose to do so now may collect the used batteries, potentially attracting new customers to their stores as they do so; and anyone who wanted to testify on the bill was heard. What ever will we think of next?”

Adjournment

At five o'clock and nineteen minutes in the afternoon, on motion of **Rep. Turner of Milton**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.