

Journal of the Senate

TUESDAY, APRIL 30, 2013

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Baruth and Benning,

J.R.S. 29. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, May 3, 2013, it be to meet again no later than Tuesday, May 7, 2013.

Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

S. 169.

By Senators Pollina and Zuckerman,

An act relating to regulating the use of drones.

To the Committee on Judiciary.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 403.

An act relating to community supports for persons with serious functional impairments.

To the Committee on Rules.

H. 450.

An act relating to expanding the powers of regional planning commissions.
To the Committee on Rules.

H. 538.

An act relating to making miscellaneous amendments to education funding laws.
To the Committee on Rules.

Bill Ordered to Lie**S. 165.**

Senate bill entitled:

An act relating to collective bargaining for deputy state's attorneys.

Was taken up.

Thereupon, pending the question, Shall the bill pass?, on motion of Senator Sears, the bill was ordered to lie.

Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**H. 205.**

House bill entitled:

An act relating to professions and occupations regulated by the Office of Professional Regulation.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved that the Senate propose to the House to amend the bill by inserting a new section to be numbered Sec. 47a, to read as follows:

* * * Barbers and Cosmetologists * * *

Sec. 47a. AMENDMENT TO RULES OF THE BOARD OF BARBERS AND COSMETOLOGISTS

By March 31, 2014, the Board of Barbers and Cosmetologists (the "Board") shall amend Rule 12.3 of the Board to allow in a shop, including in an immediate work area of a shop, any cat or dog belonging to the owner or to an employee of that shop.

Which was disagreed to on a division of the Senate, Yeas 13, Nays 14.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Proposal of Amendment; Third Reading Ordered

H. 169.

Senator Galbraith, for the Committee on Finance, to which was referred House bill entitled:

An act relating to relieving employers' experience-rating records.

Reported that the bill ought to pass in concurrence.

Senator Westman, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be read a third time?, Senators Mullin, Benning, Flory, Galbraith, Mazza, McAllister, Sears, Starr, Snelling, and Westman moved that the Senate propose to the House to amend the bill as follows:

First: By striking out Sec. 4 (effective date) in its entirety and by inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings unless the context clearly requires otherwise:

* * *

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this ~~state~~ State, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this ~~state~~ State may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this ~~state~~ State. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the ~~commissioner~~ Commissioner, upon his or her approval of said election as to

any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this ~~state~~ State.

* * *

(C) The term “employment” shall not include:

* * *

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person; or

(bb) the trade or business of the delivery or distribution of newspapers or shopping news, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(III) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal and state tax purposes.

* * *

Second: By inserting a new section to be numbered Sec. 5 to read as follows:

Sec. 5. EFFECTIVE DATES

This act shall take effect on passage except that Sec. 4 of this act shall take effect on July 1, 2013.

Thereupon, pending the question, Shall the bill be amended as recommended by Senators Mullin, Benning, Flory, Galbraith, Mazza, McAllister, Sears, Starr, Snelling, and Westman?, Senator MacDonald moved to substitute a proposal of amendment for the proposal of amendment of

Senators Mullin, Benning, Flory, Galbraith, Mazza, McAllister, Sears, Starr, Snelling, and Westman as follows:

By adding a new section to be numbered Sec. 3a to read as follows:

Sec. 3a. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS; DISCLOSURE TO SUCCESSOR ENTITY; EMPLOYEE PAID \$1,000.00 OR LESS DURING BASE PERIOD

(a) The commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

(1) The individual's employment with that employer was terminated under disqualifying circumstances.

(2) The individual's employment or right to reemployment with that employer was terminated by retirement of the individual pursuant to a retirement or lump-sum retirement pay plan under which the age of mandatory retirement was agreed upon by the employer and its employees or by the bargaining agent representing those employees.

(3) As of the date on which the individual filed an initial claim for benefits, the individual's employment with that employer had not been terminated or reduced in hours.

(4) The individual was employed by that employer as a result of another employee taking leave under subchapter 4A of chapter 5 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee under subchapter 4A of chapter 5 of this title.

(5) [Repealed.]

(6) The individual was a newspaper carrier engaged in the trade or business of the delivery or distribution of newspapers or shopping news.

* * *

Which was disagreed to.

Thereupon, the question, Shall the bill be amended as proposed by Senators Mullin, Benning, Flory, Galbraith, Mazza, McAllister, Sears, Starr, Snelling, and Westman?, was agreed to on a roll call, Yeas 18, Nays 10.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Campbell, Collins, Doyle, Flory, French, Galbraith, Hartwell, Kitchel, Mazza, Mullin, Nitka, Rodgers, Sears, Snelling, Starr, Westman.

Those Senators who voted in the negative were: Ashe, Baruth, Cummings, Fox, Lyons, MacDonald, McCormack, Pollina, White, Zuckerman.

Those Senators absent and not voting were: Bray, McAllister.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered

H. 99.

Senator Mullin, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to equal pay.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 21 V.S.A. § 495, by striking out subdivision (a)(7)(B) and inserting a new subdivision (a)(7)(B) to read as follows:

(B)(i) No employer may do any of the following:

~~(i)(I)~~ Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

~~(ii)(II)~~ Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

~~(iii)~~ ~~Discharge, formally discipline, or otherwise discriminate against an employee who discloses the amount of his or her wages.~~

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

Second: In Sec. 2, 21 V.S.A. § 495, in subsection (h), by inserting a sentence at the end of the subsection to read as follows: Unless otherwise required by law, nothing in this section shall require an employee to disclose his or her wages in response to an inquiry by another employee.

Third: In Sec. 3, 3 V.S.A. § 345, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) A contractor subject to this section shall maintain and make available its books and records at reasonable times and upon notice to the contracting agency and the Attorney General so that either may determine whether the contractor is in compliance with this section.

Fourth: By striking out Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. 21 V.S.A. § 309 is added to read:

§ 309. FLEXIBLE WORKING ARRANGEMENTS

(a)(1) An employee may request a flexible working arrangement that meets the needs of the employer and employee. The employer shall consider a request using the procedures in subsections (b) and (c) of this section at least twice per calendar year.

(2) As used in this section, “flexible working arrangement” means intermediate or long-term changes in the employee’s regular working arrangements including changes in the number of days or hours worked, changes in the time the employee arrives at or departs from work, work from home, or job-sharing. “Flexible working arrangement” does not include vacation, routine scheduling of shifts, or another form of employee leave.

(b)(1) The employer shall discuss the request for a flexible working arrangement with the employee in good faith. The employer and employee may propose alternative arrangements during the discussion.

(2) The employer shall consider the employee’s request for a flexible working arrangement and whether the request could be granted in a manner that is not inconsistent with its business operations or its legal or contractual obligations.

(3) As used in this section, “inconsistent with business operations” includes:

(A) the burden on an employer of additional costs;

(B) a detrimental effect on aggregate employee morale unrelated to discrimination or other unlawful employment practices;

(C) a detrimental effect on the ability of an employer to meet consumer demand;

(D) an inability to reorganize work among existing staff;

(E) an inability to recruit additional staff;

(F) a detrimental impact on business quality or business performance;

(G) an insufficiency of work during the periods the employee proposes to work; and

(H) planned structural changes to the business.

(c) The employer shall notify the employee of the decision regarding the request. If the request was submitted in writing, the employer shall state any complete or partial denial of the request in writing.

(d) This section shall not diminish any rights under this chapter or pursuant to a collective bargaining agreement. An employer may institute a flexible working arrangement policy that is more generous than is provided by this section.

(e) The Attorney General, a state's attorney, or the Human Rights Commission in the case of state employees may enforce subsections (b) and (c) of this section by restraining prohibited acts, conducting civil investigations, and obtaining assurances of discontinuance in accordance with the procedures established in subsection 495b(a) of this title. An employer subject to a complaint shall have the rights and remedies specified in subsection 495b(a) of this title. An investigation against an employer shall not be a prerequisite for bringing an action. The Civil Division of the Superior Court may award injunctive relief and court costs in any action. There shall be no private right of action to enforce this section.

(f) An employer shall not retaliate against an employee exercising his or her rights under this section. The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

(g) Nothing in this section shall affect any legal rights an employer or employee may have under applicable law to create, terminate, or modify a flexible working arrangement.

Fifth: By striking out Sec. 13 in its entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

Sec. 13. PAID FAMILY LEAVE STUDY COMMITTEE

(a) Creation. There is created a Committee to study the issue of paid family leave in Vermont and to make recommendations regarding whether and how paid family leave may benefit Vermont citizens.

(b) Membership. The Committee shall consist of the following members:

(1) two members of the House of Representatives, who shall not be of the same party, chosen by the Speaker;

(2) two members of the Senate, who shall not be of the same party, chosen by the Committee on Committees;

(3) three representatives from the business community, one appointed by the Speaker and two by the Committee on Committees;

(4) two representatives from labor organizations, one appointed by the Speaker and one by the Committee on Committees;

(5) one representative appointed by the Governor;

(6) the Attorney General or designee;

(7) the Commissioner of Labor or designee;

(8) the Executive Director of the Vermont Commission on Women or designee; and

(9) the Executive Director of the Human Rights Commission or designee.

(c) Duties. The Committee shall examine:

(1) existing paid leave laws and proposed paid leave legislation in other states;

(2) which employees should be eligible for paid leave benefits;

(3) the appropriate level of wage replacement for eligible employees;

(4) the appropriate duration of paid leave benefits;

(5) mechanisms for funding paid leave through employee contributions;

(6) administration of paid leave benefits;

(7) transitioning to a funded paid leave program; and

(8) any other issues relevant to paid leave.

(d) The Committee shall make recommendations including proposed legislation to address paid family leave in Vermont.

(e) The Committee shall convene its first meeting on or before September 1, 2013. The Commissioner of Labor or designee shall be designated Chair of the Committee and shall convene the first and subsequent meetings. The Committee shall have the administrative assistance of the Department of Labor.

(f) The Committee shall report its findings and recommendations on or before January 15, 2014 to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs.

(g) For participation on the Committee at meetings during the adjournment of the General Assembly, legislative members shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

(h) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their participation shall be entitled to per diem compensation or reimbursement of expenses, or both, pursuant to 32 V.S.A. § 1010.

(i) The Committee shall cease to function upon transmitting its report.

And that the bill ought to pass in concurrence with such proposals of amendment.

Senator Fox, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendments thereto:

First: In Sec. 13 (Study Committee), subsection (b), by striking out subdivisions (1) and (2) in their entirety and inserting in lieu thereof the following:

(1) One member of the House of Representatives chosen by the Speaker;

(2) One member of the Senate chosen by the Committee on Committees;

Second: In Sec. 13 (Study Committee), at the end of subsection (e) by adding the following: The Committee shall meet not more than five (5) times.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs was amended as recommended by the Committee on Appropriations.

Thereupon, the proposals of amendment recommended by the Committee on Economic Development, Housing and General Affairs, as amended, were agreed to and third reading of the bill was ordered on a roll call, Yeas, 29, Nays 0.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Campbell, Collins, Cummings, Doyle, Flory, Fox, French, Galbraith, Hartwell, Kitchel, Lyons, MacDonald, Mazza, McAllister, McCormack, Mullin, Nitka, Pollina, Rodgers, Sears, Snelling, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Bray.

Proposals of Amendment; Third Reading Ordered

H. 178.

Senator Ayer, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to anatomical gifts.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 18 V.S.A. § 5227, by inserting a new subsection (c) to read as follows:

(c) If the disposition of the remains of a decedent is determined under subdivision (a)(9) of this section and the funeral director or crematory operator has cremated the remains, the funeral director or crematory operator shall retain the remains for three years, and, if no interested party as provided in subdivisions (a)(1) through (8) of this section claims the decedent's remains after three years, the funeral director or crematory operator shall arrange for the final disposition of the cremated remains consistent with any applicable law and standard funeral practices.

And by relettering the existing subsection (c) to be (d).

Second: In Sec. 4, subsection (b), at the end of subdivision (4), by striking out the word "and" and by inserting new subdivisions (5) and (6) to read as follows:

(5) a licensed funeral director or crematory operator;

(6) a family member of a decedent who made an anatomical gift under 18 V.S.A. chapter 110; and

And by renumbering the existing subdivision (5) to be (7)

And that the bill ought to pass in concurrence with such proposals of amendment.

Senator Fox, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Health and Welfare.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the proposals of amendment were collectively agreed to, and third reading of the bill was ordered.

**Report of Committee of Conference Accepted and Adopted on the Part of
the Senate**

H. 131.

Senator Hartwell, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

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

An act relating to harvesting guidelines and procurement standards.

Respectfully reports that it has met and considered the same and recommends that the House accede to the Senate proposal of amendment and that the bill be further amended in Sec. 4, 30 V.S.A. § 248(b)(11), by striking out subdivisions (B) and (C) in their entirety and inserting in lieu thereof new subdivisions (B) and (C) to read:

(B) ~~incorporate commercially available and feasible designs to achieve a reasonable~~ the highest design system efficiency that is commercially available, feasible, and cost-effective for the type and design of the proposed facility; and

(C) comply with harvesting guidelines procedures and procurement standards that ~~are consistent~~ ensure long-term forest health and sustainability. These procedures and standards at a minimum shall be consistent with the guidelines and standards developed ~~by the secretary of natural resources~~ pursuant to 10 V.S.A. § 2750 (harvesting guidelines and procurement standards) when adopted under that statute.

*ROBERT M. HARTWELL
JOHN S. RODGERS
DIANE B. SNELLING*

Committee on the part of the Senate

*JOHN W. MALCOLM
ANTHONY W. KLEIN
WILLIAM P. CANFIELD*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

**Proposals of Amendment Amended; Bill Passed in Concurrence with
Proposals of Amendment**

H. 474.

House bill entitled:

An act relating to amending the membership and charge of the Government Accountability Committee.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ashe moved that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 2 V.S.A. § 970, by inserting subdivision (a)(11) to read as follows:

(11) Assess whether and how the State of Vermont should provide funds to nonprofit organization, including whether grants to or contracts with nonprofit organizations should require results-based accountability.

Second: In Sec. 1, 2 V.S.A. § 970, by inserting subsection (h) to read as follows:

(h)(1) On or before January 1, 2014, the Committee shall:

(A) review whether and under what conditions or situations the State of Vermont, through its agencies and other instrumentalities, should provide funding, grants, or other financial awards to a nonprofit organization subject to requirements for results-based accountability from the organization;

(B) if, after completion of its review under subdivision (1)(A) of this subsection (h), it determines that results-based accountability should be required as a condition of a financial award from the State to a nonprofit organization, review whether a special fund should be created to provide

nonprofit organizations with funding to develop capacities and other resources to support results-based accountability at an organizational level; and

(C) if it determines that a special fund should be established under subdivision (1)(B) of this subsection (h), examine how the special fund would be financed, including whether a fee or assessment on a nonprofit organization would be an appropriate funding mechanism.

(2) On or before January 15, 2014, the Committee shall submit its findings or recommendations under this subsection to the Senate Committee on Finance, the House Committee on Ways and Means, and the Senate and House Committee on Appropriations.

Third: By adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. REPEAL; GOVERNMENT ACCOUNTABILITY REVIEW OF FUNDING OF NONPROFIT ORGANIZATIONS UNDER RESULTS-BASED ACCOUNTABILITY

2 V.S.A. § 970(h) (results-based accountability; funding of nonprofit organizations) shall be repealed on January 16, 2014.

And by renumbering the existing Sec. 2 to be Sec. 3.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposals of amendment.

Bills Passed in Concurrence

House bills of the following titles were severally read the third time and passed in concurrence:

H. 525. An act relating to approval of amendments to the charter of the Town of Stowe.

H. 529. An act relating to approval of an amendment to the charter of the Winooski Incorporated School District related to the term of district treasurer.

Bill Amended; Third Reading Ordered

S. 37.

Senator Ashe, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the creation of a tax increment financing district.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. RESOLUTION OF TAX INCREMENT FINANCING DISTRICT
AUDIT REPORT ISSUES

In 2011 and 2012, the State Auditor of Accounts performed and reported on required reviews and audits of all active tax increment financing districts. However, the tax increment financing laws currently lack a specific remedy to recover amounts identified in the Auditor's Reports or an enforcement mechanism to address issues identified in the Reports. The General Assembly seeks to address issues identified in the 2011 and 2012 Auditor's Reports by clarifying tax increment financing laws and specifying a process for future oversight and enforcement. Accordingly, it is the intent of the General Assembly not to consider amounts identified as underpayments to the Education Fund by the 2011 and 2012 Auditor's Reports as owed to the State unless and until the amounts are identified as owed to the State through rulemaking, as described in Sec. 14 of this act. If the rule identifies amounts as owed to the State, these amounts shall begin to accumulate upon the adoption date of the rule.

Sec. 2. 24 V.S.A. § 1891 is amended to read:

§ 1891. DEFINITIONS

When used in this subchapter:

* * *

(4) "Improvements" means the installation, new construction, or reconstruction of streets, utilities, and other infrastructure needed for transportation, telecommunications, wastewater treatment, and water supply, parks, playgrounds, land acquisition, parking facilities, brownfield remediation, and other public improvements necessary for carrying out the objectives of this chapter infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in section 1893 of this subchapter, including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation.

(5) "Original taxable property value" means the total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the tax increment financing district on the day the district was created under as of the creation date as set forth in section 1892 of this subchapter, provided that no parcel within the district shall be divided or bisected by the district boundary.

(6) "Related costs" means expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the tax increment financing district and, including reimbursement of sums

~~previously advanced by the municipality for those purposes, and attaining the purposes and goals for which the tax increment financing district was created, as approved by the Vermont economic progress council. Related costs may include direct municipal expenses such as departmental or personnel costs related to creating or administering the district to the extent they are paid from the tax increment realized from municipal and not education taxes and using only that portion of the municipal increment above the required percentage in servicing the debt as determined in accordance with subsection 1894(f) of this subchapter.~~

(7) ~~“Financing” means the following types of debt incurred, including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing used by a municipality to pay for improvements in a tax increment financing district:~~

~~(A) Bonds.~~

~~(B) Housing and Urban Development Section 108 financing instruments.~~

~~(C) Interfund loans within a municipality.~~

~~(D) State of Vermont revolving loan funds.~~

~~(E) United States Department of Agriculture loans~~

~~only if authorized by the legal voters of the municipality in accordance with section 1894 of this subchapter. Payment for the cost of district improvements may also include direct payment by the municipality using the district increment. However, such payment is also subject to a vote by the legal voters of the municipality in accordance with section 1894 of this subchapter and, if not included in the tax increment financing plan approved under subsection 1894(d) of this subchapter, is also considered a substantial change and subject to the review process provided by subdivision 1901(3) of this subchapter. If interfund loans within the municipality are used as the method of financing, no interest shall be charged.~~

(8) ~~“Committed” means pledged and appropriated for the purpose of the current and future payment of tax increment financing incurred in accordance with section 1894 of this subchapter and related costs as defined in this section.~~

Sec. 3. 24 V.S.A. § 1892 is amended to read:

§ 1892. CREATION OF DISTRICT

(a) Upon a finding that such action will serve the public purposes of this subchapter ~~and subject to subsection (d) of this section~~, the legislative body of any municipality may create within its jurisdiction, ~~a special district or districts~~

to be known as a tax increment financing ~~districts~~ district. ~~They shall describe the~~ The district shall be described by its boundaries and the properties therein and ~~shall show~~ the district boundary shall be shown on a plan entitled "Proposed Tax Increment Financing District (municipal name), Vermont." The legislative body shall hold one or more public hearings, after public notice, on the proposed plan.

(b) When adopted by the act of the legislative body of that municipality, the plan shall be recorded with the municipal clerk and lister or assessor, and the creation of the district shall occur at 12:01 a.m. on April 1 of the calendar year so voted by the municipal legislative body.

(c) A municipality that has approved the creation of a district under this section may designate a coordinating agency from outside the municipality's departments or offices to administer the district to ensure compliance with this subchapter and any statutory or other requirements and may claim this expense as a related cost. However, the coordinating agency shall not be authorized to enter into any agreement or make any covenant on behalf of the municipality.

(d) The following municipalities have been authorized to use education tax increment financing for a tax increment financing district, and the Vermont Economic Progress Council is not authorized to approve any additional tax increment financing districts even if one of the districts named in this subsection is terminated pursuant to subsection 1894(a) of this subchapter:

- (1) the City of Burlington, Downtown;
- (2) the City of Burlington, Waterfront;
- (3) the Town of Milton, North and South;
- (4) the City of Newport;
- (5) the City of Winooski;
- (6) the Town of Colchester;
- (7) the Town of Hartford;
- (8) the City of St. Albans; and
- (9) the City of Barre.

Sec. 4. 24 V.S.A. § 1894 is amended to read:

§ 1894. POWER AND LIFE OF DISTRICT

(a) Incurring indebtedness.

~~(1) A municipality may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to 20 years~~

~~following the creation of the district, if approved as required under 32 V.S.A. § 5404a(h). The creation of the district shall occur at 12:01 a.m. on April 1 of the year so voted. Any indebtedness incurred during this 20 year period may be retired over any period authorized by the legislative body of the municipality under section 1898 of this title.~~

~~(2) If no indebtedness is incurred within the first five years after creation of the district, no indebtedness may be incurred unless the municipality obtains reapproval from the Vermont economic progress council under 32 V.S.A. § 5404a(h). When considering reapproval, the Vermont economic progress council shall consider only material changes in the application under 32 V.S.A. § 5404a(h). The Vermont economic progress council shall presume that an applicant qualifies for reapproval upon a showing that the inability of the district to incur indebtedness was the result of the macro economic conditions in the first five years after the creation of the district. Upon reapproval, the Vermont economic progress council shall grant a five year extension of the period to incur indebtedness.~~

~~(3) The district shall continue until the date and hour the indebtedness is retired.~~

(1) A municipality approved under 32 V.S.A. § 5404a(h) may incur indebtedness against revenues of the tax increment financing district at any time during a period of up to ten years following the creation of the district. If no debt is incurred during this ten-year period, the district shall terminate.

(2) Any indebtedness incurred under subdivision (1) of this subsection may be retired over any period authorized by the legislative body of the municipality.

(3) If no indebtedness is incurred within the first ten years after the creation of the district, no indebtedness may be incurred against revenues of the tax increment financing district.

(4) The district shall continue until the date and hour the indebtedness is retired or, if no debt is incurred, ten years following the creation of the district.

(b) Use of the education property tax increment. For any only debt and related costs incurred within the first five ten years after creation of the district, or within the first five years after reapproval by the Vermont economic progress council, but for no other debt, up to 75 percent of the education tax increment may be retained for up to 20 years, beginning with the initial date of the first debt incurred within the first five years education tax increment generated the year in which the first debt incurred for improvements financed in whole or in part with incremental education property tax revenue. Upon incurring the first debt, a municipality shall notify the Department of Taxes

and the Vermont Economic Progress Council of the beginning of the 20-year retention period of education tax increment.

~~(c) Prior to requesting municipal approval to secure financing, the municipality shall provide the council with all information related to the proposed financing necessary for approval and to assure its consistency with the plan approved pursuant to 32 V.S.A. § 5404a(h). The council shall also assure the viability and reasonableness of any proposed financing other than bonding and least cost financing.~~ Use of the municipal property tax increment. For only debt and related costs incurred within the first ten years after creation of the district, not less than an equal share of the municipal tax increment pursuant to subsection (f) of this section shall be retained to service the debt, beginning the first year in which debt is incurred, pursuant to subsection (b) of this section.

(d) Approval of tax increment financing plan. The Vermont Economic Progress Council shall approve a municipality's tax increment financing plan prior to a public vote to pledge the credit of that municipality under subsection (h) of this section. The tax increment financing plan shall include all information related to the proposed financing necessary for approval by the Council and to assure its viability and consistency with the tax increment financing district plan approved by the Council pursuant to 32 V.S.A. § 5404a(h). The tax increment financing plan may be submitted to and approved by the Council concurrently with the tax increment financing district plan.

(e) Proportionality. The municipal legislative body may pledge and appropriate the state education and municipal tax increments received from properties contained within the tax increment financing district for the financing of improvements and for related costs only in the same proportion by which the improvement or related costs serve the district, as determined by the Council when approved in accordance with 32 V.S.A. § 5404a(h), and in the case of an improvement that does not reasonably lend itself to a proportionality formula, the Council shall apply a rough proportionality and rational nexus test.

(f) Equal share required. If any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(h), no more than 75 percent of the state property tax increment and no less than an equal percent of the municipal tax increment may be approved by the Council or used by the municipality to service this debt.

(g) Adjustment of percentage. During the tenth year following the creation of the tax increment financing district, the municipality shall submit an updated tax increment financing plan to the Council which shall include

adjustments and updates of appropriate data and information sufficient for the Council to determine, based on tax increment financing debt actually incurred and the history of increment generated during the first ten years, whether the percentages approved under subsection (f) of this section should be continued or adjusted to a lower percentage to be retained for the remaining duration of the retention period and still provide sufficient municipal and education increment to service the remaining debt.

(h) Vote required on each instance of debt. Notwithstanding any provision of any municipal charter, each instance of borrowing to finance or otherwise pay for tax increment financing district improvements shall occur only after the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, authorize the legislative body to pledge the credit of the municipality, borrow, or otherwise secure the debt for the specific purposes so warned; provided that each request to pledge the credit of the municipality for the purposes of financing tax increment financing district improvements shall include the new amount of debt proposed to be incurred and the total outstanding tax increment financing debt approved to date.

(i) Notice to voters. A municipal legislative body shall provide information to the public prior to the public vote required under subsection (h) of this section. This information shall include the amount and types of debt and related costs to be incurred, including principal, interest, and fees, terms of the debt, the improvements to be financed, the expected development to occur because of the improvements, and notice to the voters that if the tax increment received by the municipality from any property tax source is insufficient to pay the principal and interest on the debt in any year, for whatever reason, including a decrease in property value or repeal of a state property tax source, unless determined otherwise at the time of such repeal, the municipality shall remain liable for the full payment of the principal and interest for the term of indebtedness. If interfund loans within the municipality are used, the information must also include documentation of the terms and conditions of such loan. If interfund loans within the municipality are used as the method of financing, no interest shall be charged.

Sec. 5. 24 V.S.A. § 1895 is amended to read:

§ 1895. ORIGINAL TAXABLE VALUE

~~On or about 12:01 a.m., April 1, of the first year~~ As of the date the district is created, the lister or assessor for the municipality shall certify the assessed valuation of all taxable real property within the district as then most recently determined, which is referred to in this subchapter as the “original taxable value,” original taxable value and shall certify to the legislative body in each

year thereafter during the life of the district the amount by which the original taxable value has increased or decreased, and the proportion which any such increase bears to the total assessed valuation of the real property for that year or the proportion which any such decrease bears to the original taxable value.

Sec. 6. 24 V.S.A. § 1896 is amended to read:

§ 1896. TAX INCREMENTS

(a) In each ~~subsequent~~ year following the creation of the district, the listers or assessor shall include no more than the original taxable value of the real property in the assessed valuation upon which the listers or assessor computes the rates of all taxes levied by the municipality, the school district, and every other taxing district in which the tax increment financing district is situated; but the listers or assessor shall extend all rates so determined against the entire assessed valuation of real property for that year. In each year for which the assessed valuation exceeds the original taxable value, the municipality ~~treasurer~~ shall hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property in the district which the excess valuation bears to the total assessed valuation. The amount held apart each year is the "tax increment" for that year. ~~So much~~ No more than the percentages established pursuant to section 1894 of this subchapter of the municipal and state education tax increments received with respect to the district and pledged committed for the payment for financing for improvements and related costs shall be segregated by the municipality in a special tax increment financing account ~~on~~ and in its official books and records until all capital indebtedness of the district has been fully paid. The final payment shall be reported to the lister or assessor, who shall thereafter include the entire assessed valuation of the district in the assessed valuations upon which tax rates are computed and extended and taxes are remitted to all taxing districts.

(b) ~~Adjustment upon reappraisal. In the event of a reappraisal of 20 percent or more of all parcels in the municipality, the value of the original taxable property in the district shall be changed by a multiplier, the denominator of which is the municipality's education property grand list for the property within the district in the year prior to the reappraisal or partial reappraisal and the numerator of which shall be the municipality's reappraised or partially reappraised education property grand list for the property within the district. The state education property tax revenues for the district in the first year following a townwide reappraisal or partial town-wide reappraisal shall not be less than the dollar amount of the state education property tax revenues in the prior year. [Repealed.]~~

(c) Notwithstanding any charter provision or other provision, all property taxes assessed within a district shall be subject to the provision of subsection (a) of this section.

(d) Amounts held apart under subsection (a) of this section shall only be used for financing and related costs as defined in section 1891 of this subchapter.

Sec. 7. REPEAL

24 V.S.A. § 1897 (tax increment financing) is repealed.

Sec. 8. 24 V.S.A. § 1898 is amended to read:

§ 1898. POWERS SUPPLEMENTAL; CONSTRUCTION

(a) The powers conferred by this subchapter are supplemental and alternative to other powers conferred by law, and this subchapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth herein.

(b) A municipality shall have power to issue from time to time general obligation bonds, revenue bonds, or revenue bonds also backed by the municipality's full faith and credit in its discretion to finance the undertaking of any improvements wholly or partly within such district. If revenue bonds are issued, such bonds shall be made payable, as to both principal and interest, solely from the income proceeds, revenues, tax increments, and funds of the municipality derived from, or held in connection with its undertaking and carrying out of improvements under this chapter. ~~So long as any such bonds of a municipality are outstanding the local governing body may deduct, in any one or more years from any net increase in the aggregate taxable valuation of land and improvements in all areas covered by their district the amount necessary to produce tax revenues equal to the current debt service on such bonds, assuming the previous year's total tax rate and full collection. Only the balance, if any, of such net increase shall be taken into account in computing the sums which may be appropriated for other purposes under applicable tax rate limits. But all the taxable property in all areas covered by the district, including the whole of such net increase, shall be subject to the same total tax rate as other taxable property, except as may be otherwise provided by law. Such net increase shall be computed each year by subtracting, from the current aggregate valuation of the land and improvements in all areas covered by the district, the sum of the aggregate valuations of land and improvements in each such area on the date the district was approved under this section. An area shall be deemed to be covered as a district until the date all the indebtedness incurred by the municipality to finance the applicable improvements have been paid. Notwithstanding any provisions in this chapter to the contrary, any~~

~~provision of a municipal charter of any municipality which specifies a different debt limit, or which requires a greater vote to authorize bonds, or which prescribes a different computation of appropriations under tax rate limits, or which is otherwise inconsistent with this subsection, shall apply.~~

(c) Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose.

(d) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in registered form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium or payment, at such place or places, and be subject to such terms of redemption, such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

~~(e) Prior to the resolution or ordinance of the local governing body authorizing financing under this section, the legislative body of the municipality shall hold one or more public hearings, after public notice, on a financial plan for the proposed improvements and related costs to be funded, including a statement of costs and sources of revenue, the estimates of assessed values within the district, the portion of those assessed values to be applied to the proposed improvements, the resulting tax increments in each year of the financial plan, the amount of bonded indebtedness or other financing to be incurred, other sources of financing and anticipated revenues, and the duration of the financial plan. A municipality that has approved the creation of a district under this chapter may designate a coordinating agency to administer the district to ensure compliance with this chapter and any other statutory or other requirements. [Repealed.]~~

(f) Such bonds may be sold at not less than par at public or private sales held after notice published prior to such sale in a newspaper having a general circulation ~~in the area of operation and in such other medium of publication as the municipality may determine or may be on the basis of par in the~~ municipality.

(g) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(h) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an improvement, as herein defined, shall be conclusively deemed to have been issued for such purpose and such improvement shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this chapter.

(i) [Repealed.]

Sec. 9. 24 V.S.A. § 1900 is amended to read:

§ 1900. DISTRIBUTION

In addition to all other provisions of this ~~chapter~~ subchapter, with respect to any tax increment financing district, of the municipal and education tax increments received in any tax year that exceed the amounts ~~pledged~~ committed for the payment of the financing for improvements and related costs in the district, ~~an equal portion~~ portions of each increment may be ~~used for~~ retained for the following purposes: prepayment of principal and interest on the financing, ~~placed in escrow~~ placed in a special account required by section 1896 of this subchapter and used for future financing payment payments, or ~~otherwise~~ used for defeasance of the financing; ~~and any.~~ Any remaining portion of the excess municipal tax increment shall be distributed to the city, town, or village budget, in proportion that each budget bears to the combined total of the budgets unless otherwise negotiated by the city, town, or village; and any remaining portion of the excess education tax increment shall be distributed to the ~~education fund~~ Education Fund.

Sec. 10. 24 V.S.A. § 1901 is amended to read:

§ 1901. INFORMATION REPORTING

Every municipality with an active tax increment financing district shall:

(1) ~~On or before December 1 of each year, report to the Vermont economic progress council (VEPC) and the tax department all information described in 32 V.S.A. § 5404a(i), in the form prescribed by VEPC.~~

(2) ~~Report its tax increment financing actual investment, bond or other financing repayments, escrow status, and "related cost" accounting to the Vermont economic progress council according to the municipal audit cycle prescribed in section 1681 of this title. Develop a system, segregated for the tax increment financing district, to identify, collect, and maintain all data and information necessary to fulfill the reporting requirements of this section, including performance indicators.~~

(2) Throughout the year, as required by events:

(A) provide notification to the Vermont Economic Progress Council and the Department of Taxes regarding any tax increment financing debt obligations, public votes, or votes by the municipal legislative body immediately following such obligation or vote on a form prescribed by the Council, including copies of public notices, agendas, minutes, vote tally, and a copy of the information provided to the public in accordance with subsection 1894(i) of this subchapter;

(B) submit any proposed substantial changes to be made to the approved tax increment district plan and approved financing plan to the Council for review, only after receiving approval for the substantial change through a vote of the municipal legislative body;

(3) Annually:

(A) include in the municipal audit cycle prescribed in section 1681 of this title a report of finances of the tax increment financing district, including the original taxable value and annual and total municipal and education tax increments generated, annual and total expenditures on improvements and related costs, all indebtedness of the district, including the initial debt, interest rate, terms, and annual and total principal and interest payments, an accounting of revenue sources other than property tax revenue by type and dollar amount, and an accounting of the special account required by section 1896 of this subchapter, including revenue, expenditures for debt and related costs, and current balance;

(B) on or before January 15 of each year, on a form prescribed by the Council, submit an annual report to the Vermont Economic Progress Council and the Department of Taxes, including the information required by subdivision (2) of this section if not already submitted during the year, all information required by subdivision (A) of this subdivision (3), and the information required by 32 V.S.A. § 5404a(i), including performance indicators and any other information required by the Council or the Department of Taxes.

Sec. 11. 32 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

* * *

(10) “Nonresidential property” means all property except:

* * *

(E) ~~The excess valuation of property subject to tax increment financing in a tax increment financing district established under 24 V.S.A. chapter 53, subchapter 5 to the extent that the taxes generated on the excess property valuation are pledged and appropriated for interest and principal repayment on bonded debt or prefunding future~~ such excess valuation of property are committed under 24 V.S.A. § 1894 to finance tax increment financing district debt and to the extent approved for this purpose by the Vermont economic progress council upon application by the district under procedures established for approval of tax stabilization agreements under section 5404a of this title, and that any such action shall be included in the annual authorization limits provided in subdivision 5930a(d)(1) of this title; provided that any increment in excess of the amounts committed shall be distributed in accordance with 24 V.S.A. § 1900.

* * *

Sec. 12. 32 V.S.A. § 5404a(g) is amended to read:

(g) ~~Any utilization use of education property tax increment approved under subsection (f) of this section shall be in addition to any other payments to the municipality under 16 V.S.A. chapter 133. Tax increment utilizations approved pursuant to subsection (f) of this section shall affect the education property tax grand list and the municipal grand list of the municipality under this chapter beginning April 1 of the year following approval and shall remain available to the municipality for the full period authorized under 24 V.S.A. § 1894, and shall be restricted only to the extent that the real property development giving rise to the increased value to the grand list fails to occur within the authorized period or by the enforcement provided by subsection (j) of this section.~~

Sec. 13. 32 V.S.A. § 5404a(i) is amended to read:

(i) ~~The Vermont economic progress council~~ Economic Progress Council and the ~~department of taxes~~ Department of Taxes shall make an annual report to the ~~senate committee on economic development, housing and general affairs, the senate committee on finance, the house committee on commerce and the house committee on ways~~ Senate Committees on Economic Development, Housing and General Affairs and on Finance and the House Committees on Commerce and Economic Development and on Ways and Means of the ~~general assembly~~ General Assembly on or before ~~January 15~~ April 1. The report shall include, in regard to each existing tax increment financing district, the ~~year of approval, the scope of the planned improvements and development, the equalized education grand list value of the district prior to the TIF approval, the original taxable property, the tax increment, and the annual amount of tax increments utilized~~ date of creation, a profile of the district, a map of the district, the original taxable value, the scope and value of

projected and actual improvements and developments, projected and actual incremental revenue amounts and division of the increment revenue between district debt, the Education Fund, the special account required by 24 V.S.A. § 1896 and the municipal general fund, projected and actual financing, and a set of performance indicators developed by the Vermont Economic Progress Council, which shall include the number of jobs created in the district, what sectors experienced job growth, and the amount of infrastructure work performed by Vermont firms.

Sec. 14. 32 V.S.A. § 5404a(j) is amended to read:

~~(j) The municipality shall provide the council with all information related to the proposed financing necessary to assure its consistency with the plan approved pursuant to all other provisions of subsection (h) of this section. The council shall assure the viability and reasonableness of any proposed financing other than bonding and least-cost financing.~~ Tax increment financing district rulemaking, oversight, and enforcement.

(1) Authority to adopt rules. The Vermont Economic Progress Council is hereby granted authority to adopt rules in accordance with 3 V.S.A. chapter 25 for the purpose of providing clarification and detail for administering the provisions of 24 V.S.A. chapter 53, subchapter 5 and the tax increment financing district provisions of this section. A single rule shall be adopted for all tax increment financing districts that will provide further clarification for statutory construction and include a process whereby a municipality may distribute excess increment to the Education Fund as allowed under 24 V.S.A. § 1900. From the date the rules are adopted, the municipalities with districts in existence prior to 2006 are required to abide by the governing rule and any other provisions of the law in force; provided, however, that the rule shall indicate which specific provisions are not applicable to those districts in existence prior to January 2006.

(2) Authority to issue decisions.

(A) The Secretary of Commerce and Community Development, after reasonable notice to a municipality and an opportunity for a hearing, is authorized to issue decisions to a municipality regarding questions and inquiries about the administration of tax increment financing districts, statutes, rules, noncompliance with 24 V.S.A. chapter 53, subchapter 5, and any instances of noncompliance identified in audit reports conducted pursuant to subsection (1) of this section.

(B) The Vermont Economic Progress Council shall prepare recommendations for the Secretary prior to the issuance of a decision. As appropriate, the Council may prepare such recommendations in consultation with the Commissioner of Taxes, the Attorney General, and the State

Treasurer. In preparing recommendations, the Council shall provide a municipality with a reasonable opportunity to submit written information in support of its position. The Secretary shall review the recommendations of the Council and issue a final decision on each matter within 60 days of the recommendation. However, pursuant to subdivision (5) of this subsection (j), the Secretary may permit an appeal to be taken by any party to a Superior Court for determination of questions of law in the same manner as the Supreme Court may by rule provide for appeals before final judgment from a Superior Court before issuing a final decision.

(3) Remedy for noncompliance. If the Secretary issues a decision under subdivision (2) of this subsection that includes a finding of noncompliance and that noncompliance has resulted in the improper reduction in the amount due the Education Fund, the Secretary, unless and until he or she is satisfied that there is no longer any such failure to comply, shall request that the State Treasurer bill the municipality for the total identified underpayment. The amount of the underpayment shall be due from the municipality upon receipt of the bill. If the municipality does not pay the underpayment amount within 60 days, the amount may be withheld from any funds otherwise payable by the State to the municipality or a school district in the municipality or of which the municipality is a member.

(4) In lieu of or in addition to any action authorized in subdivision (3) of this subsection, the Secretary of Commerce and Community Development or the State Treasurer may refer the matter to the Office of the Attorney General with a recommendation that an appropriate civil action be initiated.

(5) A municipality that is aggrieved by the final determination or decision of the Secretary of Commerce and Community Development may appeal to a Superior Court under Rule 74 of the Vermont Rules of Civil Procedure for a review on the record. However, the Secretary, before final determination or decision, may permit an appeal to be taken by any party to a Superior Court for determination of questions of law in the same manner as the Supreme Court may by rule provide for appeals before final judgment from a Superior Court. Notwithstanding the provisions of the Vermont Rules of Civil Procedure or the Vermont Rules of Appellate Procedure, neither the time for filing a notice of appeal nor the filing of a notice of appeal, as provided in this section, shall operate as a stay of enforcement of a determination or decision of the Secretary unless the Secretary or a superior court grants a stay.

Sec. 15. 32 V.S.A. § 5404a(k) is amended to read:

(k) The Vermont ~~economic incentive review board~~ Economic Progress Council may require a third-party financial and technical analysis as part of the application of a municipality applying for approval of a tax increment

financing district pursuant to this section. The applicant municipality shall pay a fee to cover the actual cost of the analysis to be deposited in a special fund which shall be managed pursuant to subchapter 5 of chapter 7 of this title and be available to the ~~board~~ Council to pay the actual cost of the analysis.

Sec. 16. 32 V.S.A. § 5404a(1) is amended to read:

~~(1) The state auditor of accounts~~ State Auditor of Accounts shall ~~review and conduct an audit~~ performance audits of all ~~active~~ tax increment financing districts ~~every four years and bill back to the municipality the charge for the audit. The amount paid by the municipality for the audit shall be considered a "related cost" as defined in 24 V.S.A. § 1891(6). Any audit conducted by the state auditor of accounts under this subsection shall include a validation of the portion of the tax increment retained by the municipality and the portion directed to the education fund according to a schedule, which will be arrived at in consultation with the Vermont Economic Progress Council. The cost of conducting each audit shall be considered a "related cost" as defined in 24 V.S.A. § 1891(6) and shall be billed back to the municipality. Audits conducted pursuant to this subsection shall include a review of a municipality's adherence to relevant statutes and rules adopted by the Vermont Economic Progress Council pursuant to subsection (j) of this section, an assessment of record keeping related to revenues and expenditures, and a validation of the portion of the tax increment retained by the municipality and used for debt repayment and the portion directed to the Education Fund.~~

(1) For municipalities with a district created prior to January 1, 2006 and a debt repayment schedule that anticipates retention of education increment beyond fiscal year 2016, an audit shall be conducted when approximately three-quarters of the period for retention of education increment has elapsed, and at the end of that same period, an audit shall be conducted for the final one-quarter period for retention of education increment.

(2) For municipalities with a district created after January 1, 2006 and approved by the Vermont Economic Progress Council, an audit shall be conducted at the end of the 10-year period in which debt can be incurred and again approximately halfway through the 20-year period for retention of education increment; provided, however, that an audit shall occur no more than one time in a five-year period. A final audit will be conducted at the end of the period for retention of education increment.

Sec. 17. TAX INCREMENT FINANCING DISTRICT APPROVAL; CITY OF SOUTH BURLINGTON

Notwithstanding 24 V.S.A. § 1892(d) and any other provision of law, the Vermont Economic Progress Council is authorized to approve a tax increment

financing district in the City of South Burlington if approval is granted by December 31, 2013.

Sec. 18. BURLINGTON WATERFRONT TIF

The authority of the City of Burlington to incur indebtedness for its waterfront tax increment financing district is hereby extended for five years beginning January 1, 2015. This extension does not extend any period that municipal or education tax increment may be retained.

Sec. 19. 3 V.S.A. § 816(a) is amended to read:

(a) Sections 809–813 of this title shall not apply to:

* * *

(4) Acts, decisions, findings, or determinations by the Vermont Economic Progress Council of the Agency of Commerce and Community Development or the Secretary of Commerce and Community Development or his or her, its, or their duly authorized agents as to any and all procedures or hearings before and by the Vermont Economic Progress Council, the Agency, or their designees arising out of or with respect to 24 V.S.A. chapter 53, subchapter 5 and 32 V.S.A. chapter 135.

Sec. 20. 2011 AND 2012 AUDITOR'S REPORTS; PAYMENT

The State Treasurer is authorized to bill an audited municipality in an amount not to exceed \$15,000.00 to offset costs associated with conducting the 2011 and 2012 audits of tax increment financing districts. A municipality shall remit payment to the Treasurer no more than 60 days after receiving the bill. The Treasurer shall distribute any amounts collected from a municipality to the State Auditor of Accounts.

Sec. 21. REPEAL

Pursuant to Sec. 17 of this act, the 2006 Acts and Resolves No. 184, Sec. 2i, as amended by 2008 Acts and Resolves No. 190, Sec. 67 (tax increment financing districts, cap), is repealed to clarify that the Vermont Economic Progress Council shall not approve any additional tax increment financing districts.

Sec. 22. EFFECTIVE DATES

(a) Secs. 1, 6(b), 10, 13–21, and this section shall take effect on passage. Sec. 6(b) (repeal of adjustment upon reappraisal) shall be effective retroactive to July 2006.

(b) Secs. 2 through 9 (except Sec. 6(b)), 11, and 12 (clarification of ambiguous statutes) of this act shall apply to any tax increment retained for all taxes assessed on the April 1, 2013 grand list.

(c) Sec. 6(c) (creation of taxes for special purposes) shall take effect on July 1, 2013.

And that after passage the title of the bill be amended to read:

An act relating to tax increment financing districts.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

**House Proposal of Amendment Not Concurred In; Committee of
Conference Requested**

S. 1.

House proposal of amendment to Senate bill entitled:

An act relating to consideration of financial cost of criminal sentencing options.

Was taken up.

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

Sec. 1. CRIMINAL JUSTICE CONSENSUS COST-BENEFIT WORKING GROUP

(a)(1) A Criminal Justice Consensus Cost-Benefit Working Group is established to develop collaboratively a criminal and juvenile justice cost-benefit model for Vermont for the purpose of providing policymakers with the information necessary to weigh the pros and cons of various strategies and programs, and enable them to identify options that are not only cost-effective, but also have the greatest net social benefit. The model will be used to estimate the costs related to the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants, and victimization of citizens by defendants.

(2) The Working Group shall:

(A) develop estimates of costs associated with the arrest, prosecution, defense, adjudication, and correction of criminal and juvenile defendants in Vermont by using the cost-benefit methodology developed by the Washington State Institute for Public Policy and currently used collaboratively by the Joint Fiscal Office and the PEW Charitable Trust for the Vermont Results First Project;

(B) estimate costs incurred by citizens who are the victims of crime by using data from the Vermont Center of Crime Victim Services, supplemented where necessary with national survey data;

(C) assess the quality of justice data collection systems and make recommendations for improved data integration, data capture, and data quality as appropriate;

(D) develop a throughput model of the Vermont criminal and juvenile justice systems which will serve as the basic matrix for calculating the cost and benefit of Vermont justice system programs and policies;

(E) investigate the need for and most appropriate entity within state government to be responsible for:

(i) revising the statewide cost benefit model in light of legislative or policy changes, or both, in the criminal or juvenile justice systems;

(ii) updating cost estimates; and

(iii) updating throughput data for the model.

(3) The Working Group shall be convened and staffed by the Vermont Center for Justice Research.

(4) The costs associated with staffing the Working Group shall be underwritten through December 31, 2013 by funding previously obtained by the Vermont Center for Justice Research from the Bureau of Justice Statistics, U.S. Department of Justice.

(b) The Working Group shall be composed of the following members:

(1) the Administrative Judge or designee;

(2) the Chief Legislative Fiscal Officer or designee;

(3) the Attorney General or designee;

(4) the Commissioner of Corrections or designee;

(5) the Commissioner for Children and Families or designee;

(6) the Executive Director of State's Attorneys and Sheriffs or designee;

(7) the Defender General or designee;

(8) the Commissioner of Public Safety or designee;

(9) the Director of the Vermont Center for Crime Victim Services or designee;

(10) the President of the Chiefs of Police Association of Vermont or designee;

(11) the President of the Vermont Sheriffs' Association or designee; and

(12) the Director of the Vermont Center for Justice Research.

(c) On or before November 15, 2013, the Working Group shall report its preliminary findings to the Senate Committee on Judiciary, the House Committee on Judiciary, and the House Committee on Corrections and Institutions. The Working Group shall issue a final report to the General Assembly on or before January 1, 2014.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Sears, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Concurred In

S. 151.

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous changes to the laws governing commercial motor vehicle licensing and operation.

Was taken up.

The House proposes to the Senate to amend the bill by inserting a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 23 V.S.A. § 102(d) is amended to read:

(d) The ~~commissioner~~ Commissioner may authorize background investigations for potential employees that may include criminal, traffic, and financial records checks; provided, however, that the potential employee is notified and has the right to withdraw his or her name from application. Additionally, employees who are ~~authorized to manufacture or produce~~ involved in the manufacturing or production of operators' licenses and identification cards, including enhanced licenses, or who have the ability to affect the identity information that appears on a license or identification card, or current employees who will be assigned to such positions, shall be subject to appropriate background checks and shall be provided notice of the background check and the contents of that check. These background checks will include a name-based and fingerprint-based criminal history records check using at a minimum the Federal Bureau of Investigation's National Crime Information Center and the Integrated Automated Fingerprint Identification database and state repository records on each covered employee. Employees may be subject

to ~~further~~ appropriate security ~~clearance~~ clearances if required by federal law, including background investigations that may include criminal and traffic records checks, and providing proof of United States citizenship. The ~~commissioner~~ Commissioner may, in connection with a formal disciplinary investigation, authorize a criminal or traffic record background investigation of a current employee; provided, however, that the background review is relevant to the issue under disciplinary investigation. Information acquired through the investigation shall be provided to the ~~commissioner~~ Commissioner or designated division director, and must be maintained in a secure manner. If the information acquired is used as a basis for any disciplinary action, it must be given to the employee during any pretermination hearing or contractual grievance hearing to allow the employee an opportunity to respond to or dispute the information. If no disciplinary action is taken against the employee, the information acquired through the background check shall be destroyed.

And by renumbering the remaining section to be numerically correct.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 161.

House proposal of amendment to Senate bill entitled:

An act relating to mitigation of traffic fines and approval of a DLS Diversion Program contract.

Was taken up.

The House proposes to the Senate to amend the bill by inserting a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. 2012 Acts and Resolves No. 147, Sec. 2(d) is amended to read:

(d) A person with ~~fewer than five~~ violations of 23 V.S.A. § 676 may apply to the DLS ~~diversion program~~ Diversion Program. Upon receipt of an application and determination of eligibility, the ~~diversion program~~ Diversion Program shall send the person a notice to report to the ~~diversion program~~ Diversion Program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Proposal of Amendment; Consideration Interrupted by Recess**H. 528.**

Senator Ashe, for the Committee on Finance, to which was referred House bill entitled:

An act relating to revenue changes for fiscal year 2014 and fiscal year 2015.

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

* * * Spirituous Liquor * * *

Sec. 1. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax is assessed on the gross revenue on the retail sale of spirituous liquor in the ~~state~~ State of Vermont, including fortified wine, sold by the ~~liquor control board~~ Liquor Control Board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the ~~previous~~ current year:

(1) if the gross revenue of the seller is ~~\$100,000.00~~ \$150,000.00 or lower, the rate of tax is five percent;

(2) if the gross revenue of the seller is between ~~\$100,000.00~~ \$150,000.00 and ~~\$200,000.00~~ \$250,000.00, the rate of tax is ~~\$15,000.00~~ \$7,500.00 plus 15 percent of gross revenues over ~~\$100,000.00~~ \$150,000.00;

(3) if the gross revenue of the seller is over ~~\$200,000.00~~ \$250,000.00, the rate of tax is 25 percent.

* * * Health Care/Employer Assessment * * *

Sec. 2. 21 V.S.A. § 2002 is amended to read:

§ 2002. DEFINITIONS

~~For the purposes of~~ As used in this chapter:

* * *

(5) "Uncovered employee" means:

(A) an employee of an employer who does not offer to pay any part of the cost of health care coverage for its employees;

(B) an employee who is not eligible for health care coverage offered by an employer to any other employees; or

(C) an employee who is offered and is eligible for coverage by the employer but elects not to accept the coverage and either:

(i) has no other health care coverage under either a private or public plan; or

(ii) has health insurance coverage purchased through the Vermont Health Benefit Exchange.

* * *

Sec. 3. 21 V.S.A. § 2003 is amended to read:

§ 2003. HEALTH CARE FUND CONTRIBUTION ASSESSMENT

* * *

(b) For any quarter in fiscal years 2007 and 2008, the amount of the ~~health care fund~~ Health Care Fund contribution shall be \$ 91.25 for each full-time equivalent employee in excess of eight. For each fiscal year after fiscal year 2008, the number of excluded full-time equivalent employees shall be adjusted in accordance with subsection (a) of this section, and the amount of the ~~health care fund~~ Health Care Fund contribution shall be adjusted by a percentage equal to any percentage change in premiums for ~~Catamount Health~~ for that fiscal year; provided, however, that to the extent that Catamount Health premiums decrease due to changes in benefit design or deductible amounts, the health care fund contribution shall not be decreased by the percentage change attributable to such benefit design or deductible changes the second lowest cost silver-level plan in the Vermont Health Benefit Exchange.

* * *

(d) Revenues from the ~~health care fund~~ Health Care Fund contributions collected shall be deposited into the state ~~health care resources fund~~ Health Care Resources Fund established under 33 V.S.A. § 1901d for the purpose of financing health care coverage under Catamount Health assistance, as provided under 33 V.S.A. chapter 19, subchapter 3a.

Sec. 4. 33 V.S.A. § 1812 is added to read:

§ 1812. EXCHANGE PLAN SURCHARGE

(a) In the event that the revenue projected to be generated by the Employers' Health Care Fund Contribution assessment pursuant to 21 V.S.A. chapter 25 for a given year is insufficient to cover the net operating costs of the Exchange for the same year, the premium for each health benefit plan issued through the Exchange for that year shall include a monthly surcharge to finance the remaining costs associated with the operation of the Exchange.

(b) On or before September 1 of each year, the Department of Vermont Health Access shall project the net operating costs of the Exchange for the following calendar year. On or before the same date, the Department of Vermont Health Access shall, in consultation with the Department of Labor and the Legislative Joint Fiscal Office, project the amount of revenue to be generated by the Health Care Fund Contribution assessment in the following fiscal year. If the projected costs of the Exchange exceed the projected revenue from the assessment, the Department of Vermont Health Access shall, in consultation with the Legislative Joint Fiscal Office, calculate the estimated amount of the shortfall and the amount of the per-member per-month surcharge to be applied to the premium for all plans offered through the Exchange to make up the difference.

(c) The Exchange shall impose and collect the surcharge applied pursuant to this section from purchasers of Exchange plans as part of its monthly or other regular billing process. The Commissioner of Vermont Health Access or designee shall deposit the funds collected pursuant to this section in the State Health Care Resources Fund established by section 1901d of this title.

(d) The Exchange website shall clearly indicate the dollar amount of the premium for each health benefit plan offered through the Exchange that is attributable to a surcharge established by this section.

* * * Local Option Taxes * * *

Sec. 5. 24 V.S.A. § 138(a) is amended to read:

(a) Local option taxes are authorized under this section for the purpose of affording municipalities ~~an alternative a~~ method of raising municipal revenues ~~to facilitate the transition and reduce the dislocations in those municipalities that may be caused by reforms to the method of financing public education under the Equal Educational Opportunity Act of 1997.~~ Accordingly:

~~(1) the local option taxes authorized under this section may be imposed by a municipality;~~

~~(2) a municipality opting to impose a local option tax may do so prior to July 1, 1998 to be effective beginning January 1, 1999, and anytime after December 1, 1998 a local option tax shall be effective beginning on the next tax quarter following 90 days' notice to the department of taxes of the imposition; and~~

~~(3) a local option tax may only be adopted by a municipality in which:~~

~~(A) the education property tax rate in 1997 was less than \$1.10 per \$100.00 of equalized education property value; or~~

~~(B) the equalized grand list value of personal property, business machinery, inventory, and equipment is at least ten percent of the equalized education grand list as reported in the 1998 Annual Report of the Division of Property Valuation and Review; or~~

~~(C) the combined education tax rate of the municipality will increase by 20 percent or more in fiscal year 1999 or in fiscal year 2000 over the rate of the combined education property tax in the previous fiscal year. A local option tax shall be effective beginning on the next tax quarter following 90 days' notice to the Department of Taxes of the imposition.~~

* * * Tax Expenditures * * *

Sec. 6. 32 V.S.A. § 312(d) is added to read:

(d) Every tax expenditure in the tax expenditure report required by this section shall be accompanied in statute by a statutory purpose explaining the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. The statutory purpose shall appear as a separate subsection or subdivision in statute and shall bear the title "Statutory Purpose." Notwithstanding any other provision of law, a tax expenditure listed in the tax expenditure report that lacks a statutory purpose in statute shall not be implemented or enforced until a statutory purpose is provided.

Sec. 7. TAX EXPENDITURE PURPOSES

The Joint Fiscal Committee shall draft a statutory purpose for each tax expenditure in the report required by 32 V.S.A. § 312 that explains the policy goal behind the exemption, exclusion, deduction, or credit applicable to the tax. For the purpose of this report, the Committee shall have the assistance of the Department of Taxes, the Joint Fiscal Office, and the Office of Legislative Council. The Committee shall report its findings and recommendations to the Senate Committee on Finance and the House Committee on Ways and Means by January 15, 2014. The report of the Committee shall consist of a written catalogue for Vermont's tax expenditures and draft legislation, in bill form, providing a statutory purpose for each tax expenditure.

* * * Joint Fiscal Office * * *

Sec. 8. 32 V.S.A. § 3102(l) is added to read:

(l) The Commissioner shall provide the Joint Fiscal Office with state return and return information necessary for the Joint Fiscal Office or its agents to perform its duties, including conducting their own statistical studies, forecasts, and fiscal analysis.

* * * Property Taxes * * *

Sec. 9. 32 V.S.A. § 3802(18) is added to read:

(18) Any parcel of land that provides public access to public waters, as defined in 10 V.S.A. § 1422(6), and that is also:

(A) owned by the Town of Hardwick, and located in Greensboro, Vermont, or

(B) owned by the Town of Thetford, and located in Fairlee, Vermont, and West Fairlee, Vermont.

Sec. 10. 32 V.S.A. § 3802a is added to read:

§ 3802a. REQUIREMENT TO PROVIDE INSURANCE INFORMATION

Before April 1 of each year, owners of property exempt from taxation under subdivisions 3802(4)–(6), (9), and (12)–(15) and under subdivisions 5401(10)(D), (F), (G), and (J) of this title shall provide their local assessing officials with information regarding the insurance replacement cost of the exempt property or with a written explanation of why the property is not insured. There is a rebuttable presumption that the insurance replacement value is the value that should be entered in the grand list under subdivision 4152(a)(6) of this title.

Sec. 11. STUDY COMMITTEE ON CERTAIN PROPERTY TAX EXEMPTIONS

(a) Creation of committee. There is created a Property Tax Exemption Study Committee to study issues related to properties that fall within the public, pious, and charitable property tax exemption in 32 V.S.A. § 3802(4). The Committee shall study and make recommendations related to the definition, listing, valuation, and tax treatment of properties within this exemption.

(b) Membership. The Property Tax Exemption Study Committee shall be composed of seven members. Four members of the Committee shall be members of the General Assembly. The Committee on Committees of the Senate shall appoint two members of the Senate, not from the same political party, and the Speaker of the House shall appoint two members of the House, not from the same political party. The Chair and Vice Chair of the Committee shall be legislative members selected by all members of the Committee. Three members of the Committee shall be as follows:

- (1) the Director of the Division of Property Valuation and Review;
- (2) one member from Vermont's League of Cities and Towns, chosen by its board of directors; and

(3) one member of the Vermont Assessors and Listers Association, chosen by its board of directors.

(c) Powers and duties.

(1) The Committee shall study the definition, listing practices, valuation, and tax treatment of properties within the public, pious, and charitable exemption, including the following:

(A) ways to clarify the definitions of properties that fall within this exemption, including recreational facilities, educational facilities, and publically owned land and facilities;

(B) guidelines to ensure a uniform listing practice of public, pious, and charitable properties in different municipalities;

(C) methods of providing a valuation for properties within this exemption; and

(D) whether the policy justification for these exemptions continues to be warranted and whether a different system of taxation or exemption of these properties may be more appropriate.

(2) For purposes of its study of these issues, the Committee shall have the assistance of the Joint Fiscal Office, the Office of Legislative Council, and the Department of Taxes.

(d) Report. By January 15, 2014, the Committee shall report to the Senate Committee on Finance and the House Committee on Ways and Means its findings and any recommendations for legislative action.

(e) Number of meetings; term of Committee. The Committee may meet no more than six times, and shall cease to exist on January 16, 2014.

Sec. 12. 2008 Acts and Resolves No. 190, Sec. 40, as amended by 2010 Acts and Resolves No. 160, Sec. 22, as amended by 2011 Acts and Resolves No. 45, Sec. 13f, is further amended to read:

Sec. 40. ~~EDUCATION PROPERTY TAX EXEMPTION FOR SKATING RINKS~~ SKATING RINKS USED FOR PUBLIC SCHOOLS

Real and personal property operated as a skating rink, owned and operated on a nonprofit basis but not necessarily by the same entity, and which, in the most recent calendar year, provided facilities to local public schools for a sport officially recognized by the Vermont Principals' Association shall be exempt from 50 percent of the education property taxes for fiscal ~~year 2012~~ years 2013 and 2014 only.

Sec. 13. 32 V.S.A. § 3850 is added to read:

§ 3850. BLIGHTED PROPERTY IMPROVEMENT PROGRAM

(a) At an annual or special meeting, a municipality may vote to authorize the legislative body of the municipality to exempt from municipal taxes for a period not to exceed five years the value of improvements made to dwelling units certified as blighted. As used in this section, "dwelling unit" means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(b) If a municipality votes to approve the exemption described in subsection (a) of this section, the legislative body of the municipality shall appoint an independent review committee that is authorized to certify dwelling units in the municipality as blighted and exempt the value of improvements made to these dwelling units.

(c) As used in this section, a dwelling unit may be certified as blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

(d) If a dwelling unit is certified as blighted under subsection (b) of this section, the exemption shall take effect on the April 1 following the certification of the dwelling unit.

Sec. 14. 32 V.S.A. § 5410a(i) is amended to read:

(i) An owner filing a new or corrected declaration, or rescinding an erroneous declaration, after ~~September 1~~ October 15 shall not be entitled to a refund resulting from the correct property classification; and any additional property tax and interest which would result from the correct classification shall not be assessed as tax and interest, but shall instead constitute an additional penalty, to be assessed and collected in the same manner as penalties under subsection (g) of this section. Any change in property classification under this subsection shall not be entered on the grand list.

* * * Income Taxes * * *

Sec. 15. 32 V.S.A. § 5811(21) is amended to read:

(21) "Taxable income" means federal taxable income determined without regard to ~~Section 168(k) of the Internal Revenue Code~~ 26 U.S.C. § 168(k) and:

(A) Increased by the following items of income (to the extent such income is excluded from federal adjusted gross income):

(i) interest income from non-Vermont state and local obligations;

(ii) dividends or other distributions from any fund to the extent they are attributable to non-Vermont state or local obligations; ~~and~~

(iii) the amount in excess of \$5,000.00 of state and local income taxes deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; ~~and~~

(iv) the amount in excess of \$12,000.00 of home mortgage interest deducted from federal adjusted gross income for the taxable year, but in no case in an amount that will reduce total itemized deductions below the standard deduction allowable to the taxpayer; and

* * *

Sec. 16. 32 V.S.A. § 5822(a)(6) is added to read

(6) If the federal adjusted gross income of the taxpayer exceeds \$125,000.00, then the tax calculated under this subsection shall be the greater of the tax calculated under subdivisions (1)–(5) of this subsection or three percent of the taxpayer’s federal adjusted gross income.

Sec. 17. 32 V.S.A. § 5825a(a) is amended to read:

(a) A taxpayer of this ~~state~~ State with taxable income of less than \$150,000.00, including each spouse filing a joint return, shall be eligible for a nonrefundable credit against the tax imposed under section 5822 of this title of 10 percent of the first \$2,500.00 per beneficiary, contributed by the taxpayer during the taxable year to a Vermont higher education investment plan account under 16 V.S.A. chapter 87, subchapter 7 ~~of chapter 87 of Title 16.~~

* * * Estate Taxes * * *

Sec. 18. 32 V.S.A. § 7402(14) is amended to read:

(14) “Vermont taxable estate” means ~~the value of the Vermont gross estate, reduced by the proportion of the deductions and exemptions from the value of the federal gross estate allowable under the laws of the United States, which the value of the Vermont gross estate bears to the value of the federal gross estate~~ federal taxable estate plus the federal taxable gifts of the decedent with no deduction under 26 U.S.C. § 2058.

Sec. 19. 32 V.S.A. § 7442a is amended to read:

§ 7442a. IMPOSITION OF A VERMONT ESTATE TAX AND RATE OF TAX

(a) A tax is hereby imposed on the transfer of the Vermont estate of every decedent dying on or after January 1, 2002, who, at the time of death, was a resident of this state. The base amount of this tax shall be ~~a sum equal to the~~

~~amount of the credit for state death taxes allowable to a decedent's estate under Section 2011 of the Internal Revenue Code as in effect on January 1, 2001, calculated as follows:~~

(1) there shall be no tax owed for Vermont taxable estates with a value of \$2,750,000.00 or less;

(2) for estates with a Vermont taxable estate value of over \$2,750,000.00 but equal to or less than the annual indexed basic exclusion amount under 26 U.S.C. § 2010(c)(3), the rate of tax shall be 10 percent of the Vermont taxable estate over \$2,750,000.00; and

(3) for estates with a Vermont taxable estate value greater than the annual indexed basic exclusion amount under 26 U.S.C. § 2010(c)(3), the tax shall be the tax calculated under subdivision (2) of this subsection, plus 16 percent of the Vermont taxable estate over the annual indexed amount of the federal applicable exclusion.

(b) This ~~This~~ The base amount calculated under subsection (a) of this section shall be reduced by the lesser of the following:

(1) The ~~the~~ total amount of all constitutionally valid state death taxes actually paid to other states; or

(2) A ~~a~~ sum equal to the proportion of the ~~credit~~ base amount in subsection (a) which the value of the property taxed by other states bears to the value of the decedent's total gross estate for federal estate tax purposes.

~~(b)(c)~~ (c) A tax is hereby imposed on the transfer of the ~~Vermont estate~~ Vermont real and tangible personal property within the State of every decedent dying on or after January 1, 2002, who, at the time of death, was not a resident of this ~~state~~ State. The amount of this tax shall be a sum equal to the proportion of the base amount of tax under ~~subsection (a)~~ subsections (a) and (b) of this section which the value of Vermont real and tangible personal property taxed in this ~~state~~ State bears to the value of the decedent's total gross estate for federal estate tax purposes.

~~(e) The Vermont estate tax shall not exceed the amount of the tax imposed by 26 U.S.C. § 2001 calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were \$2,750,000.00, and with no deduction under 26 U.S.C. § 2058.~~

(d) All values shall be as finally determined for federal estate tax purposes.

Sec. 20. 32 V.S.A. § 7475 is amended to read:

§ 7475. ADOPTION OF FEDERAL ESTATE AND GIFT TAX LAWS

The laws of the United States, relating to federal estate and gift taxes as in effect on ~~December 31, 2011~~ December 31, 2012, are hereby adopted for the purpose of computing the tax liability under this chapter, ~~except:~~

~~(1) the credit for state death taxes shall remain as provided for under 26 U.S.C. §§ 2011 and 2604 as in effect on January 1, 2001;~~

~~(2) the applicable credit amount under 26 U.S.C. § 2010 shall not apply; and the tax imposed under section 7442a of this chapter shall be calculated as if the applicable exclusion amount under 26 U.S.C. § 2010 were \$2,750,000.00; and~~

~~(3) the deduction for state death taxes under 26 U.S.C. § 2058 shall not apply except that elections under 26 U.S.C. § 2056(b)(7) and under 26 U.S.C. § 2056A(a)(3) may be made for state estate tax purposes only if such an election is not made for federal estate tax purposes. The value of the Vermont estate shall include the value of any property in which the decedent had a qualifying income interest for life for which an election was made under this section.~~

* * * Uniform Capacity Tax * * *

Sec. 21. 32 V.S.A. § 8701(d) is added to read:

(d) The existence of a renewable energy plant subject to tax under subsection (b) of this section shall not alter the exempt status of any underlying property under 32 V.S.A. § 3802 or 5401(10)(F).

* * * Sales and Use Taxes * * *

Sec. 22. 32 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

* * *

(31) Food and food ingredients: means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages ~~or~~, tobacco, or bottled water.

* * *

(48)(A) “Bottled water” means water that is placed in a safety-sealed container or package for human consumption. Bottled water is calorie-free and does not contain sweeteners or other additives except that it may contain:

- (i) antimicrobial agents;
- (ii) fluoride;
- (iii) carbonation;
- (iv) vitamins, minerals, and electrolytes;
- (v) oxygen;
- (vi) preservatives; and
- (vii) only those flavors, extracts, or essences derived from a spice or fruit.

(B) "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

Sec. 23. 32 V.S.A. § 9741(13) is amended to read:

(13) Sales of food, food stamps, purchases made with food stamps, food products and beverages, food and food ingredients sold for human consumption off the premises where sold and sales of eligible foods that are purchased with benefits under the Supplemental Nutrition Assistance Program or any successor program. When a purchase is made with a combination of benefits under the Supplemental Nutrition Assistance Program or any successor program and cash, check, or similar payment, the cash, check, or similar payment must be applied first to food and food ingredients exempt under this subdivision.

* * * Satellite Programming Tax * * *

Sec. 24. 32 V.S.A. chapter 242 is added to read:

CHAPTER 242. TAX ON SATELLITE TELEVISION PROGRAMMING
§ 10401. DEFINITIONS

As used in this chapter:

- (1) "Commissioner" means the Commissioner of Taxes.
- (2) "Distributor" means any person engaged in the business of making satellite programming available for purchase by subscribers.
- (3) "Satellite programming" means radio and television audio and video programming services where the programming is distributed or broadcast by satellite directly to the subscriber's receiving equipment located at an end user subscribers' or end user customers' premises.
- (4) "Subscriber" means a person who purchases programming taxable under this chapter.

§ 10402. TAX IMPOSED

(a) There is imposed a tax on provision of satellite programming to a subscriber located in this State. The tax shall be at the rate of three percent of all gross receipts derived by the distributor from the provision of satellite programming in this State.

(b) The tax together with a return in a form prescribed by the Commissioner shall be paid to the Commissioner quarterly on or before the 25th day of the month following the last day of each quarter of the taxpayer's taxable year under the Internal Revenue Code. The Commissioner shall deposit the payments collected into the General Fund.

(c) To the extent they are not explicitly in conflict with the provisions of this chapter, the provisions of chapter 103 and subchapters 6, 7, 8, and 9 of chapter 151 of this title shall apply to the tax imposed by this section.

§ 10403. EXEMPTIONS

(a) The following transactions are not covered by the tax in this chapter:

- (1) transactions that are not within the taxing power of this State;
- (2) the provision of satellite programming to a person for resale; and
- (3) the first \$30.00 of monthly charges paid by each subscriber for the provision of satellite programming which shall not be counted as gross receipts.

(b) The following organizations are not covered by the tax in this chapter:

- (1) the State of Vermont or any of its agencies, instrumentalities, public authorities, or political subdivisions; and
- (2) the United States of America or any of its agencies and instrumentalities.

Sec. 25. 32 V.S.A. § 10402(a) is amended to read:

(a) There is imposed a tax on provision of satellite programming to a subscriber located in this State. The tax shall be at the rate of ~~three percent~~ four percent of all gross receipts derived by the distributor from the provision of satellite programming in this State.

Sec. 26. 32 V.S.A. § 10403(a) is amended to read:

(a) The following transactions are not covered by the tax in this chapter:

- (1) transactions that are not within the taxing power of this State; and
- (2) the provision of satellite programming to a person for resale;

~~(3) the first \$30.00 of monthly charges paid by each subscriber for the provision of satellite programming shall not be counted as gross receipts.~~

Sec. 27. 32 V.S.A. § 10402(a) is amended to read:

(a) There is imposed a tax on provision of satellite programming to a subscriber located in this State. The tax shall be at the rate of ~~four percent~~ five percent of all gross receipts derived by the distributor from the provision of satellite programming in this State.

* * * Break-Open Tickets * * *

Sec. 28. 32 V.S.A. chapter 245 is added to read:

CHAPTER 245. BREAK-OPEN TICKET TAX

§ 10501. DEFINITIONS

As used in this chapter:

(1) “Break-open ticket” shall have the same meaning as in 7 V.S.A. chapter 26, § 901(1).

(2) “Commissioner” means the Commissioner of Taxes.

(3) “Distributor” shall have the same meaning as in 7 V.S.A. chapter 26, § 901(3).

§ 10502. TAX ON DISTRIBUTOR SALES

(a) In addition to the annual licensing fee as provided in 7 V.S.A. § 904, there is levied upon each break-open ticket sold by a seller’s agent in this State a tax to be paid by the distributor in the amount of three percent of the retail sales value of the ticket. For purposes of this section, “retail sale value” means the retail price stated on the ticket or, if no price is stated on the ticket, the price at which that type of ticket is generally sold.

(b) The tax together with a return in a form prescribed by the Commissioner shall be paid to the Commissioner of Taxes monthly on or before the 25th day of the month with respect to tickets sold in the month ending prior to the month in which the payment is due and shall be deposited into the Education Fund.

(c) The administrative provisions of chapters 103 and 233 of this title shall apply to the tax imposed by this section.

* * * Fuel Gross Receipts Tax * * *

Sec. 29. 33 V.S.A. § 2503 is amended to read:

§ 2503. FUEL GROSS RECEIPTS TAX

(a) There is imposed a gross receipts tax of 0.5 percent on the retail sale of the following types of fuel ~~by sellers receiving more than \$10,000.00 annually for the sale of such fuels:~~

- (1) heating oil, kerosene, and other dyed diesel fuel delivered to a residence or business;
- (2) propane;
- (3) natural gas;
- (4) electricity;
- (5) coal.

* * *

Sec. 30. BANK FRANCHISE TAX STUDY

(a) Creation of committee. There is created a Bank Franchise Tax Study Committee to examine the taxation of financial institutions in Vermont.

(b) Membership. The Bank Franchise Tax Study Committee shall be composed of nine members. The Chair and Vice Chair of the Committee shall be legislative members selected by all the members of the Committee. Four members of the Committee shall be members of the General Assembly. The Committee on Committees of the Senate shall appoint two members of the Senate, not from the same political party; and the Speaker of the House shall appoint two members of the House, not from the same political party. Five members of the Committee shall be as follows:

- (1) the Secretary of Administration or designee;
- (2) the Commissioner of Financial Regulation or designee;
- (3) the Commissioner of Taxes; and
- (4) two persons appointed by the Vermont Banker's Association.

(c) Powers and duties.

(1) The Committee shall study the taxation of financial institutions in Vermont, including:

(A) the policy considerations for a bank franchise tax versus a corporate tax on financial institutions;

(B) an examination of the tax burden on financial institutions;

(C) the history of the rates and base of the bank franchise tax; and

(D) recommendations for setting the rate of the bank franchise tax in an equitable manner.

(2) For purposes of its study of these issues, the Committee shall have the administrative assistance of the Agency of Administration and the legal and fiscal support of the Department of Financial Regulation and the Department of Taxes.

(d) Report. On or before January 15, 2014, the Committee shall report to the Senate Committee on Finance and the House Committee on Ways and Means its findings and any recommendations for legislative action.

(e) Number of meetings; term of Committee. The Committee may meet no more than six times, and shall cease to exist on January 15, 2014.

Sec. 31. STUDY COMMITTEE ON BARRIERS TO THE WORKFORCE

(a) Creation of committee. There is created a Committee on Workforce Barriers to study how the totality of agency programs, tax credits, and subsidies affects the incentives for joining and remaining in the workforce.

(b) Membership. The Chair and Vice Chair of the Committee shall be legislative members selected by all the members of the Committee. The Committee on Workforce Barriers shall be composed of seven members as follows:

(1) the chairs of the Senate and House Committees on Appropriations;

(2) the chairs of the Senate Committee on Finance and House Committee on Ways and Means;

(3) the Secretary of Administration or designee;

(4) the Secretary of Human Services or designee; and

(5) the Commissioner of Labor or designee.

(c) Powers and duties.

(1) The Committee shall evaluate the totality of agency programs, tax credits, and subsidies that Vermont extends to low and moderate income Vermonters to determine if, collectively, they create financial incentives and mitigate social barriers to entering and remaining in the workforce. The Committee shall report any recommended policy changes that reduce financial or other barriers to entering the workforce, remaining in the workforce, or increasing an individual's participation in the workforce.

(2) For purposes of its study of these issues, the Committee shall have the administrative assistance of the Agency of Administration and the

technical, legal, and fiscal assistance of the Agency of Human Services, the Department of Labor, and the Department of Taxes.

(d) Report. By January 15, 2014, the Committee shall report to the General Assembly its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee. The Committee may meet no more than six times, and shall cease to exist on January 16, 2014.

* * * Repeals and Effective Dates * * *

Sec. 32. REPEAL

The following are repealed:

(1) 2011 Acts and Resolves No. 45, Sec. 13a (wastewater permits).

(2) 2012 Acts and Resolves No. 143, Secs. 41 through 43 (wastewater permits).

Sec. 33. EFFECTIVE DATES

(a) This section and Sec. 12 (skating rinks) shall take effect on passage.

(b) Secs. 1 (spirituous liquors), 4 (exchange plan surcharge), 5 (local option taxes), 6 (tax expenditures), 7 (joint fiscal committee report), 8 (joint fiscal office), 11 (Exempt Property Study Committee), 13 (blighted property), 17 (Vermont higher education tax credit), 21 (uniform capacity tax), 22 (sales tax definitions), 23 (sales tax exemptions), 24 (satellite programming tax), 28 (taxation of break-open tickets), 29 (fuel gross receipts tax), 30 (bank franchise study), 31 (workforce barriers study), and 32 (repeals) of this act shall take effect on July 1, 2013.

(c) Secs. 2 (employer assessment definition), 3 (employer assessment fund) and 9 (water access land) of this act shall take effect on January 1, 2014.

(d) Sec. 10 (insurance values) of this act shall take effect on July 1, 2014.

(e) Sec. 14 (homestead filing) of this act shall take effect on January 1, 2014 and apply to homestead declarations filed after that date.

(f) Secs. 15 (definition of taxable income) and 16 (minimum payment) of this act shall apply retroactively to January 1, 2013 and apply to taxable year 2013 and after.

(g) Secs. 18, 19, and 20 (estate taxes) shall take effect on January 1, 2014 and apply to decedents dying after that date.

(h) Secs. 25 (satellite tax rate) and 26 (satellite tax exemption) shall take effect on July 1, 2014.

(i) Sec. 27 (satellite tax rate) shall take effect on July 1, 2015.

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance?, Senator Campbell, moved that the Senate recess until one o'clock and thirty minutes in the afternoon.

Called to Order

The Senate was called to order by the President.

Recess

On motion of Senator French the Senate recessed until 2:00 P.M.

Called to Order

The Senate was called to order by the President.

Message from the House No. 53

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposals of amendment to the following House bills:

H. 280. An act relating to payment of wages.

H. 401. An act relating to municipal and regional planning and flood resilience.

H. 406. An act relating to listers and assessors.

And has severally concurred therein.

Consideration Resumed; Bill Amended; Third Reading Ordered

H. 528.

Consideration was resumed on House bill entitled:

An act relating to revenue changes for fiscal year 2014 and fiscal year 2015.

Thereupon, the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Finance?, was agreed to.

Thereupon, third reading of the bill was ordered.

Committees Relieved of Further Consideration; Bills Committed**H. 54.**

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to Public Records Act exemptions,
and the bill was committed to the Committee on Government Operations.

H. 403.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to community supports for persons with serious functional impairments,
and the bill was committed to the Committee on Health and Welfare.

H. 450.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to expanding the powers of regional planning commissions,
and the bill was committed to the Committee on Government Operations.

H. 536.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to the Adjutant and Inspector General and the Vermont National Guard,
and the bill was committed to the Committee on Government Operations.

H. 538.

On motion of Senator Campbell, the Committee on Rules was relieved of further consideration of House bill entitled:

An act relating to making miscellaneous amendments to education funding laws,
and the bill was committed to the Committee on Finance.

Rules Suspended; Bill Committed**H. 522.**

Pending entry on the Calendar for notice, on motion of Senator Ayer, the rules were suspended and House bill entitled:

An act relating to strengthening Vermont's response to opioid addiction and methamphetamine abuse.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Ayer moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock and thirty minutes in the morning.