

House Calendar

Thursday, April 28, 2016

115th DAY OF THE ADJOURNED SESSION

House Convenes at 1:00 PM

TABLE OF CONTENTS

Page No.

Action Postponed Until April 28, 2016

Senate Proposal of Amendment

H. 690 The practice of acupuncture by physicians, osteopaths, and physician assistants 2107

ACTION CALENDAR

Third Reading

H. 886 Approval of amendments to the charter of the Town of Brattleboro 2107

Favorable with Amendment

S. 10 An act relating to the State DNA database 2107
Rep. Burditt for Judiciary

S. 91 An act relating to procedures of the Judicial Nominating Board and qualifications of candidates for the positions of Justice, judge, magistrate, and Chair and member of the Public Service Board 2108
Rep. LaLonde for Judiciary

S. 154 An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening 2108
Rep. Rachelson for Judiciary

S. 183 An act relating to permanency for children in the child welfare system 2115
Rep. Conquest for Judiciary

Favorable

H.R. 18 To amend the Rules and Orders of the House of Representatives related to individual members' paid and volunteer staff 2126
Rep. Donahue for Rules

Senate Proposal of Amendment

H. 74 Safety protocols for social and mental health workers..... 2127
Rep. McCoy Amendment..... 2128

H. 183 Security in the Capitol Complex 2130

H. 367 Miscellaneous revisions to the municipal plan adoption, amendment,
and update process..... 2131

H. 610 Clarifying the Clean Water State Revolving Fund and Water Pollution
Control Grant Programs 2134

H. 629 A study committee to examine laws related to the administration and
issuance of vital records 2135
Rep. Devereux, et al Amendment..... 2135

Action Postponed Until April 29, 2016

Senate Proposal of Amendment

H. 280 Amending the State Board of Education rules on school lighting
requirements 2136

Action Postponed Until May 2, 2016

Favorable with Amendment

H. 866 Prescription drug manufacturer cost transparency 2136

NOTICE CALENDAR

Favorable with Amendment

H. 871 Approval of amendments to the charter of the City of Montpelier . 2137
Rep. Martin for Government Operations
Rep. Condon for Ways and Means..... 2137

S. 55 An act relating to creating a flat rate for Vermont’s estate tax and
creating an estate tax exclusion amount that matches the federal amount .. 2137
Rep. Young for Ways and Means

S. 123 An act relating to standardized procedures for permits and approvals
issued by the Department of Environmental Conservation 2155
Rep. Reyerson for Natural Resources and Energy

S. 212 An act relating to court-approved absences from home detention and
home confinement furlough 2174
Rep. Myers for Corrections and Institutions

S. 243 An act relating to combating opioid abuse in Vermont	2281
Rep. Pugh for Human Services	
Rep. Till for Ways and Means.....	2197
S. 250 An act relating to alcoholic beverages	2197
Rep. Stevens for General, Housing and Military Affairs	
Rep. Clarkson for Ways and Means	2214
S. 257 An act relating to residential rental agreements	2214
Rep. Stevens for General, Housing and Military Affairs	

Senate Proposal of Amendment

H. 95 Jurisdiction over delinquency proceedings by the Family Division of the Superior Court	2217
H. 595 Potable water supplies from surface waters	2240
Rep. Krebs Amendment	2250

Consent Calendar

H.C.R. 363 In memory of former Representative and Senator John C. Page of Bennington and his wife, Marjorie Page	2265
H.C.R. 364 Congratulating the Windsor High School team on winning the 2016 3D Vermont architecture competition	2265
H.C.R. 365 Congratulating Windsor public schools' student winners of the 2016 State Science Fair	2266
H.C.R. 366 Honoring Nancy Remsen, on the conclusion of her journalism career, as a fair, perceptive, and thoughtful reporter and editor	2266
H.C.R. 367 Sincere appreciation for the presence of General Electric's Aviation and Healthcare units in Vermont and for their major contribution to the State's economy.....	2266
H.C.R. 368 Congratulating the 2016 Mt. Anthony Union High School Patriots State championship wrestling team	2266
H.C.R. 369 Congratulating recent Vermont recipients of the Girl Scout Gold Award	2266
H.C.R. 370 Welcoming Shen Yun Performing Arts to Vermont	2266
H.C.R. 371 Congratulating Dismas of Vermont on its 30th anniversary ...	2266
H.C.R. 372 Congratulating the Montshire Museum in Norwich on the 40th anniversary of its opening	2266

H.C.R. 373 Congratulating the Southwestern Vermont Medical Center for its award-winning renal care services	2266
H.C.R. 374 Congratulating the Southwestern Vermont Medical Center on its receipt of a fourth Magnet recognition	2266
H.C.R. 375 Honoring James Harrison of Chittenden for his exemplary leadership of the Vermont Retail & Grocers Association	2267
H.C.R. 376 Honoring Gary Rutkowski for his 40 years of outstanding editorial leadership at the St. Albans Messenger	2267
H.C.R. 377 Recognizing the economic vibrancy of the Northeast Kingdom	2267
H.C.R. 378 Congratulating Rutland’s United Neighborhoods Community Justice Center on its 15th anniversary	2267
S.C.R. 43 Senate concurrent resolution congratulating the Green Mountain United Way on its 40th anniversary	2267

ORDERS OF THE DAY

Action Postponed Until April 28, 2016

Senate Proposal of Amendment

H. 690

An act relating to the practice of acupuncture by physicians, osteopaths, and physician assistants

The Senate proposes to the House to amend the bill as follows:

In Sec. 1, 26 V.S.A. § 3402, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read:

(f) This chapter shall not be construed to limit or restrict in any way the right of a licensed practitioner of a health care profession regulated under this title from performing services within the scope of his or her professional practice.

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

An act relating to the practice of acupuncture by health care professionals acting within their scope of practice.

(For text see House Journal March 16, 2016)

ACTION CALENDAR

Third Reading

H. 886

An act relating to approval of amendments to the charter of the Town of Brattleboro

Favorable with Amendment

S. 10

An act relating to the State DNA database

Rep. Burditt of West Rutland, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended as follows:

In Sec. 1, 20 V.S.A. § 1932, in subdivision (12), by striking out subdivision (D) in its entirety and inserting in lieu thereof a new subdivision (D) to read as follows:

(D) a misdemeanor violation of 13 V.S.A. chapter 28 of this title, relating to abuse, neglect, and exploitation of vulnerable adults;

(Committee vote: 6-4-1)

(For text see Senate Journal February 25, 2016)

S. 91

An act relating to procedures of the Judicial Nominating Board and qualifications of candidates for the positions of Justice, judge, magistrate, and Chair and member of the Public Service Board

Rep. Lalonde of South Burlington, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended as follows:

First: In Sec. 1, 4 V.S.A. § 601(d), by striking out “ ~~shall~~ may” and inserting in lieu thereof “shall”

Second: In Sec. 2, 4 V.S.A. § 602, in subdivision (c)(1), by adding a second sentence to read as follows:

The Board may make exceptions to the five-year requirement for absences from practice for reasons including family, military, academic, or medical leave.

(Committee vote: 10-0-1)

(For text see Senate Journal March 16, 2016)

S. 154

An act relating to enhanced penalties for assaulting an employee of the Family Services Division of the Department for Children and Families and to criminal threatening

Rep. Rachelson of Burlington, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The General Assembly finds the following:

(1) Stalking is a serious problem in Vermont and nationwide.

(2) Stalking involves severe intrusions on the victim’s personal privacy and autonomy.

(3) Stalking causes a long-lasting impact on the victim's quality of life and creates risks to the security and safety of the victim and others even in the absence of express threats of physical harm.

(4) Stalking conduct often becomes increasingly violent over time.

(5) There is a strong connection between stalking and domestic violence and sexual assault.

Sec. 2. 12 V.S.A. § 5131 is amended to read:

§ 5131. DEFINITIONS

As used in this chapter:

~~(1)(A) "Course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose~~ two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of "course of conduct."

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

~~(2) "Following" means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death. [Repealed.]~~

~~(3) "Lying in wait" means hiding or being concealed for the purpose of attacking or harming another person.~~

~~(4) "Nonphysical contact" includes telephone calls, mail, e-mail, social media commentary or comment,~~ or other electronic communication, fax, and written notes.

(4) "Reasonable person" means a reasonable person in the victim's circumstances.

(5) "Sexually assaulted the plaintiff" means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct as defined in 13 V.S.A. § 2601, lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, sexual assault as defined in 13 V.S.A. § 3252, aggravated sexual assault as defined in 13 V.S.A. § 3253, use of a child in a sexual performance as defined in 13 V.S.A. § 2822, or consenting to a sexual

performance as defined in 13 V.S.A. § 2823 and that the plaintiff was the victim of the offense.

(6) “Stalk” means to engage purposefully in a course of conduct ~~which consists of following or lying in wait for a person, or threatening behavior~~ directed at a specific person ~~or a member of the person’s family, and:~~

~~(A) serves no legitimate purpose; and~~

~~(B) that the person engaging in the conduct knows or should know would cause a reasonable person to:~~

~~(A) fear for his or her safety or the safety of a family member; or~~

~~(B) would cause a reasonable person suffer substantial emotional distress as evidenced by:~~

~~(i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or~~

~~(ii) significant modifications in the person’s actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person’s life, changes to the person’s employment or work schedule, or the loss of a job or time from work.~~

(7) “Stay away” means to refrain from knowingly:

(A) initiating or maintaining a physical presence near the plaintiff;

(B) engaging in nonphysical contact with the plaintiff directly or indirectly; or

(C) engaging in nonphysical contact with the plaintiff through third parties who may or may not know of the order.

~~(8) “Threatening behavior” means acts which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats,² written, telephonic, or other electronically communicated threats,² vandalism,² or physical contact without consent. [Repealed.]~~

Sec. 3. 12 V.S.A. § 5133 is amended to read:

§ 5133. REQUESTS FOR AN ORDER AGAINST STALKING OR SEXUAL ASSAULT

(a) A person, other than a family or household member as defined in 15 V.S.A. § 1101(2), may seek an order against stalking or sexual assault on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under

this chapter. A minor 16 years of age or older may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

(b) Except as provided in section 5134 of this title, the court shall grant the order only after notice to the defendant and a hearing. The plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted the plaintiff.

(c) In a hearing under this chapter, neither opinion evidence of nor evidence of the reputation of the plaintiff's sexual conduct shall be admitted. Evidence of prior sexual conduct of the plaintiff shall not be admitted; provided, however, where it bears on the credibility of the plaintiff or it is material to a fact at issue and its probative value outweighs its private character, the court may admit any of the following:

(1) ~~Evidence~~ evidence of the plaintiff's past sexual conduct with the defendant.;

(2) ~~Evidence~~ evidence of specific instances of the plaintiff's sexual conduct showing the source of origin of semen, pregnancy, or disease.;

(3) ~~Evidence~~ evidence of specific instances of the plaintiff's past false allegations of violations of 13 V.S.A. chapter 59 or 72.

(d)(1) If the court finds by a preponderance of evidence that the defendant has stalked or sexually assaulted the plaintiff, or has been convicted of stalking or sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other ~~such~~ order it deems necessary to protect the plaintiff or the plaintiff's children, or both.

~~(2) If the court finds by a preponderance of evidence that the defendant has sexually assaulted the plaintiff and there is a danger of the defendant further harming the plaintiff, the court shall order the defendant to stay away from the plaintiff or the plaintiff's children, or both, and may make any other such order it deems necessary to protect the plaintiff or the plaintiff's children, or both. The court may consider the defendant's past conduct as relevant evidence of future harm.~~

(e) Relief shall be granted for a fixed period, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or the plaintiff's children, or both. It is not necessary for the court to find that the defendant stalked or sexually assaulted the plaintiff during the pendency of the order to extend the terms of the order. The court may modify its order at any

subsequent time upon motion by either party and a showing of a substantial change in circumstance.

* * *

Sec. 4. 13 V.S.A. § 1021 is amended to read:

§ 1021. DEFINITIONS

(a) ~~For the purpose of~~ As used in this chapter:

* * *

~~(4) “Course~~ (b) As used in this subchapter, “course of conduct” means a pattern of conduct composed of two or more acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

Sec. 5. 13 V.S.A. chapter 19, subchapter 7 is amended to read:

Subchapter 7. Stalking

§ 1061. DEFINITIONS

As used in this subchapter:

~~(1)(A) “Stalk” means to engage in a course of conduct which consists of following, lying in wait for, or harassing, and:~~

~~(A) serves no legitimate purpose; and~~

~~(B) would cause a reasonable person to fear for his or her physical safety or would cause a reasonable person substantial emotional distress.~~

~~(2) “Following” means maintaining over a period of time a visual or physical proximity to another person in such manner as would cause a reasonable person to have a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death.~~

~~(3) “Harassing” means actions directed at a specific person, or a member of the person’s family, which would cause a reasonable person to fear unlawful sexual conduct, unlawful restraint, bodily injury, or death, including verbal threats, written, telephonic, or other electronically communicated threats, vandalism, or physical contact without consent~~ “Course of conduct” means two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person’s property. This definition shall apply to acts conducted by the person directly or indirectly, and by any action, method, device, or means. Constitutionally protected activity is not included within the meaning of “course of conduct.”

(B) As used in subdivision (A) of this subdivision (1), threaten shall not be construed to require an express or overt threat.

~~(4) “Lying in wait” means hiding or being concealed for the purpose of attacking or harming another person.~~

(2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(3) “Reasonable person” means a reasonable person in the victim’s circumstances.

(4) “Stalk” means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to fear for his or her safety or the safety of another or would cause a reasonable person substantial emotional distress.

§ 1062. STALKING

Any person who intentionally stalks another person shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

§ 1063. AGGRAVATED STALKING

(a) A person commits the crime of aggravated stalking if the person intentionally stalks another person, and:

(1) such conduct violates a court order that prohibits stalking and is in effect at the time of the offense; ~~or~~

(2) has been previously convicted of stalking or aggravated stalking; ~~or~~

(3) has been previously convicted of an offense an element of which involves an act of violence against the same person; ~~or~~

(4) the person being stalked is under ~~the age of~~ 16 years of age; or

(5) had a deadly weapon, as defined in section 1021 of this title, in his or her possession while engaged in the act of stalking.

(b) A person who commits the crime of aggravated stalking shall be imprisoned not more than five years or be fined not more than \$25,000.00, or both.

(c) Conduct constituting the offense of aggravated stalking shall be considered a violent act for the purposes of determining bail.

§ 1064. DEFENSES

In a prosecution under this subchapter, it shall not be a defense that the defendant was not provided actual notice that the course of conduct was unwanted.

Sec. 6. 13 V.S.A. § 1028 is amended to read:

§ 1028. ~~ASSAULT OF LAW ENFORCEMENT OFFICER, FIREFIGHTER, EMERGENCY MEDICAL PERSONNEL MEMBER, OR HEALTH CARE WORKER~~ PROTECTED PROFESSIONAL; ASSAULT WITH BODILY FLUIDS

(a) A person convicted of a simple or aggravated assault against a ~~law enforcement officer, a firefighter, a health care worker, or a member of emergency medical personnel as defined in 24 V.S.A. § 2651(6)~~ protected professional as defined in subdivision (d)(1) of this section while the ~~officer, firefighter, health care worker, or emergency medical personnel member~~ protected professional is performing a lawful duty, or with the intent to prevent the protected professional from performing his or her lawful duty, in addition to any other penalties imposed under sections 1023 and 1024 of this title, shall:

(1) for the first offense, be imprisoned not more than one year;

(2) for the second offense and subsequent offenses, be imprisoned not more than 10 years.

(b)(1) No person shall intentionally cause blood, vomitus, excrement, mucus, saliva, semen, or urine to come in contact with a ~~person designated in subsection (a) of this section~~ protected professional while the person is performing a lawful duty.

(2) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both.

* * *

(d) ~~For purposes of~~ As used in this section:

(1) “Protected professional” shall mean a law enforcement officer, a firefighter, a health care worker, an employee of the Family Services Division of the Department for Children and Families, or any emergency medical personnel as defined in 24 V.S.A. § 2651(6).

(2) “Health care facility” shall have the same meaning as defined in 18 V.S.A. § 9432(8); and.

(3) "Health care worker" means an employee of a health care facility or a licensed physician who is on the medical staff of a health care facility who provides direct care to patients or who is part of a team-response to a patient or visitor incident involving real or potential violence.

(e) This section shall not apply to an individual under 18 years of age residing in a residential rehabilitation facility.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

and that after passage the title of the bill be amended to read: "An act relating to stalking and enhanced penalties for assault"

(Committee vote: 7-3-1)

(For text see Senate Journal February 19, March 9, 2016)

S. 183

An act relating to permanency for children in the child welfare system

Rep. Conquest of Newbury, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. § 2660 is added to read:

§ 2660. STATEMENT OF LEGISLATIVE INTENT

(a) The creation of a permanent guardianship for minors provides the opportunity for a child, whose circumstances make returning to the care of the parents not reasonably possible, to be placed in a stable and nurturing home for the duration of the child's minority. The creation of a permanent guardianship offers the additional benefit of permitting continued contact between a child and the child's parents.

(b) The Family Division of the Superior Court is not required to address and rule out each of the other potential disposition options once it has concluded that termination of parental rights is in a child's best interests.

Sec. 2. 14 V.S.A. § 2664 is amended to read:

§ 2664. CREATION OF PERMANENT GUARDIANSHIP

(a) ~~The family division of the superior court~~ Family Division of the Superior Court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding pursuant to 33 V.S.A. § 5318, or a delinquency proceeding pursuant to 33 V.S.A. § 5232.

The court shall also issue an order permitting or denying visitation, contact or information with the parent at the same time the order of permanent guardianship is issued. Before issuing an order for permanent guardianship, the court shall find by clear and convincing evidence all of the following:

~~(1) Neither parent is capable or willing to provide adequate care to the child, requiring that parental rights and responsibilities be awarded to a permanent guardian~~ able to assume or resume parental duties within a reasonable time.

~~(2) Neither returning the child to the parents nor adoption of the child is likely within a reasonable period of time.~~

~~(3) The child is at least 12 years old unless the proposed permanent guardian is:~~

~~(A) a relative; or~~

~~(B) the permanent guardian of one of the child's siblings.~~

~~(4) The child has resided with the permanent guardian for at least a year or the permanent guardian is a relative with whom the child has a relationship and with whom the child has resided for at least six months.~~

~~(5)~~(3) A permanent guardianship is in the best interests of the child.

~~(6)~~(4) The proposed permanent guardian:

(A)(i) is emotionally, mentally, and physically suitable to become the permanent guardian; and

(ii) is financially suitable, with kinship guardianship assistance provided for in 33 V.S.A. § 4903 if applicable, to become the permanent guardian;

(B) has expressly committed to remain the permanent guardian for the duration of the child's minority; and

(C) has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any resulting loss of ~~state~~ State or federal benefits or other assistance.

(b) The parent voluntarily may ~~voluntarily~~ consent to the permanent guardianship, and shall demonstrate an understanding of the implications and obligations of the consent.

(c) After the ~~family division of the superior court~~ Family Division of the Superior Court issues a final order establishing permanent guardianship, the case shall be transferred to the appropriate ~~probate division of the superior court~~ Probate Division of the Superior Court in the district in which the

permanent guardian resides. Jurisdiction shall continue to lie in the ~~probate division~~ Probate Division. Appeal of any decision by the ~~probate division of the superior court~~ Probate Division of the Superior Court shall be de novo to the ~~family division~~ Family Division.

(d) The Family Division of the Superior Court may name a successor permanent guardian in the initial permanent guardianship order. In the event that the permanent guardian dies or the guardianship is terminated by the Probate Division of the Superior Court, if a successor guardian is named in the initial order, custody of the child transfers to the successor guardian pursuant to subsection 2666(b) of this title.

Sec. 3. 14 V.S.A. § 2665 is amended to read:

§ 2665. REPORTS

The permanent guardian shall file a written report on the status of the child to the ~~probate division of the superior court~~ Probate Division of the Superior Court annually pursuant to subdivision 2629(b)(6) of this title and at any other time the court may order. ~~The report shall include the following:~~

~~(1) The location of the child.~~

~~(2) The child's health and educational status.~~

~~(3) A financial accounting of the income, expenditures and assets of the child if the permanent guardian is receiving any state or federal government benefits for the child.~~

~~(4) Any other information regarding the child that the probate division of the superior court may require.~~

Sec. 4. 14 V.S.A. § 2666(b) is amended to read:

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the ~~commissioner for children and families~~ Commissioner for Children and Families as if the child had been abandoned. If a successor permanent guardian has been named in the initial permanent guardianship order, custody shall transfer to the successor guardian, without reverting first to the Commissioner. The Probate Division of the Superior Court shall notify the Department when custody transfers to the Commissioner or the successor guardian.

Sec. 5. 33 V.S.A. § 5124 is amended to read:

§ 5124. POSTADOPTION CONTACT AGREEMENTS

(a) Either or both parents and each intended adoptive parent may enter into a postadoption contact agreement regarding communication or contact between either or both parents and the child after the finalization of an adoption by the intended adoptive parent or parents who are parties to the agreement. Such an agreement may be entered into if:

(1) the child is in the custody of:

(A) the Department for Children and Families; or

(B) a nonparent pursuant to subdivision 5318(a)(2) or (a)(7), or subdivision 5232(b)(2) or (b)(3) of this title;

(2) an order terminating parental rights has not yet been entered; and

(3) either or both parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights.

* * *

(c) A postadoption contact agreement must be in writing and signed by each parent and each intended adoptive parent entering into the agreement. There may be separate agreements for each parent. The agreement shall specify:

* * *

(9) ~~an acknowledgment that once the adoption is finalized, the court shall presume that the adoptive parent's judgment concerning the best interests of the child is correct~~ the adoptive parent's judgment regarding the child is in the child's best interests;

* * *

Sec. 6. 33 V.S.A. § 5318 is amended to read:

§ 5318. DISPOSITION ORDER

(a) Custody. At disposition, the Court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the Court determines are in the best interest of the child, including:

(1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. ~~Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years.~~

~~The Court shall schedule regular review hearings to determine whether the conditions continue to be necessary. The order may be subject to conditions and limitations.~~

(2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. ~~Following disposition, the Court may issue a conditional custody order for a fixed period of time not to exceed two years. The Court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the Family Division of the Superior Court are necessary.~~

(3) An order transferring legal custody to a noncustodial parent and closing the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the Court's own motion, the Court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the child.

(4) An order transferring legal custody to the Commissioner.

(5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the Commissioner without limitation as to adoption.

(6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to ~~periodic review as determined by the Court~~ review pursuant to subdivision 5320a(b) of this title.

* * *

(f) Conditions. Conditions shall include protective supervision with the Department if such a condition is not in place under the terms of an existing temporary care or conditional custody order. Protective supervision shall remain in effect for the duration of the order to allow the Department to take reasonable steps to monitor compliance with the terms of the conditional custody order.

Sec. 7. 33 V.S.A. § 5320 is amended to read:

§ 5320. POSTDISPOSITION REVIEW HEARING

~~If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the~~ The Court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver, or any custodian of the child shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding. This section shall not apply to cases where full custody has been returned to one or both parents unconditionally at disposition, or cases where the court has created a permanent guardianship at disposition. The Department shall, and any other party or caregiver may prepare a written report to the Court regarding progress under the plan of services specified in the disposition case plan.

Sec. 8. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

(b) In carrying out the purposes outlined in subsection (a) of this section, the Court may:

(1) Place the child on probation subject to the supervision of the Commissioner, upon such conditions as the Court may prescribe. The length of probation shall be as prescribed by the Court or until further order of the Court.

(2) Order custody of the child be given to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and the community. Conditions may include protective supervision for up to ~~one year~~ six months following the disposition order unless further extended by court order. ~~The Court shall schedule regular~~ hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

(3) Transfer custody of the child to a noncustodial parent, relative, or person with a significant connection to the child. The Court may order that custody be subject to such conditions and limitations as the Court may deem necessary and sufficient to provide for the safety of the child and community, including protective supervision, for up to six months unless further extended by court order. The Court shall hold review hearings pursuant to section 5320 of this title to determine whether the conditions continue to be necessary.

- (4) Transfer custody of the child to the Commissioner.
- (5) Terminate parental rights and transfer custody and guardianship to the Department without limitation as to adoption.
- (6) Issue an order of permanent guardianship pursuant to 14 V.S.A. § 2664.
- (7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the Court to place the child on probation. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the Court for disposition.

* * *

Sec. 9. 33 V.S.A. § 5258 is amended to read:

**§ 5258. POSTDISPOSITION REVIEW AND PERMANENCY REVIEW
FOR DELINQUENTS IN CUSTODY**

Whenever custody of a delinquent child is transferred to the Commissioner or the Court orders conditional custody of a child, the custody order of the Court shall be subject to a postdisposition review hearing pursuant to section 5320 of this title and permanency reviews pursuant to section 5321 of this title. At the permanency review, the Court shall review the permanency plan and determine whether the plan advances the permanency goal recommended by the Department. The Court may accept or reject the plan, but may not designate a particular placement for a child in the Department's legal custody. Any conditional custody order shall be subject to review pursuant to section 5258a of this title.

Sec. 10. 33 V.S.A. § 5258a is added to read:

§ 5258a. DURATION OF CONDITIONAL CUSTODY ORDERS
POSTDISPOSITION

(a) Conditional custody orders to parents. Whenever the court issues a conditional custody order transferring custody to a parent either at or following disposition, the presumptive duration of the order shall be no more than six months from the date of the disposition order or the conditional custody order, whichever occurs later, unless otherwise extended by the court after hearing. At least 14 days prior to the termination of the order, any party may file a request to extend the order pursuant to subsection 5113(b) of this title. Upon

such motion, the Court may extend the order for an additional period of time not to exceed six months. Prior to vacating the conditional custody order, the court may schedule a hearing on its own motion to review the case prior to discharging the conditions. If a motion to extend is not filed, the court shall issue an order vacating the conditions and transferring full custody to the parent without conditions.

(b) Custody orders to nonparents.

(1) When the court at disposition issues an order continuing or transferring legal custody with a nonparent pursuant to subdivision 5232(b)(3) of this title, the court shall set the matter for a hearing six months from the date of disposition or custody order whichever occurs later. At the hearing, the court shall determine whether it is in the best interests of the child to:

(A) transfer either full or conditional custody of the child to a parent;

(B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664 with the nonparent who has had custody of the child as the guardian; or

(C) terminate residual parental rights and release the child for adoption.

(2) If, after hearing, the court determines that reasonable progress has been made toward reunification and that reunification is in the best interests of the child but will require additional time, the court may extend the current order for a period not to exceed six months and set the matter for further hearing.

Sec. 11. 33 V.S.A. § 5320a is added to read:

§ 5320a. DURATION OF CONDITIONAL CUSTODY ORDERS

POSTDISPOSITION

(a) Conditional custody orders to parents. Whenever the Court issues a conditional custody order transferring custody to a parent either at or following disposition, the presumptive duration of the order shall be no more than six months from the date of the disposition order or the conditional custody order, whichever occurs later, unless otherwise extended by the court after hearing. At least 14 days prior to the termination of the order, any party may file a request to extend the order pursuant to subsection 5113(b) of this title. Upon such motion, the Court may extend the order for an additional period of time not to exceed six months. Prior to vacating the conditional custody order, the Court may schedule a hearing on its own motion to review the case prior to discharging the conditions. If a motion to extend is not filed, the court shall issue an order vacating the conditions and transferring full custody to the parent without conditions.

(b)(1) Custody orders to nonparents. When the court at disposition issues an order continuing or transferring legal custody with a nonparent pursuant to subdivision 5318(a)(2) or (a)(7) of this title, the court shall set the matter for a hearing six months from the date of disposition or custody order, whichever occurs later. At the hearing, the court shall determine whether it is in the best interests of the child to:

(A) transfer either full or conditional custody of the child to a parent;

(B) establish a permanent guardianship pursuant to 14 V.S.A. § 2664 with the nonparent who has had custody of the child as the guardian; or

(C) terminate residual parental rights and release the child for adoption.

(2) If, after hearing, the court determines that reasonable progress has been made toward reunification and that reunification is in the best interests of the child but will require additional time, the court may extend the current order for a period not to exceed six months and set the matter for further hearing.

Sec. 12. 33 V.S.A. § 5125 is added to read:

§ 5125. REINSTATEMENT OF PARENTAL RIGHTS

(a) Petition for reinstatement.

(1) A petition for reinstatement of parental rights may be filed by the Department for Children and Families on behalf of a child in the custody of the Department under the following conditions:

(A) the child's adoption has been dissolved; or

(B) the child has not been adopted after at least three years from the date of the court order terminating parental rights.

(2) The child, if 14 years of age or older, may also file a petition to reinstate parental rights if the adoption has been dissolved, or if parental rights have been terminated and the child has not been adopted after three years from the date of the court order terminating parental rights. This section shall not apply to children who have been placed under permanent guardianship pursuant to 14 V.S.A. § 2664.

(b) Permanency plan. The Department shall file an updated permanency plan with the petition for reinstatement. The updated plan shall address the material change in circumstances since the termination of parental rights, the Department's efforts to achieve permanency, the reasons for the parent's desire to have rights reinstated, any statements by the child expressing the child's

opinions about reinstatement, and the parent's present ability and willingness to resume or assume parental duties.

(c) Hearing.

(1) The court shall hold a hearing to consider whether reinstatement is in the child's best interest. The court shall conditionally grant the petition if it finds by clear and convincing evidence that:

(A) the parent is presently willing and has the ability to provide for the child's present and future safety, care, protection, education, and healthy mental, physical, and social development;

(B) reinstatement is the child's express preference;

(C) if the child is 14 years of age or older and has filed the petition, the child is of sufficient maturity to understand the nature of this decision;

(D) the child has not been adopted, or the adoption has been dissolved;

(E) the child is not likely to be adopted; and

(F) reinstatement of parental rights is in the best interests of the child.

(2) Upon a finding by clear and convincing evidence that all conditions set forth in subdivision (1) of this subsection exist and that reinstatement of parental rights is in the child's best interest, the court shall issue a conditional custody order for up to six months transferring temporary legal custody of the child to the parent, subject to conditions as the court may deem necessary and sufficient to ensure the child's safety and well-being. The court may order the Department to provide transition services to the family as appropriate. If during this time period the child is removed from the parent's temporary conditional custody due to allegations of abuse or neglect, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(d) Final order. After the child is placed with the parent for up to six months pursuant to subsection (c) of this section, the court shall hold a hearing to determine if the placement has been successful. The court shall enter a final order of reinstatement of parental rights upon a finding by a preponderance of the evidence that placement continues to be in the child's best interest.

(e) Effect of reinstatement. Reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights. Reinstatement restores a parent's legal rights to his or her child, including all rights, powers, privileges, immunities, duties, and obligations that were terminated by the court in the termination of parental rights order. Such

reinstatement shall be a recognition that the parent's and child's situations have changed since the time of the termination of parental rights, and reunification is appropriate. An order reinstating the legal parent and child relationship as to one parent of the child has no effect on the legal rights of any other parent whose rights to the child have been terminated by the court; or the legal sibling relationship between the child and any other children of the parent. A parent whose rights are reinstated pursuant to this section is not liable for child support owed to the Department during the period from termination of parental rights to reinstatement.

Sec. 13. JUDICIARY COMMISSION ON CHILD ABUSE AND NEGLECT

(a) The General Assembly recognizes that the increasing burden of substance abuse in Vermont has deteriorated families, resulting in a tremendous increase in children in need of supervision (CHINS) and termination of parental rights (TPR) filings in courts throughout the State. The General Assembly also recognizes that the allocation of resources in judicial proceedings devoted to CHINS and TPR cases, including attorney time, Department for Children and Families staff time, judge time, court staff time, and operating expenses are controlled to a great degree by statute and do not always allow flexibility to meet Vermont's constitutional responsibilities to children and families in an efficient and effective manner. The General Assembly also recognizes that technology and other resources provide opportunities to increase efficiency in processing cases, while improving timely access to judicial proceedings for families and children in need. The General Assembly also recognizes that an effort to evaluate reform measures with input from all interested parties involved in the processing of these cases will improve access to justice.

(b) In order to develop specific proposals for consideration by the General Assembly, the General Assembly requests the Supreme Court, subject to the availability of funding to provide dedicated staff and research support, to appoint and convene a Commission on Judicial Operations in CHINS and TPR cases to consist of members representing Judicial, Legislative, and Executive Branches of government and persons representing the citizens of Vermont in a number to be determined by the Court. The Chief Justice shall appoint the Chair of the Commission, who shall be independent of the Vermont Judicial System. The Commission shall expire on June 30, 2017. The Commission shall from time to time make recommendations by report to the Senate and House Committees on Judiciary and on Appropriations, the House Committee on Human Services, and the Senate Committee on Health and Welfare. On or before January 15, 2017, the Commission shall submit an interim report to those committees with specific proposals regarding subdivisions (1)–(6) of this subsection with accompanying draft legislation to implement those proposals

and a final report on or before May 1, 2017, which shall address all the following areas:

(1) achieving adequate dedicated court staff, attorney, Department, guardian ad litem, and judge resources;

(2) business reprocessing of child protection and parental rights procedures, laws and rules to minimize extra operational steps involved in processing CHINS and TPR cases;

(3) the use of technology such as video to increase litigant access and reduce unnecessary expense to litigants, including transportation, lost work time, lost school time, and any other measure suitable in the judgment of the Commission, while improving access and maintaining quality adjudication;

(4) alternative hearing space recommendations, including Saturday and weekday evening hearings and mobile courtrooms;

(5) flexibility in the use of resources to respond to the elastic, changeable demands for judicial and legal services in CHINS cases; and

(6) any other ideas for the efficient and effective delivery of judicial services in CHINS cases.

Sec. 14. EFFECTIVE DATES

This act shall take effect on September 1, 2016, except for this section and Sec. 5 (postadoption contact agreements), which shall take effect on July 1, 2016.

(Committee vote: 7-3-1)

(For text see Senate Journal March 11, 15, 16 2016)

Favorable

H.R. 18

House resolution to amend the Rules and Orders of the House of Representatives related to individual members' paid and volunteer staff

Rep. Donahue of Northfield, for the Committee on **Rules**, recommends the bill ought to pass.

(Committee Vote: 6-0-1)

Senate Proposal of Amendment

H. 74

An act relating to safety protocols for social and mental health workers

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

Sec. 1. 33 V.S.A. chapter 82 is added to read:

CHAPTER 82. SAFETY PROVISIONS FOR WORKERS

§ 8201. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT SOCIAL SERVICES

(a)(1) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social services.

(2) The Secretary shall ensure that its contracts with providers whose employees deliver direct social services and that are administered or designated but not otherwise licensed by a department of the Agency include the requirement that providers establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social services.

(b) A written workplace violence prevention and crisis response policy prepared with input from employees delivering direct social services shall minimally include the following:

(1) measures the program intends to take to respond to an incident of or credible threat of workplace violence against employees delivering direct social services;

(2) a system for centrally recording all incidents of or credible threats of workplace violence against employees delivering direct social services;

(3) a training program to educate employees delivering direct social services about workplace violence and ways to reduce the risks; and

(4) the development and maintenance of a violence prevention and response committee that includes employees delivering direct social services to monitor ongoing compliance with the violence prevention and crisis response policy and to assist employees delivering direct social services.

(c) In preparing the written violence prevention and crisis response policy required by this section, the Secretary and providers identified in subdivision (a)(2) of this section shall consult the U.S. Occupational Safety and Health Administration's Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers as amended.

(d) A written workplace violence prevention and crisis response policy shall be evaluated annually and updated as necessary by the violence and prevention response committee and provided to employees delivering direct social services.

(e) The requirements of this section shall neither be construed as a waiver of sovereign immunity by the State, nor as creating any private right of action against the State for damages resulting from failure to comply with this section.

Sec. 2. 18 V.S.A. § 7114 is added to read:

§ 7114. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT SOCIAL SERVICES

(a) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a workplace violence prevention and crisis response policy for the benefit of employees delivering direct social services pursuant to 33 V.S.A. § 8201.

(b) The Secretary shall ensure that its contracts with providers described in 33 V.S.A. § 8201(a)(2) require the providers to establish and maintain a written workplace violence prevention and crisis response policy for the benefit of employees delivering direct social services pursuant to 33 V.S.A. § 8201.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2017.

And that after passage the title of the bill be amended to read: "An act relating to safety policies for employees delivering direct social services"

(For text see House Journal March 17, 2016)

Amendment to be offered by Rep. McCoy of Poultney to H. 74

That the House concur in the Senate Proposal of Amendment, with further amendment thereto; by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 82 is added to read:

CHAPTER 82. SAFETY PROVISIONS FOR WORKERS

§ 8201. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT SOCIAL OR MENTAL HEALTH SERVICES

(a)(1) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social or mental health services.

(2) The Secretary shall ensure that the Agency's contracts with providers whose employees deliver direct social or mental health services and that are administered or designated but not otherwise licensed by a department of the Agency include the requirement that providers establish and maintain a written workplace violence prevention and crisis response policy that meets or exceeds the requirements of this chapter in place for the benefit of employees delivering direct social or mental health services.

(b) A written workplace violence prevention and crisis response policy prepared with input from an employee delivering direct social or mental health services shall minimally include the following:

(1) measures the provider intends to take to respond to an incident of or credible threat of workplace violence against an employee delivering direct social or mental health services;

(2) a system for centrally recording all incidents of or credible threats of workplace violence against an employee delivering direct social or mental health services;

(3) a training program to educate employees delivering direct social or mental health services about workplace violence and ways to reduce the risks; and

(4) the development and maintenance of a violence prevention and crisis response committee that includes employees delivering direct social or mental health services to monitor ongoing compliance with the violence prevention and crisis response policy and to assist employees delivering direct social or mental health services.

(c) In preparing the written violence prevention and crisis response policy required by this section, the Secretary and providers identified in subdivision (a)(2) of this section shall consult the U.S. Occupational Safety and Health Administration's Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers as amended.

(d) A written workplace violence prevention and crisis response policy shall be evaluated annually and updated as necessary by the violence and

prevention response committee and provided to employees delivering direct social or mental health services.

(e) The requirements of this section shall neither be construed as a waiver of sovereign immunity by the State nor as creating any private right of action against the State for damages resulting from failure to comply with this section. This section shall not be construed to limit or eliminate any legal remedy available to an employee prior to the enactment of this section.

Sec. 2. 18 V.S.A. § 7114 is added to read:

§ 7114. SAFETY POLICIES FOR EMPLOYEES DELIVERING DIRECT
SOCIAL OR MENTAL HEALTH SERVICES

(a) The Secretary of Human Services, in consultation with each department of the Agency, shall establish and maintain a workplace violence prevention and crisis response policy for the benefit of employees delivering direct social or mental health services pursuant to 33 V.S.A. § 8201.

(b) The Secretary shall ensure that the Agency's contracts with providers described in 33 V.S.A. § 8201(a)(2) require the providers to establish and maintain a written workplace violence prevention and crisis response policy for the benefit of employees delivering direct social or mental health services pursuant to 33 V.S.A. § 8201.

Sec. 3. EFFECTIVE DATE

This act shall take effect on January 1, 2017.

and that after passage the title of the bill be amended to read: "An act relating to safety policies for employees delivering direct social or mental health services"

H. 183

An act relating to security in the Capitol Complex

The Senate proposes to the House to amend the bill as follows:

In Sec. 1, 2 V.S.A. chapter 30, § 991, in subsection (b), subdivision (2), by striking out subsection (b), subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) In the first year, the Chair of the House Committee on Corrections and Institutions shall serve as Chair of the Committee and the Chair of the Senate Committee on Institutions shall serve as Vice Chair. Annually thereafter, the offices of Chair and Vice Chair shall rotate between the Chairs of the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

(For text see House Journal March 17, 2016)

H. 367

An act relating to miscellaneous revisions to the municipal plan adoption, amendment, and update process

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

Sec. 1. 24 V.S.A. § 4350 is amended to read:

§ 4350. REVIEW AND CONSULTATION REGARDING MUNICIPAL PLANNING EFFORT

(a) A regional planning commission shall consult with its municipalities with respect to the municipalities' planning efforts, ascertaining the municipalities' needs as individual municipalities and as neighbors in a region, and identifying the assistance that ought to be provided by the regional planning commission. As a part of this consultation, the regional planning commission, after public notice, shall review the planning process of its member municipalities at least twice during an eight-year period, or more frequently on request of the municipality, and shall so confirm when a municipality:

(1) is engaged in a continuing planning process that, within a reasonable time, will result in a plan ~~which~~ that is consistent with the goals contained in section 4302 of this title; ~~and~~

(2) is engaged in a process to implement its municipal plan, consistent with the program for implementation required under section 4382 of this title; and

(3) is maintaining its efforts to provide local funds for municipal and regional planning purposes.

(b)(1) As part of the consultation process, the commission shall consider whether a municipality has adopted a plan. In order to obtain or retain confirmation of the planning process ~~after January 1, 1996~~, a municipality must have an approved plan. A regional planning commission shall review and approve plans of its member municipalities, when approval is requested and warranted. Each review shall include a public hearing which is noticed at least 15 days in advance by posting in the office of the municipal clerk and at least one public place within the municipality and by publication in a newspaper or newspapers of general publication in the region affected. The commission shall approve a plan if it finds that the plan:

(A) is consistent with the goals established in section 4302 of this title;

(B) is compatible with its regional plan;

(C) is compatible with approved plans of other municipalities in the region; and

(D) contains all the elements included in subdivisions 4382(a)(1)-(10)(12) of this title.

~~(2) Prior to January 1, 1996, if a plan contains all the elements required by subdivisions 4382(a)(1)-(10) and is submitted to the regional planning commission for approval but is not approved, it shall be conditionally approved.~~

~~(e)(2)~~ A commission shall give approval or disapproval to a municipal plan or amendment within two months of its receipt following a final hearing held pursuant to section 4385 of this title. The fact that the plan is approved after the deadline shall not invalidate the plan. If the commission disapproves the plan or amendment, it shall state its reasons in writing and, if appropriate, suggest acceptable modifications. Submissions for approval that follow a disapproval shall receive approval or disapproval within 45 days.

~~(d)(3)~~ The commission shall file any adopted plan or amendment with the Department of Housing and Community Development within two weeks of receipt from the municipality. Failure on the part of the commission to file the plan shall not invalidate the plan.

(c) In order to retain confirmation of the planning process, a municipality shall document that it has reviewed and is actively engaged in a process to implement its adopted plan.

(1) When assessing whether a municipality has been actively engaged in a process to implement its adopted plan, the regional planning commission shall consider the activities of local boards and commissions with regard to the preparation or adoption of bylaws and amendments; capital budgets and programs; supplemental plans; or other actions, programs, or measures undertaken or scheduled to implement the adopted plan. The regional planning commission shall also consider factors that may have hindered or delayed municipal implementation efforts.

(2) The consultation may include guidance by the regional planning commission with regard to resources and technical support available to the municipality to implement its adopted plan and recommendations by the regional planning commission for plan amendments and for updating the plan prior to readoption under section 4387 of this title.

~~(e)(d)~~ During the period of time when a municipal planning process is confirmed:

(1) The municipality's plan will not be subject to review by the Commissioner of Housing and Community Development under section 4351 of this title.

(2) State agency plans adopted under 3 V.S.A. chapter 67 shall be compatible with the municipality's approved plan. ~~This provision shall not apply to plans that are conditionally approved under this chapter.~~

(3) The municipality may levy impact fees on new development within its borders, according to the provisions of chapter 131 of this title.

(4) The municipality shall be eligible to receive additional funds from the municipal and regional planning fund.

~~(f)~~(e) Confirmation and approval decisions under this section shall be made by majority vote of the commissioners representing municipalities, in accordance with the bylaws of the regional planning commission.

Sec. 2. 24 V.S.A. § 4385 is amended to read:

§ 4385. ADOPTION AND AMENDMENT OF PLANS; HEARING BY
LEGISLATIVE BODY

* * *

(d) Plans may be reviewed from time to time and may be amended in the light of new developments and changed conditions affecting the municipality. An amendment to a plan does not affect or extend the plan's expiration date.

Sec. 3. 24 V.S.A. § 4387 is amended to read:

§ 4387. READOPTION OF PLANS

(a) All plans, including all prior amendments, shall expire every ~~five~~ eight years unless they are readopted according to the procedures in section 4385 of this title.

(b)(1) A municipality may readopt any plan that has expired or is about to expire. Prior to any readoption, the planning commission shall review and update the information on which the plan is based, and shall consider this information in evaluating the continuing applicability of the plan. In its review, the planning commission shall:

(A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;

(B) engage in community outreach and involvement in updating the plan;

(C) consider consistency with the goals established in section 4302 of this title;

(D) address the required plan elements under section 4382 of this title;

(E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;

(F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and

(G) establish a program and schedule for implementing the plan.

(2) The readopted plan shall remain in effect for the ensuing ~~five~~ eight years unless earlier readopted.

(c) Upon the expiration of a plan, all bylaws and capital budgets and programs then in effect shall remain in effect, but shall not be amended until a plan is in effect.

(d) The fact that a plan has not been approved shall not make it inapplicable, except as specifically provided by this chapter. Bylaws, capital budgets, and programs shall remain in effect, even if the plan has not been approved.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2016. The eight-year expiration date for municipal plans applies to plans adopted or readopted on or after July 1, 2015. Plans adopted or readopted before July 1, 2015 shall expire in accordance with section 4387 of this title as it existed on the date of adoption or readoption.

(For text see House Journal April 2, 2015)

H. 610

An act relating to clarifying the Clean Water State Revolving Fund and Water Pollution Control Grant Programs

In Sec. 38, Report on Loans to Private Entities for Water Pollution Abatement and Control Facilities and Public Water Supply Systems, in subsection (a), by striking out "Committee on Institutions" and inserting in lieu thereof Committees on Institutions and on Natural Resources and Energy.

(For text see House Journal March 17, 2016)

H. 629

An act relating to a study committee to examine laws related to the administration and issuance of vital records

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 1, in subsection (a), by striking out subdivisions (1)–(5) in their entirety and inserting in lieu thereof the following:

(1) the Commissioner of Health or designee, who shall serve as Chair of the Committee;

(2) the State Archivist or designee;

(3) a Probate judge appointed by the Chief Justice of the Vermont Supreme Court;

(4) two town clerks appointed by the Vermont Municipal Clerks' and Treasurers' Association.

Second: In Sec. 1, in subsection (c), by striking out the second sentence in its entirety and inserting in lieu thereof the following: The Committee may consult with and shall have the assistance of the Office of Legislative Council.

Third: In Sec. 1, in subsection (e), by striking out subdivisions (1)–(3) in their entirety and inserting in lieu thereof the following:

(1) The Chair shall call the first meeting of the Committee to occur on or before June 15, 2016.

(2) A majority of the membership shall constitute a quorum.

Fourth: In Sec. 1, by striking out subsection (g) in its entirety

(For text see House Journal March 17, 2016)

Amendment to be offered by Reps. Devereux of Mount Holly and Martin of Wolcott to H. 629

That the House concur in the Senate Proposal of Amendment with further amendment thereto as follows:

First: In Sec. 1, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Creation and membership. There is created a Vital Records Study Committee composed of the following members:

(1) the Commissioner of Health or designee;

(2) the State Archivist or designee;

(3) a Probate judge appointed by the Chief Justice of the Vermont Supreme Court;

(4) one municipal clerk designated by the Vermont Municipal Clerks' and Treasurers' Association; and

(5) one municipal clerk designated by the Vermont League of Cities and Towns, who is the clerk of a municipality that is not a member of the Vermont Municipal Clerks' and Treasurers' Association.

Second: In Sec. 1, by striking out subsection (e) in its entirety and inserting in lieu thereof the following:

(e) Meetings; selection of chair.

(1) The Probate judge appointed by the Chief Justice to serve on the Committee shall call the first meeting of the Committee to occur on or before June 15, 2016.

(2) The Committee shall select a chair from among its members at the first meeting.

(3) A majority of the membership of the Committee shall constitute a quorum.

Action Postponed Until April 29, 2016

Senate Proposal of Amendment

H. 280

An act relating to amending the State Board of Education rules on school lighting requirements

The Senate proposes to the House to amend the bill as follows:

In Sec. 1, in subsection (b), by striking out "August 1, 2015" and inserting in lieu thereof August 1, 2016.

(For text see House Journal April 22, 2015)

Action Postponed Until May 2, 2016

Favorable with Amendment

H. 866

An act relating to prescription drug manufacturer cost transparency

NOTICE CALENDAR
Favorable with Amendment

H. 871

An act relating to approval of amendments to the charter of the City of Montpelier

Rep. Martin of Wolcott, for the Committee on **Government Operations**, recommends the bill be amended as follows:

In Sec. 2, 24 App. V.S.A. chapter 5, by striking out in their entirety the Subchapter 7 (city ordinances) designation and the asterisks immediately following and § 709 (regulation of public water supply and sources) and the asterisks immediately following.

(Committee Vote: 6-5-0)

Rep. Condon of Colchester, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Government Operations**.

(Committee Vote: 6-5-0)

S. 55

An act relating to creating a flat rate for Vermont's estate tax and creating an estate tax exclusion amount that matches the federal amount

Rep. Young of Glover, for the Committee on **Ways & Means**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Estate Taxes * * *

Sec. 1. 32 V.S.A. § 7402 is amended to read:

§ 7402. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

(1) "Commissioner" means the Commissioner of Taxes appointed under section 3101 of this title.

(2) "Executor" means the executor or administrator of the estate of the decedent, or, if there is no executor or administrator appointed, qualified and acting within Vermont, then any person in actual or constructive possession of any property of the decedent.

(3) “Federal estate tax liability” means for any decedent’s estate, the federal estate tax payable by the estate under the laws of the United States after the allowance of all credits against such estate tax provided thereto by the laws of the United States.

~~(4) “Federal gift tax liability” means for any taxpayer and any calendar year, the federal gift tax payable by the taxpayer for that calendar year under the laws of the United States. [Repealed.]~~

(5) “Federal gross estate” means the gross estate as determined under the laws of the United States.

(6) “Federal taxable estate” means the taxable estate as determined under the laws of the United States.

(7) “Federal taxable gifts” means taxable gifts as determined under the laws of the United States.

~~(8) “Laws of the United States” means, for any taxable year, the statutes of the United States relating to the federal estate or gift taxes, as the case may be, effective for the calendar year or taxable estate, but with the credit for State death taxes under 26 U.S.C. § 2011, as in effect on January 1, 2001, and without any deduction for State death taxes under 26 U.S.C. § 2058 the U.S. Internal Revenue Code of 1986, as amended through December 31, 2015. As used in this chapter, “Internal Revenue Code” shall have the same meaning as “laws of the United States” as defined in this subdivision.~~

(9) “Nonresident of Vermont” means a person whose domicile is not Vermont.

(10) “Resident of Vermont” means a person whose domicile is Vermont.

(11) “Taxpayer” means the executor of an estate, the estate itself, the donor of a gift, or any person or entity or combination of these who is liable for the payment of any tax, interest, penalty, fee, or other amount under this chapter.

~~(12) “Vermont gifts” means, for any calendar year, all transfers by gift, excluding transfers by gift of tangible personal property and real property which have a situs outside Vermont, and also excluding all transfers by gift made by nonresidents of Vermont which take place outside Vermont. [Repealed.]~~

(13) “Vermont gross estate” means for any decedent the value of the federal gross estate as provided under ~~the laws of the United States~~ Section 2031 of the Internal Revenue Code, excluding the value of ~~real or tangible personal~~ property which has an actual ~~its~~ situs outside Vermont ~~at the time of~~

~~death of the decedent, and also excluding in the case of a nonresident of Vermont the value of intangible personal property owned by the decedent.~~

~~(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 as provided under Section 2051 of the Internal Revenue Code, without regard to whether the estate is subject to the federal estate tax:~~

~~(A) Increased by the amount of the deduction for state death taxes allowed under Section 2058 of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.~~

~~(B) Increased by the amount of the deduction for foreign death taxes allowed under Section 2053(d) of the Internal Revenue Code, to the extent deducted in computing the federal taxable estate.~~

~~(C) Increased by the aggregate amount of taxable gifts as defined in Section 2503 of the Internal Revenue Code, made by the decedent within two years of the date of death. For purposes of this subdivision, the amount of the addition equals the value of the gift under Section 2512 of the Internal Revenue Code and excludes any value of the gift included in the federal gross estate.~~

~~(15) “Situs of property” means, with respect to:~~

~~(A) real property, the state or country in which it is located;~~

~~(B) tangible personal property, the state or country in which it was normally kept or located at the time of the decedent’s death or for a gift of tangible personal property within two years of death, the state or country in which it was normally kept or located when the gift was executed;~~

~~(C) a qualified work of art, as defined in Section 2503(g)(2) of the Internal Revenue Code, owned by a nonresident decedent and that is normally kept or located in this State because it is on loan to an organization, qualifying as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that is located in Vermont, the situs of the art is deemed to be outside Vermont; and~~

~~(D) intangible personal property, the state or country in which the decedent was domiciled at death or for a gift of intangible personal property within two years of death, the state or country in which the decedent was domiciled when the gift was executed.~~

Sec. 2. 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 26 U.S.C. § 2011 as in effect on January 1, 2001. This base amount shall be reduced by the lesser of the following: estates of decedents as prescribed by this chapter.~~

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

~~(2) A sum equal to the proportion of the credit 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) 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 not a resident of this State. The amount of this tax shall be a sum equal to the proportion of the base amount of tax under subsection (a) of this section which the value of Vermont real and tangible personal property taxed in this State bears to the value of the decedent's total gross estate for federal estate tax purposes. The tax shall be computed as follows. The following rates shall be applied to the Vermont taxable estate:~~

<u>Amount of Vermont Taxable Estate</u>	<u>Rate of Tax</u>
<u>Not over \$2,750,000.00</u>	<u>None</u>
<u>\$2,750,000.00 or more</u>	<u>16 percent of the excess over</u> <u>\$2,750,000.00</u>

The resulting amount shall be multiplied by a fraction not greater than one, where the numerator of which is the value of the Vermont gross estate plus the value of gifts under 32 V.S.A. § 7402(14)(C) with a Vermont situs, and the denominator of which is the federal gross estate plus the value of gifts under subdivision 7402(14)(C) of this title.

Sec. 3. 32 V.S.A. § 7444 is amended to read:

§ 7444. RETURN BY EXECUTOR

(a) An executor shall submit a Vermont estate tax return to the Commissioner, on a form prescribed by the Commissioner, when a decedent

has an interest in property with a situs in Vermont and one or both of the following apply:

(1) A federal estate tax return is required to be filed under Section 6018 of the Internal Revenue Code; or

(2) The sum of the federal gross estate and federal adjusted taxable gifts, as defined in Section 2001(b) of the Internal Revenue Code, made within two years of the date of the decedent's death exceeds \$2,750,000.00.

~~(b) In all cases where a tax is imposed upon the estate under section 7442a of this chapter, the executor shall make a return with respect to the estate tax imposed by this chapter. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he or she shall include in his or her return (to the extent of his or her knowledge or information) a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Commissioner, such person shall in like manner make a return as to such part of the gross estate. A return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this section shall contain a statement that the return is, to the best of the knowledge and belief of the fiduciary, true and correct.~~

Sec. 4. 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, 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 shall 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. [Repealed.]~~

* * * PSB Telecommunications Siting; Municipal Role * * *

Sec. 5. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS
FACILITIES

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

(b) Definitions. As used in this section:

(1) “Ancillary improvements” means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) “De minimis modification” means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) the addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) the additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3) “Good cause” means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a

substantial shortcoming detrimental to the public good or State's interests in section 202c of this title.

~~(4)~~(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. ~~For purposes of~~ As used in this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(5) "Substantial deference" means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

~~(4)~~(6) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

~~(5)~~(7) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the Public Service Board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the

public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) the Board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) a telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.

(2) Unless there is good cause to find otherwise, substantial deference has been given to ~~the land conservation measures in the plans of the affected municipalities and;~~ to the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively; and to the recommendations of the regional planning commission concerning the regional plan. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(A) If a proposed new support structure for a new telecommunications facility that provides wireless service will exceed 50 feet in height in a cleared area or will exceed 20 feet in height above the average

treeline measured within a 100-foot radius from the structure in a wooded area, the application shall identify all existing telecommunications facilities within the area to be served by the proposed structure and, for each such existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunications equipment were located on or at the existing facility. The applicant also shall compare each such projection and estimate to the coverage and capacity that would be provided at the site of the proposed structure.

(B) To obtain a finding that a proposed facility cannot reasonably be collocated on or at an existing telecommunications facility, the applicant must demonstrate that:

(i) collocating on or at an existing facility will result in a significant reduction of the area to be served or the capacity to be provided by the proposed facility or substantially impede coverage or capacity objectives for the proposed facility that promote the general good of the State under subsection 202c(b) of this title;

(ii) the proposed antennas and equipment will exceed the structural or spatial capacity of the existing or approved tower or facility, and the existing or approved tower or facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility;

(iii) the owner of the existing facility will not provide space for the applicant's proposed telecommunications equipment on or at that facility on commercially reasonable terms; or

(iv) the proposed antennas and equipment will cause radio frequency interference that will materially impact the usefulness of other existing or permitted equipment at the existing or approved tower or facility and such interference cannot be mitigated at a reasonable cost.

* * *

(e) Notice. No less than ~~45~~ 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been

issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the ~~45-day~~ 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the collocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's collocation assessment and to conduct further independent analysis, as necessary. Within 45 days of receiving the applicant's notice and collocation assessment, the Department shall report its own preliminary findings and recommendations regarding collocation to the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

* * *

(h) Exemptions from other law.

(1) An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. This exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.

(2) Ordinances An applicant using the procedures provided in this section shall not be required to obtain an approval from the municipality under an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. This exemption from obtaining an approval under such an ordinance shall not affect the substantial deference to be given to a plan or recommendation based on such an ordinance under subdivision (c)(2) of this section.

(3) Disputes over jurisdiction under this section shall be resolved by the Public Service Board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction of a telecommunications facility may not apply for approval from the Board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

* * *

Sec. 6. 24 V.S.A. § 4412(8)(C) is amended to read:

(C) The regulation of a telecommunications facility, as defined in 30 V.S.A. § 248a, shall be exempt from municipal approval under this chapter when and to the extent jurisdiction is assumed by the Public Service Board according to the provisions of that section. This exemption from obtaining approval under this chapter shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under 30 V.S.A. § 248a(c)(2).

* * * Connectivity Initiative; Public Schools; Cellular Service * * *

Sec. 7. 30 V.S.A. § 7515b is amended to read:

§ 7515b. CONNECTIVITY INITIATIVE

(a) The ~~purpose~~ goals of the Connectivity Initiative ~~is~~ are to:

(1) ~~provide~~ Provide each service location in Vermont access to Internet service that is capable of speeds of at least 10 Mbps download and 1 Mbps upload, or the FCC speed requirements established under Connect America Fund Phase II, whichever is higher, beginning with locations not served as of December 31, 2013 according to the minimum technical service characteristic objectives applicable at that time. Within this category of service locations, priority shall be given first to unserved and then to underserved locations. As used in this section, “unserved” means a location having access to only satellite or dial-up Internet service and “underserved” means a location having

access to Internet service with speeds that exceed satellite and dial-up speeds but are less than 4 Mbps download and 1 Mbps upload.

(2) Provide universal availability of mobile telecommunications service throughout the State.

(b) Any new services funded in whole or in part by monies from this Initiative shall be capable of being continuously upgraded to reflect the best available, most economically feasible service capabilities.

~~(b)~~(c) The Department of Public Service shall publish annually a list of census blocks eligible for funding based on the Department's most recent broadband mapping data. The Department annually shall solicit proposals from telecommunications service providers, alone or in partnership with one or more municipalities, to deploy broadband to eligible census blocks.

(d) The Department shall give priority to proposals that reflect the lowest cost of providing services to unserved and underserved locations; ~~however or that include upgrading Internet service at one or more public schools that do not have access to Internet service capable of the minimum speeds required under subdivision (a)(1) of this section.~~ In addition, the Department shall give priority to proposals that include matching public or private funds and establish an alignment between the proposed broadband or cellular project and community goals.

(e) In addition to the priorities established in subsection (d) of this section, the Department also shall consider:

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

(2) the price to consumers of services;

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

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

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

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

(7) whether a public school has a percentage of students receiving free or reduced lunches that is above the State average;

(8) whether the community in which a public school is situated does not have high speed Internet connectivity; and

(9) whether the community in which a public school is situated is rural and has a percentage of households categorized as low-income that is higher than the State average.

(10) a telecommunications service provider's performance with respect to the terms of a publicly-financed grant or loan awarded by a federal or State entity for the expansion of broadband or mobile telecommunications service in Vermont.

Sec. 8. 30 V.S.A. § 7523 is amended to read:

§ 7523. RATE OF CHARGE

(a) Beginning on July 1, 2014, the rate of charge shall be two percent of retail telecommunications service.

(b) Beginning on July 1, 2016 and ending on June 30, 2021, the rate of charge established under subsection (a) of this section shall be increased by one-half of one percent of retail telecommunications service, and the monies collected from this increase shall be transferred to the Connectivity Fund established under section 7516 of this title to provide specifically additional support for the Connectivity Initiative established under section 7515b of this title.

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

Sec. 9. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

(a) There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before September 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

(b) In addition to the monies transferred to the Fund pursuant to subsection (a) of this section, monies collected from one-half of one percent of the Universal Service Charge shall be allocated to the Fund specifically to provide additional support to the Connectivity Initiative, as prescribed in subsection 7523(b) of this title.

* * * VUSF; News Service; Blind and Visually Impaired * * *

Sec. 10. 30 V.S.A. § 7511 is amended to read:

§ 7511. DISTRIBUTION GENERALLY

(a)(1) As directed by the Commissioner of Public Service, funds collected by the fiscal agent, and interest accruing thereon, shall be distributed as follows:

(A) to pay costs payable to the fiscal agent under its contract with the Commissioner;

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

(C) to support the Vermont Lifeline program in the manner provided by section 7513 of this title;

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

(E) to support a telecommunications information and news service in the manner provided by section 7512a of this title; and

(F) to support the Connectivity Fund established in section 7516 of this title; and

(2) for fiscal year 2016 only, any personnel or administrative costs associated with the Connectivity Initiative shall come from the Connectivity Fund, as determined by the Commissioner in consultation with the Connectivity Board.

(b) If insufficient funds exist to support all of the purposes contained in subsection (a) of this section, the Commissioner shall allocate the available funds, giving priority in the order listed in subsection (a).

Sec. 11. 30 V.S.A. § 7512a is added to read:

§ 7512a. TELECOMMUNICATIONS NEWS SERVICE

The fiscal agent shall make distributions to the State Treasurer for a telecommunications information and news service that provides access to existing newspapers and other printed materials for individuals who are blind, visually impaired, or otherwise unable to read such printed materials. The amount of the transfer shall be determined by the Commissioner of Public Service as the amount reasonably necessary to pay the costs of a contract administered by the Department of Public Service.

* * * High-Cost Program; Eligibility; Deployment Information * * *

Sec. 12. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST PROGRAM

(a) The Universal Service Charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this State, thereby maintaining universal service, and as a means of supporting access to broadband service in all parts of the State.

* * *

(i) The amount of the monthly support under this section shall be the pro rata share of available funds based on the total number of incumbent local exchange carriers in the State and reflecting each carrier's lines in service or service locations in its high-cost area or areas, as determined under subsection (e) of this section. If an incumbent local exchange carrier does not petition the Board for VETC designation, or is found ineligible by the Board or by the Commissioner of Public Service pursuant to his or her authority under subsection (k) of this section, the share of funds it otherwise would have received under this section shall be used to support the Connectivity Initiative established in section 7515b of this chapter.

* * *

(l) Based on the recommendation of the Commissioner of Public Service, the Board may deem a company ineligible to receive monthly support under this section or revoke a company's VETC designation if he or she finds that the company or one of its affiliates has not provided adequate deployment information requested by the Director for Telecommunications and Connectivity under subsection 202e(c) of this title.

Sec. 13. PROPOSAL; SCHOOL CONNECTIVITY GRANT PROGRAM

On or before December 1, 2016, the Secretary of Education and the Director of Telecommunications and Connectivity shall propose to the General Assembly in the form of a draft bill a school connectivity grant program designed to provide competitive grants to public schools for capital costs associated with upgrading the Internet connection to a public school or purchasing hardware for infrastructure for internal Internet connections. The goal of the program is to ensure that the maximum Internet service available to the school is accessible by all personnel and students on school grounds, consistent with and supportive of educational policies and objectives. Proposed criteria shall prioritize rural communities having a percentage of households categorized as low-income that is higher than the State average, and shall seek to maximize the availability of federal matching funds.

* * * Communications Union Districts; Budget; Hearing;
Date Changes * * *

Sec. 14. 30 V.S.A. § 3075 is amended to read:

§ 3075. BUDGET

(a) Annually, ~~not later than September 15~~ on or before October 21, the board shall approve and cause to be distributed to the legislative body of each district member for review and comment an annual report of its activities, together with a financial statement, a proposed district budget for the next fiscal year, and a forecast presenting anticipated year-end results. The proposed budget shall include reasonably detailed estimates of:

- (1) deficits and surpluses from prior fiscal years;
- (2) anticipated expenditures for the administration of the district;
- (3) anticipated expenditures for the operation and maintenance of any district communications plant;
- (4) payments due on obligations, long-term contracts, leases, and financing agreements;
- (5) payments due to any sinking funds for the retirement of district obligations;
- (6) payments due to any capital or financing reserve funds;
- (7) anticipated revenues from all sources; and
- (8) such other estimates as the board deems necessary to accomplish its purpose.

(b) Coincident with a regular meeting thereof, the board shall hold a public hearing ~~not later than November 1~~ on or before November 15 of each year to receive comments from the legislative bodies of district members and hear all other interested persons regarding the proposed budget. Notice of such hearing shall be given to the legislative bodies of district members at least ~~30 days~~ 15 days prior to such hearing. The board shall give consideration to all comments received and make such changes to the proposed budget as it deems advisable.

(c) Annually, ~~not later than December 1~~ on or before December 15, the board shall adopt the budget and appropriate the sums it deems necessary to meet its obligations and operate and carry out the district's functions for the next ensuing fiscal year.

(d) Actions or resolutions of the board for the annual appropriations of any year shall not cease to be operative at the end of the fiscal year for which they were adopted. Appropriations made by the board for the various estimates of

the budget shall be expended only for such estimates, but by majority vote of the board the budget may be amended from time to time to transfer funds between or among such estimates. Any balance left or unencumbered in any such budget estimate, or the amount of any deficit at the end of the fiscal year, shall be included in and paid out of the operating budget and appropriations in the next fiscal year. All such budget amendments shall be reported by the district treasurer to the legislative bodies of each district member within 14 days of the end of the fiscal year.

(e) Financial statements and audit results shall be delivered to the legislative bodies of each district member within 10 days of delivery to the board.

* * * E-911; Call-taking Services; Study * * *

Sec. 15. E-911; CALL-TAKING SERVICES; STUDY

(a) A working group shall be formed to study and make recommendations regarding the most efficient, reliable, and cost effective means for providing statewide call-taking operations for Vermont's 911 system. Among other things, the group shall make findings related to the financing, operations, and geographical location of 911 call-taking services. In addition, the group's findings shall include a description of the number and nature of calls received, and an evaluation of current and potential State and local partnerships with respect to the provision of such services. The group shall take into consideration the "Enhanced 9-1-1 Board Operational and Organizational Report," dated September 4, 2015. The group's recommendations shall strive to achieve the best possible outcome in terms of ensuring the health and safety of Vermonters and Vermont communities.

(b) Members of the working group shall include a representative from each of the following entities: the Enhanced 911 Board; the Department of Public Safety; the Vermont State Employees Association; the Vermont League of Cities and Towns; the Vermont State Firefighters' Association; the Vermont Ambulance Association; the Vermont Association of Chiefs of Police; and the Vermont Sheriffs' Association.

(c) The representative from the E-911 Board shall convene the first meeting of the working group, at which the group shall elect a Chair and Vice Chair from among its members. The group shall meet as needed, and shall receive administrative and staffing support from the Department of Public Safety, and may request relevant financial information from the Joint Fiscal Office.

(d) On or before January 15, 2017, the group shall report its findings and recommendations to the House Committees on Commerce and Economic Development, on Government Operations, on Appropriations, and on Ways

and Means and to the Senate Committees on Finance, on Government Operations, on Appropriations, and on Economic Development, Housing, and General Affairs, and to the Governor.

(e) The Department of Public Safety shall continue to provide 911 call-taking services unless otherwise directed by legislative enactment.

* * * Miscellaneous Provisions; Telecommunications

Grant Programs * * *

Sec. 16. RECOVERY AND REPURPOSING OF

TELECOMMUNICATIONS GRANT FUNDS

To the extent State funds are recovered by the Department of Public Service, as the successor in interest to the Vermont Telecommunications Authority (VTA), as the result of a grant recipient's failure to comply with the terms of a grant agreement entered into with the VTA, such public monies shall be deposited in the Connectivity Initiative.

Sec. 17. HIGH-COST PROGRAM; PUBLIC SERVICE BOARD;

DEADLINE

The Public Service Board shall issue a procedures order for implementation of the High-Cost Program established under 30 V.S.A. § 7515 not later than September 1, 2016. If the Board fails to do so, the Board shall provide a report to the General Assembly and the Governor detailing reasons for failing to comply with this mandate.

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

(a) Notwithstanding 1 V.S.A. § 214, Secs. 1–4 shall take effect on January 1, 2016 and apply to decedents dying after December 31, 2015.

(b) This section and Secs. 5–17 shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to Vermont’s estate tax and to telecommunications”

(Committee vote: 9-2-0)

(For text see Senate Journal April 1, 2016)

S. 123

An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation

Rep. Ryerson of Randolph, for the Committee on **Natural Resources & Energy**, recommends that the House propose to the Senate that the bill be amended as follows:

First: By striking out Secs. 1 through 5 in their entirety and inserting in lieu thereof Secs. 1 through 5c to read:

* * * Environmental Conservation; Standard Procedures * * *

Sec. 1. 10 V.S.A. chapter 170 is added to read:

CHAPTER 170. DEPARTMENT OF ENVIRONMENTAL CONSERVATION; STANDARD PROCEDURES;

Subchapter 1. General Provisions

§ 7701. PURPOSE

The purpose of this chapter is to establish standard procedures for public notice, public meetings, and decisions relating to applications for permits issued by the Department of Environmental Conservation.

§ 7702. DEFINITIONS

As used in this chapter:

(1) “Adjoining property owner” means a person who owns land in fee simple, if that land:

(A) shares a property boundary with a tract of land where proposed or actual activity regulated by the Department is located; or

(B) is adjacent to a tract of land where such activity is located and the two properties are separated only by a river, stream, or public highway.

(2) “Administrative amendment” means an amendment to an individual permit, general permit, or notice of intent under a general permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or the imposition of new conditions or requirements.

(3) “Administrative record” means the application and any supporting data furnished by the applicant; all information submitted by the applicant during the course of reviewing the application; the draft permit or notice of intent to deny the application; the fact sheet and all documents cited in the fact sheet, if applicable; all comments received during the public comment period;

the recording or transcript of any public meeting or meetings held; any written material submitted at a public meeting; the response to comments; the final permit; any document used as a basis for the final decision; and any other documents contained in the permit file.

(4) “Administratively complete application” means an application for a permit for which all initially required documentation has been submitted, and any required permit fee, and the information submitted initially addresses all application requirements but has not yet been subjected to a complete technical review.

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

(6) “Clean Air Act” means the federal statutes on air pollution prevention and control, 42 U.S.C. § 7401 et seq.

(7) “Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

(8) “Commissioner” means the Commissioner of Environmental Conservation or the Commissioner’s designee.

(9) “Department” means the Department of Environmental Conservation.

(10) “Document” means any written or recorded information, regardless of physical form or characteristics, which the Department produces or acquires in the course of reviewing an application for a permit.

(11) “Environmental notice bulletin” or “bulletin” means the website and e-mail notification system required by 3 V.S.A. § 2826.

(12) “Fact sheet” means a document that briefly sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing a draft decision.

(13) “General permit” means a permit that applies to a class or category of discharges, emissions, disposal, facilities, or activities within a common geographic area, including the entire State or a region of the State.

(14) “Individual permit” means a permit that authorizes a specific discharge, emission, disposal, facility, or activity that contains terms and conditions that are specific to the discharge, emission, disposal, facility, or activity.

(15) “Major amendment” means an amendment to an individual permit or notice of intent under a general permit that necessitates technical review.

(16) “Minor amendment” means an amendment to an individual permit or notice of intent under a general permit that requires a change in a condition or requirement, does not necessitate technical review, and is not an administrative amendment.

(17) “Notice of intent under a general permit” means an authorization issued by the Secretary to undertake an action authorized by a general permit.

(18) “Permit” includes any permit, certification, license, registration, determination, or similar form of permission required from the Department by law. However, the term excludes a professional license issued pursuant to chapter 48, subchapter 3 (licensing of well drillers) of this title and sections 1674 (water supply operators), 1936 (UST inspector licenses), 6607 (hazardous waste transporters), and 6607a (waste transportation) of this title.

(19) “Person” shall have the same meaning as under section 8502 of this title.

(20) “Person to whom notice is federally required” means a person to whom notice of an application or draft decision must be given under federal regulations adopted pursuant to the Clean Air Act or Clean Water Act.

(21) “Public meeting” means a meeting that is open to the public and recorded or transcribed, at which the Department shall provide basic information about the draft permit decision, an opportunity for questions to the applicant and the Department, and an opportunity for members of the public to submit oral and written comments.

(22) “Secretary” means the Secretary of Natural Resources or designee.

(23) “Technical review” means the application of scientific, engineering, or other professional expertise to the facts to determine whether activity for which a permit is requested meets the standards for issuing the permit under statute and rule.

§ 7703. RULES; ADDITIONAL NOTICE OR PROCEDURES

(a) Rules.

(1) Implementing rules. The Secretary may adopt rules to implement this chapter.

(2) Complex projects; preapplication process. The Secretary shall adopt rules to determine when a project requiring a permit is large and complex. These rules shall provide that an applicant proposing such a project, prior to filing an application for a permit, shall initiate a project scoping process pursuant to 3 V.S.A. § 2828 or shall hold an informational meeting that is open to the public. The rules shall ensure that:

(A) Written notice of an informational meeting under this section is sent to the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for any municipality in which the project is located; if the project site is located on a boundary, any Vermont municipality adjacent to that boundary and the municipal and regional planning commissions for that municipality; and each adjoining property owner. At the time this written notice is sent, the Secretary also shall post the notice to the environmental notice bulletin.

(B) The notice to adjoining property owners informs them of how they can continue to receive notices and information through the environmental notice bulletin concerning the project as it is reviewed by the Secretary.

(C) The applicant furnishes by affidavit to the Secretary the names of those furnished notice and certifies compliance with the notice requirements of this subsection.

(D) The applicant and the Secretary or designee shall attend the meeting. The applicant shall respond to questions from other attendees.

(b) Additional notice.

(1) The Secretary may require, by rule or in an individual case, measures in addition to those directed by this chapter using any method reasonably calculated to give direct notice to persons potentially affected by a decision on the application.

(2) In an individual case, the Secretary may determine to apply the procedures of section 7713 (Type 2) of this chapter to the issuance of a permit otherwise subject to the procedures of section 7715 (Type 4) or section 7716 (Type 5) of this chapter.

(c) Extension of deadlines. A person may request that the Secretary extend any deadline for comment or requesting a public informational meeting established by this chapter. The person shall submit the request before the deadline and include a brief explanation of why the extension is justified. If the request is granted, the Secretary shall provide notice of the new deadline through the environmental notice bulletin.

§ 7704. ADMINISTRATIVE RECORD

(a) The Secretary shall create an administrative record for each application for a permit and shall make the administrative record available to the public.

(b) The Secretary shall base a draft or final decision on each application for a permit on the administrative record.

(c) With respect to permits issued under the Clean Air Act and Clean Water Act, the Secretary shall comply with any requirements under those acts concerning the maintenance and availability of the administrative record.

§ 7705. TIME; HOW COMPUTED

In this chapter:

(1) When time is to be reckoned from a day, date, or an act done, the day, date, or day when the act is done shall not be included in the computation.

(2) Computation of a time period shall use calendar days.

Subchapter 2. Standard Procedures

§ 7711. PERMIT PROCEDURES; STANDARD PROVISIONS

(a) Notice through the environmental notice bulletin. When this chapter requires notice through the environmental notice bulletin:

(1) The bulletin shall generate and send an e-mail to notify:

(A) each person requiring notice under section 7712 of this chapter;

(B) the applicant;

(C) each person on an interested persons list;

(D) each municipality in which the activity to be permitted is located, except for notice of a draft or final general permit; and

(E) each other person to whom this chapter directs that a particular notice be provided through the bulletin.

(2) At a minimum, each notice generated by the bulletin shall contain:

(A) the name and contact information for the person at the Agency processing the permit;

(B) the name and address of the permit applicant, if applicable;

(C) the name and address of the facility or activity to be permitted, if applicable;

(D) a brief description of the activity for which the permit would be issued;

(E) the length of the period for submitting written comments and the process for submitting those comments, if applicable, and notice of the requirements regarding submission of comments during that period or at a public meeting in order to appeal under chapter 220 of this title;

(F) the process for requesting a public meeting, if applicable;

(G) when a public meeting has been scheduled, the time, date, and location of the meeting and a brief description of the nature and purpose of the meeting;

(H) when issued, the draft permit or notice of intent to deny a permit, and the period and process for submitting written comments on that draft permit or notice;

(I) when issued, the final decision issuing or denying a permit, and the process for appealing the decision; and

(J) any other information that this chapter directs be included in a particular notice to be generated by the bulletin.

(3) The environmental notice bulletin shall provide notice by mail as required by 3 V.S.A. § 2826.

(b) Notice to adjoining property owners. When this chapter requires notice of an application to adjoining property owners, the applicant shall provide notice of the application by U.S. mail to all adjoining property owners, on a form developed by the Secretary, at the time the application is submitted to the Secretary. The form shall state how the property owners can continue to receive notices and information concerning the project as it is reviewed by the Secretary. The applicant shall provide a signed certification to the Secretary that all adjoining property owners have been notified of the application. However, if the applicant has provided written notice to adjoining property owners as part of the preapplication engagement process for complex projects under rules adopted in accordance with subsection 7703(a) of this title, then instead of the written notice required of the applicant by this subsection, the Department shall provide notice of the application through the environmental notice bulletin to those adjoining property owners who have requested notice.

(c) Comment period length. When this chapter requires the Secretary to provide a public comment period, the length of the period shall be at least 30 days, unless this chapter applies a different period for submitting comments on the particular type of permit.

(d) Period to request a public meeting. When this chapter allows a person to request a public meeting on a draft decision, the person shall submit the request within 14 days of the date on which notice of the draft decision is posted to the environmental notice bulletin, unless this chapter specifies a different period for requesting a hearing on the particular type of permit.

(e) Public meeting; notice; additional comment period. When the Secretary holds a public meeting under this chapter:

(1) The Secretary shall:

(A) provide at least 14 days' prior notice of the public meeting through the environmental notice bulletin, unless this chapter specifies a different notice period for a public meeting on the particular type of permit;

(B) include in the notice, in addition to the information required by subsection (a) of this section, the date the Secretary gave notice of an administrative complete application, if applicable; and

(C) hold the period for written comments open for at least seven days after the meeting.

(2) The applicant or applicant's representative and the Secretary or designee shall attend the meeting. The applicant shall cause to be present those professionals retained in the preparation of the application. At the meeting, the applicant and the Secretary each shall answer questions relevant to the application or draft decision to the best of their ability.

(f) Draft decisions. When this chapter requires the Secretary to post a draft decision or draft general permit to the environmental notice bulletin, the Secretary shall post to the bulletin the draft decision or draft general permit and all documents on which the Secretary relied in issuing the draft. This post shall include instructions on how to inspect and how to request a copy of each other document that is part of the administrative record of the draft decision or permit.

(g) Response to comments. When this chapter requires the Secretary to provide a response to comments, the Secretary shall provide a response to each comment received during the comment period and the basis for the response. The Secretary also shall specify each provision of the draft decision that has been changed in the final decision and the reasons for each change. The Secretary shall post the response to comments to the environmental notice bulletin and send it to all commenters.

(h) Final decisions; content; notice.

(1) The Secretary's final decision on an application for a permit or on the issuance of a general permit shall include a concise statement of the facts and analysis supporting the decision that is sufficient to apprise the reader of the decision's factual and legal basis. The final decision also shall provide notice that it may be appealed and state the period for filing an appeal and how and where to file an appeal.

(2) When this chapter requires that the Secretary to post a final decision to the environmental notice bulletin, the Secretary also shall send a copy of the final decision to all commenters.

§ 7712. TYPE 1 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits and considering applications for individual permits under the Clean Air Act and Clean Water Act.

(2) This section governs each application for a permit to be issued by the Secretary pursuant to the requirements of the Clean Air Act and Clean Water Act and to each general permit to be issued under one of those acts. However, the subsection does not apply to a notice of intent under a general permit. The procedures under this section shall be known as Type 1 Procedures.

(b) Notice of application.

(1) The applicant shall provide notice to adjoining property owners.

(2) At least 15 days prior to posting a draft decision, the Secretary shall provide notice of an administratively complete application through the environmental notice bulletin. The environmental notice bulletin shall send notice of such an application to each person to whom notice is federally required.

(3) This subsection (b) shall not apply to a general permit issued under this section.

(c) Notice of draft decision or draft general permit. The Secretary shall provide notice of a draft decision or draft general permit through the environmental notice bulletin and shall post the draft decision or permit to the bulletin. In addition to the requirements of section 7711 of this chapter:

(1) The Secretary shall post a fact sheet to the bulletin.

(2) The environmental notice bulletin shall send notice of the draft to each person to whom notice is federally required.

(3) The Secretary shall provide newspaper notice of the draft decision as required by this subdivision (3).

(A) If the draft decision pertains to an application for an individual permit, the Secretary shall provide notice in a daily or weekly newspaper in the area of the proposed project if the project is classified as major pursuant to the Clean Water Act or chapter 47 of this title or if required by federal statute or regulation.

(B) If the draft decision is a draft general permit, the Secretary shall provide notice in daily or weekly newspapers in each region of the State to which the draft general permit will apply.

(C) In addition to the requirements of this chapter and 3 V.S.A. § 2826, the notice from the environmental notice bulletin and the newspaper notice shall include all information required pursuant to applicable federal statute and regulation.

(d) Comment period. The Secretary shall provide a public comment period.

(e) Public meeting. On or before the end of the comment period, any person may request a public meeting on the draft decision or draft general permit issued under this section. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion. The Secretary shall provide at least 30 days' notice of the public meeting through the environmental notice bulletin. If the notice of the public meeting is not issued at the same time as the draft decision or draft general permit, the Secretary also shall provide notice of the public meeting in the same manner as required for the draft decision or permit under subsection (c) of this section.

(f) Notice of final decision or final general permit. The Secretary shall provide notice of the final decision or final general permit through the environmental notice bulletin and shall post the final decision or permit to the bulletin. When the Secretary issues the final decision or final general permit, the Secretary shall provide a response to comments.

(g) Compliance with Clean Air and Water Acts. With respect to a issuance of a permit under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7713. TYPE 2 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for individual permits, except for individual permits specifically listed in other sections of this subchapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 2 Procedures. This section governs an application for each of the following:

(A) an individual permit issued pursuant to the Secretary's authority under this title and 29 V.S.A. chapter 11, except for permits governed by sections 7712 and 7714–7716 of this chapter;

(B) a wetland determination under section 914 of this title;

(C) an individual shoreland permit under chapter 49A of this title;

(D) a public water system source permit under section 1675 of this title;

(E) a provisional certification issued under section 6605d of this title; and

(F) a corrective action plan under section 6648 of this title.

(b) Notice of application.

(1) The applicant shall provide notice of the application to adjoining property owners.

(A) For public water system source protection areas, the applicant also shall provide notice to all property owners located in:

(i) zones 1 and 2 of the source protection area for a public community water system source; and

(ii) the source protection area for a public nontransient noncommunity water system source.

(B) For an individual shoreland permit under chapter 49A:

(i) The notice to adjoining property owners shall be to the adjoining property owners on the terrestrial boundary of the shoreland.

(ii) This chapter does not require notice to owners of property across the lake as defined in that chapter.

(2) The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of a draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. When the Secretary issues the final decision, the Secretary shall provide a response to comments.

§ 7714. TYPE 3 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when adopting general permits, except for general permits governed by section 7712 of this chapter, and when considering other permits listed in this section.

(2) The procedures under this section shall be known as Type 3 Procedures. This section governs each of the following:

(A) Each general permit issued pursuant to the Secretary's authority under this title other than a general permit subject to section 7712 of this chapter. However, this section does not apply to a notice of intent under a general permit.

(B) Issuance of a dam safety order under chapter 43 of this title, except for an unsafe dam order under section 1095 of this title.

(C) An application or request for approval of:

(i) an individual shoreland permit under chapter 49A of this title;

(ii) an aquatic nuisance control permit under chapter 50 of this title;

(iii) a change in treatment for a public water supply under chapter 56 of this title;

(iv) a collection plan for mercury-containing lamps under section 7156 of this title;

(v) an individual plan for the collection and recycling of electronic waste under section 7554 of this title; and

(vi) a primary battery stewardship plan under section 7586 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall

post the draft decision to the bulletin. The Secretary shall provide a public comment period.

(d) Public meeting. The Secretary shall hold a public meeting whenever any person files a written request for such a meeting. The Secretary otherwise may hold a public meeting at his or her discretion.

(e) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the final decision to the bulletin. The Secretary shall provide a response to comments.

§ 7715. TYPE 4 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when considering applications for notice of intent under a general permit and other permits listed in this section.

(2) The procedures under this section shall be known as Type 4 Procedures. This section applies to each of the following:

(A) a notice of intent under a general permit issued pursuant to the Secretary's authority under this title; and

(B) an application for each of following permits:

(i) construction or operation of an air contaminant source or class of sources not identified in the State's implementation plan approved under the Clean Air Act;

(ii) construction or expansion of a public water supply under chapter 56 of this title, except that a change in treatment for a public water supply shall proceed in accordance with section 7714 of this chapter;

(iii) a category 1 underground storage tank under chapter 59 of this title;

(iv) a categorical solid waste certification under chapter 159 of this title; and

(v) a medium scale composting certification under chapter 159 of this title.

(b) Notice of application. The Secretary shall provide notice of an administratively complete application through the environmental notice bulletin.

(c) Notice of draft decision; comment period. The Secretary shall provide notice of the draft decision through the environmental notice bulletin and shall post the draft decision to the bulletin. The Secretary shall provide a public comment period of at least 14 days on the draft decision.

(d) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin. The Secretary shall provide a response to comments.

§ 7716. TYPE 5 PROCEDURES

(a) Purpose; scope.

(1) The purpose of this section is to establish the public notice and comment requirements that the Department must follow when issuing emergency permits and other permits listed in this section.

(2) The procedures under this section shall be known as Type 5 Procedures. This section shall govern each of the following:

(A) issuance of temporary emergency permits under section 912 of this title;

(B) applications for public water system operational permits under chapter 56 of this title;

(C) issuance of authorizations, under a stream alteration general permit issued under chapter 41 of this title, for reporting without an application, for an emergency, and for activities to prevent risks to life or of severe damage to improved property posed by the next annual flood;

(D) issuance of emergency permits issued under section 1268 of this title;

(E) issuance of emergency sludge and septage disposal approvals under section 6605 of this title; and

(F) shoreland registrations authorized under chapter 49A of this title.

(b) Notice of final decision. The Secretary shall provide notice of the final decision through the environmental notice bulletin and shall post the decision to the bulletin.

§ 7717. AMENDMENTS; RENEWALS

(a) A major amendment shall be subject to the same procedures applicable to the original permit decision under this chapter.

(b) A minor amendment shall be subject to the Type 4 Procedures, except that the Secretary need not provide notice of the administratively complete application.

(c) An administrative amendment shall not be subject to the procedural requirements of this chapter.

(d) A person may renew a permit under the same procedures applicable to the original permit decision under this chapter.

(e) With respect to amending a permit issued under the Clean Air Act or Clean Water Act, if a requirement under those acts directs the Secretary to provide the public with greater notice, opportunity to participate, or access to information than the corresponding requirement of this chapter, the Secretary shall comply with the federal requirement.

§ 7718. EXEMPTIONS

This subchapter shall not govern an application or petition for:

(1) an unsafe dam order under section 1095 of this title;

(2) a potable water supply and wastewater permit under subsection 1973(j) of this title;

(3) a hazardous waste facility certification under section 6606 of this title; and

(4) a certificate of need under section 6606a of this title.

Sec. 2. RULES; EFFECT ON PROCEDURAL REQUIREMENTS

Sec. 1 of this act shall take precedence over any inconsistent requirements for notice and processing of applications contained in rules adopted by the Department of Environmental Conservation other than rules pertaining to applications that are exempt under Sec. 1, 10 V.S.A. § 7718. On or before July 1, 2019, the Secretary of Natural Resources shall commence and complete amendments to conform these rules to Sec. 1.

* * * Environmental Notice Bulletin * * *

Sec. 3. 3 V.S.A. § 2826 is amended to read:

§ 2826. ENVIRONMENTAL NOTICE BULLETIN; PERMIT HANDBOOK

(a) The Secretary shall establish ~~procedures for the publication of~~ an environmental notice bulletin, in order to provide for the timely public notification of permit applications, notices, comment periods, hearings, and permitting decisions. ~~The Secretary shall begin publication of the bulletin by no later than July 1, 1995 on the Agency's website. At a minimum, the~~

~~bulletin shall contain the following information:~~ The bulletin shall consist of a website and an e-mail notification system. The Secretary shall ensure that the website for the bulletin is readily accessible from the Agency's main web page.

~~(1) notice of administratively complete permit applications submitted to the Department of Environmental Conservation; When 10 V.S.A. chapter 170 requires the posting of information to the bulletin, the Secretary shall post the information to the bulletin's website.~~

~~(2) notice of the comment period on the application and draft permit, if any, for those applications which were noticed; When 10 V.S.A. chapter 170 requires notice to persons through the environmental notice bulletin, the bulletin shall generate an e-mail notification to those persons containing the information required by that chapter.~~

~~(3) notice of the issuance of a draft permit, if required by law, for those applications that were noticed; The Secretary shall provide members of the public the ability to register, through the bulletin, for a list of interested persons to receive e-mail notification of permit activity based on permit type, municipality, proximity to a specified address, or a combination of these characteristics.~~

~~(4) information on how to request a public hearing or meeting; If an individual does not have an e-mail address, the individual may request to receive notifications through U.S. mail. On receipt of such a request, the Secretary shall mail to the individual the same information that the individual would have otherwise received through an e-mail generated by the bulletin.~~

~~(5) notice of the name of the staff person to contact for information regarding public hearings or meetings with respect to a particular application.~~

~~(6) notice of the issuance or denial of a permit for those applications that were noticed.~~

~~(b) By January 1, 1995, the~~ The Secretary shall publish a permit handbook which lists all of the permits required for the programs administered by the Department of Environmental Conservation. The handbook shall include examples of activities that require certain permits, an explanation in lay terms of each of the permitting programs involved, and the names, addresses, and telephone numbers of the person or persons to contact for further information for each of the permitting programs. The Secretary shall update the handbook ~~shall be updated,~~ periodically.

Sec. 4. REPORTS; RULEMAKING; BULLETIN; REVISION

(a) On or before September 15, 2016, the Secretary shall commence all rulemaking required by Sec. 1 of this act.

(b) On or before February 15, 2017, the Secretary shall report in writing to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources on the Secretary's progress in adopting the rules required by Sec. 1 of this act and revising and reestablishing the environmental notice bulletin in accordance with Secs. 1 and 3 of this act.

(c) On or before July 1, 2017, the Secretary shall revise and reestablish the environmental notice bulletin to conform to the requirements of Secs. 1 and 3 of this act.

(d) On or before February 15, 2020, the Secretary of Natural Resources shall submit a written report to the House and Senate Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources that:

(1) summarizes the Secretary's implementation of Secs. 1 through 3 of this act and details the steps taken to implement those sections;

(2) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on the amount of time taken by the Department of Environmental Conservation (DEC), during the preceding two calendar years, to review and issue decisions on applications and permits subject to that chapter and the data supporting that assessment;

(3) provides the Secretary's assessment of the effect of 10 V.S.A. chapter 170 on public participation, during the preceding two calendar years, in the review of applications and permits subject to that chapter and the data supporting that assessment;

(4) provides:

(A) the total and annual number of appeals, during 2018 and 2019, of DEC decisions subject to 10 V.S.A. chapter 170 and how each appeal was resolved;

(B) the total and annual number of times that a party moved to dismiss an issue or an appeal based on the requirements of 10 V.S.A. § 8504(d)(2) and the Environmental Division's ruling on those motions; and

(C) a comparison with the total and annual number of appeals, during calendar years 2015 through 2017, from DEC programs that become subject to the procedures of 10 V.S.A. chapter 170 on January 1, 2018, and how each of those appeals was resolved;

(5) provides the Secretary's overall evaluation of the success of Secs. 1 and 3 of this act in standardizing DEC permit procedures, increasing public

participation in DEC's permit process, and resolving issues related to the issuance of DEC permits without appeal;

(6) based on the track record of 10 V.S.A. chapter 170 to date of the report, states the Secretary's recommendation on whether there is justification to amend the process for appealing those acts and decisions of the Secretary subject to that chapter; and

(7) if the recommendation under subdivision (6) of this subsection is affirmative, provides the Secretary's recommended amendments to the process for appealing those acts and decisions of the Secretary subject to 10 V.S.A. chapter 170.

* * * Appeals from Agency of Natural Resources to the
Environmental Division * * *

Sec. 5. 10 V.S.A. § 8504 is amended to read:

§ 8504. APPEALS TO THE ENVIRONMENTAL DIVISION

* * *

(d) Requirement ~~that aggrieved Act 250 parties~~ to participate before the District Commission or the Secretary.

(1) ~~No Participation before District Commission.~~ An aggrieved person may shall not appeal an act or decision that was made by a District Commission unless the person was granted party status by the District Commission pursuant to subdivision 6085(c)(1)(E) of this title, participated in the proceedings before the District Commission, and retained party status at the end of the District Commission proceedings. In addition, the person may only appeal those issues under the criteria with respect to which the person was granted party status.

~~(2) Notwithstanding subdivision (d)(1) of this section,~~ However, notwithstanding these limitations, an aggrieved person may appeal an act or decision of the District Commission if the Environmental judge determines that:

(A) there was a procedural defect ~~which that~~ prevented the person from obtaining party status or participating in the proceeding;

(B) the decision being appealed is the grant or denial of party status; or

(C) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

(2) Participation before the Secretary.

(A) An aggrieved person shall not appeal an act or decision of the Secretary unless the person submitted to the Secretary a written comment during the comment period or an oral comment at the public meeting conducted by the Secretary. In addition, the person may only appeal issues related to the person's comment to the Secretary.

(i) To be sufficient for the purpose of appeal, a comment to the Secretary shall identify each reasonably ascertainable issue with enough particularity so that a meaningful response can be provided.

(ii) The appellant shall identify each comment that the appellant submitted to the Secretary that identifies or relates to an issue raised in his or her appeal.

(iii) A person moving to dismiss an appeal or an issue raised by an appeal pursuant to this subdivision (A) shall have the burden to prove that the requirements of this subdivision (A) are not satisfied.

(B) Notwithstanding the limitations of subdivision (2)(A) of this subsection, an aggrieved person may appeal an act or decision of the Secretary if the Environmental judge determines that:

(i) there was a procedural defect that prevented the person from commenting during the comment period or at the public meeting or otherwise participating in the proceeding;

(ii) the Secretary did not conduct a comment period and did not hold a public meeting;

(iii) the person demonstrates that an issue was not reasonably ascertainable during the review of an application or other request that led to the Secretary's act or decision; or

(iv) some other condition exists which would result in manifest injustice if the person's right to appeal was disallowed.

* * *

(p) Administrative record. The Secretary shall certify the administrative record as defined in chapter 170 of this title and shall transfer a certified copy of that record to the Environmental Division when:

(1) there is an appeal of an act or decision of the Secretary that is based on that record; or

(2) there is an appeal of a decision of a District Commission and the applicant used a decision of the Secretary based on that record to create a presumption under a criterion of subsection 6086(a) of this title that is at issue in the appeal.

Sec. 5a. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS
FACILITY; APPEALS

* * *

(c) The provisions of subdivisions 8504(c)(2) (notice of appeal), (d)(2) (participation before the Secretary), and (f)(1)(A) (automatic stays of certain permits), and subsections 8504(j) (appeals under a general permit) and (n) (intervention), and (p) (administrative record) of this title shall apply to appeals under this section except that, with respect to subsection (p), the Secretary shall transfer a certified copy of the administrative record to the Board.

* * *

Sec. 5b. PURPOSE

The purposes of the amendments contained in Secs. 5 (appeals to the Environmental Division) and 5a (renewable energy plant; telecommunications facility; appeals) of this act are to:

(1) require participation in the permitting process of the Department of Environmental Conservation (DEC) and identification of concerns about an application early in that process so that DEC and the applicant have an opportunity to address those concerns where possible before a permit becomes final and subject to appeal; and

(2) require that an issue raised on appeal be identified or related to an issue identified in a comment to the Secretary while guarding against creating an overly technical approach to the preservation of issues for the purpose of appeal when interpreting whether an appeal satisfies requirements of 10 V.S.A. § 8504(d)(2)(A).

Sec. 5c. FEDERALLY DELEGATED PROGRAMS

If the U.S. Environmental Protection Agency notifies the Secretary of Natural Resources that a provision of this act is inconsistent with the Clean Air Act or Clean Water Act as defined in 10 V.S.A. chapter 170 or federal regulations adopted under one of those acts, the Secretary shall report the receipt of this notification to the House and Senate Committees on Natural and Energy and the House Committee on Fish, Wildlife and Water Resources. This report shall attach the notification and may include proposed statutory revisions to address the inconsistency.

Second: After Sec. 37, by adding two new sections to be Secs. 37a and 37b to read:

Sec. 37a. 10 V.S.A. § 6604c(d) is amended to read:

(d) On or before July 1, ~~2016~~ 2017, the Secretary shall adopt rules that allow for the management of excavated soils requiring disposal that contain PAHs, arsenic, or lead in a manner that ensures protection of human health and the environment and promotes Vermont's traditional settlement patterns in compact village or city centers. At a minimum, the rules shall:

* * *

Sec. 37b. MANAGEMENT OF EXCAVATED DEVELOPMENT SOILS;
EXTENSION OF REPEAL DATE

2015 Acts and Resolves No. 52, Sec. 7 is amended to read:

Sec. 7. REPEAL

On July 1, ~~2016~~ 2017, 10 V.S.A. § 6604c(a), (b), and (c) are repealed.

Third: In Sec. 38 (effective dates), by adding subdivisions (3) and (4) to read:

(3) Secs. 33 through 37 (Act 250 jurisdictional opinions; appeals) shall take effect on passage and shall apply to appeals of jurisdictional opinions issued on or after the effective date of those sections. Notwithstanding the repeal of its authority to consider jurisdictional opinions, the Natural Resources Board shall have authority to complete its consideration of any jurisdictional opinion pending before it as of that effective date, and appeal of the Board's decision shall be governed by the law as it existed immediately prior to that date.

(4) Secs. 37a (rules; management of excavated soils) and 37b (extension of repeal date) shall take effect on passage.

(Committee vote: 11-0-0)

(For text see Senate Journal March 9, 2016)

S. 212

An act relating to court-approved absences from home detention and home confinement furlough

Rep. Myers of Essex, for the Committee on **Corrections & Institutions**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

(1) The defendant shall be ordered released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release will not reasonably ensure the appearance of the person as required. In determining whether the defendant presents a risk of nonappearance, the judicial officer shall consider, in addition to any other factors, the seriousness of the offense charged and the number of offenses with which the person is charged. If the officer determines that such a release will not reasonably ensure the appearance of the defendant as required, the officer shall, either in lieu of or in addition to the ~~above~~ methods of release in this section, impose the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure the appearance of the defendant as required:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Require the execution of a secured appearance bond in a specified amount and the deposit with the clerk of the Court, in cash or other security as directed, of a sum not to exceed 10 percent of the amount of the bond, such deposit to be returned upon the appearance of the defendant as required.

(E) Require the execution of a surety bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(F) Impose any other condition found reasonably necessary to ensure appearance as required, including a condition requiring that the defendant return to custody after specified hours.

(G) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

(2) If the judicial officer determines that conditions of release imposed to ensure appearance will not reasonably protect the public, the judicial officer may impose in addition the least restrictive of the following conditions or the least restrictive combination of the following conditions that will reasonably ensure protection of the public:

(A) Place the defendant in the custody of a designated person or organization agreeing to supervise him or her if the defendant is charged with an offense that is not a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301.

(B) Place restrictions on the travel, association, or place of abode of the defendant during the period of release.

(C) Require the defendant to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances.

(E) If the defendant is a State, county, or municipal officer charged with violating section 2537 of this title, the Court may suspend the officer's duties in whole or in part, if the Court finds that it is necessary to protect the public.

(F) Place the defendant in a program of community-based electronic monitoring in accordance with section 7554d of this title.

* * *

Sec. 2. 13 V.S.A. § 7554d is amended to read:

§ 7554d. ~~WINDHAM COUNTY~~ ELECTRONIC MONITORING PILOT PROGRAM

(a)(1) The Windham County Sheriff's Office (WCSO) shall establish and manage a two-year electronic monitoring pilot program in Windham County for the purpose of supervising persons ordered to be under electronic monitoring as a condition of release or in addition to the imposition of bail pursuant to section 7554 of this title, to home detention pursuant to section 7554b of this title, and home confinement furlough pursuant to 28 V.S.A. § 808b. The program shall be a part of an integrated community incarceration

program and shall provide 24-hours-a-day, seven-days-a-week electronic monitoring with supervision and immediate response.

(2) For purposes of this program;

~~(A)~~ if electronic monitoring is ordered by the Court pursuant to section 7554 of this title, the Court shall use the following criteria ~~in section 7554b~~ for determining whether ~~home detention~~ electronic monitoring is appropriate;

~~(B)~~ the seven-day waiting period under ~~7554b~~ of this title shall not apply; and

~~(C)~~ for persons who are under the custody of the Department of Corrections pursuant to section ~~7554b~~ of this title and 28 V.S.A. § 808b, the WCSO shall notify the Department of any violations.;

(A) the nature of the offense with which the defendant is charged;

(B) the defendant's prior convictions, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(C) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from the placement.

(3) The WCSO shall establish written policies and procedures for the electronic monitoring program, shall provide progress reports on the development of the policies and procedures to the Justice Oversight Committee, and shall submit the final policies and procedures to the Committee for approval on or before June 30, 2016.

(b) The goal of the pilot program is to assist policymakers in determining whether electronically monitored home detention and home confinement can be utilized for pretrial detention and as a post-adjudication option to reduce recidivism, to improve public safety, and to save valuable bed space for detainees and inmates who ~~should, without an electronic monitoring program,~~ would otherwise be lodged in a correctional facility. Additional benefits may include reducing transportation costs, increasing detainee access to services, reducing case resolution time, and determining if the program can be replicated statewide.

(c) The WCSO shall work with the Crime Research Group (CRG) for design and evaluation assistance. The program shall be evaluated by CRG to determine if the stated goals have been attained, the cost and savings of the program, identifying what goals or objective were not met and if not, what could be changed to meet the goals and objectives to ensure program success.

The Joint Fiscal Office shall contract with the CRG to provide design and evaluation services.

(d)(1) The WCSO is authorized to enter into written agreements with the sheriffs of other counties permitting those counties to participate in the pilot program subject to the policies and procedures established by the WCSO under this section. At least one of the agreements shall be between the WCSO and a county with a significant population.

(2) The purpose of expanding the electronic monitoring program to other counties under this subsection is to increase the number of participants to a level sufficient to permit evaluation of whether the program is meeting the bed savings and other goals identified in subsection (b) of this section.

(e) The Department of Corrections shall enter into a memorandum of understanding with the Department of State's Attorneys and Sheriffs for oversight and funding of the electronic monitoring program established by this section. The memorandum shall establish processes for:

(1) transmitting funding for the electronic monitoring program from the Department of Corrections to the Department of State's Attorneys and Sheriffs for purposes of allocation to the sheriff's departments participating in the program; and

(2) maintaining oversight of the electronic monitoring program to ensure that it complies with the requirements of this section and the policies and procedures established by the WCSO pursuant to subdivision (a)(3) of this section.

~~(d)(f)~~ (f) The pilot program shall be in effect from July 1, 2014 through June 30, 2016 June 30, 2018.

Sec. 4. 28 V.S.A. § 808b is amended to read:

§ 808b. HOME CONFINEMENT FURLOUGH

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences. Home confinement furlough shall be enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the ~~Court~~ court or the Department, or both.

(b) The Department, in its own discretion, may place on home confinement furlough an offender who has not yet served the minimum term of the sentence for an eligible misdemeanor as defined in section 808d of this title if the Department has made a determination based upon a risk assessment that the

offender poses a low risk to public safety or victim safety and that employing an alternative to incarceration to hold the offender accountable is likely to reduce the risk of recidivism.

~~(c) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:~~

~~(1) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the Court may order; or~~

~~(2) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.~~

~~(d) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, all of the following shall be considered:~~

~~(1) The nature of the offense with which the defendant was charged and the nature of the offense of which the defendant was convicted.~~

~~(2) The defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight.~~

~~(3) Any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.~~

(d)(1) A home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(A) to remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(B) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(2) In cases involving offenders convicted of a listed crime, the defendant shall remain at a preapproved residence at all times except for preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court or Department may authorize. The day the absences are approved, the court or the Department shall provide a record to the prosecutor's office documenting the date, time, location, and purpose of the authorized absences. The authorized absences may commence no earlier than 24 hours following notification to the prosecutor's office. The Department may reschedule authorized absences only

after providing 72 hours' advance notice to the prosecutor's office. In the case of a medical emergency, the notice required by this subdivision shall be provided as soon as practicable after the emergency.

(e) [Repealed.]

Sec. 5. APPLICABILITY

A defendant participating in an electronic monitoring program established under 13 V.S.A. § 7554d prior to July 1, 2016 shall not have his or her participation in the program withdrawn or affected as a result of this act.

Sec. 6. REPORT

On or before December 15, 2016, the Windham County Sheriff's Office shall report to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the House and Senate Committees on Judiciary on the electronic monitoring program established under 13 V.S.A. § 7554d. The report shall include the number of program participants, the offense with which each participant is charged, the number of participants who violate conditions of the program, the costs of the program, and the manner in which the program creates budgetary savings, including whether and how the program makes correctional facility bed space available that would otherwise be occupied by detainees and inmates in the program.

Sec. 7. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE; 2016 LEGISLATIVE INTERIM; GENDER-BASED DISPARITIES IN DETENTION AND SENTENCING

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate any disparities in sentencing and detainment by gender, including the average duration of detention for men and women, and the percentage of sentences or detainments imposed for listed crimes and nonlisted crimes for men and women. The Committee also shall investigate whether the primary drivers for detention, such as lack of housing, substance abuse, and risk assessment results, differ for men and women.

Sec. 8. EFFECTIVE DATES

(a) This section and Sec. 2 shall take effect on passage.

(b) Secs. 1 and 3–7 shall take effect on July 1, 2016.

(Committee vote: 10-0-1)

(For text see Senate Journal February 23, 2016)

S. 243

An act relating to combating opioid abuse in Vermont

Rep. Pugh of South Burlington, for the Committee on **Human Services**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Vermont Prescription Monitoring System * * *

Sec. 1. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

* * *

(g) Following consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to use information from VPMS to determine if individual prescribers and dispensers are using VPMS appropriately.

(h) Following consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council and an opportunity for input from stakeholders, the Department shall develop a policy that will enable it to evaluate the prescription of regulated drugs by prescribers.

* * *

Sec. 2. 18 V.S.A. § 4289 is amended to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE

PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for treatment of acute pain, chronic pain, and for other medical conditions to be determined by the licensing authority. The standards developed by the licensing authorities shall be consistent with rules adopted by the Department of Health. The licensing authorities shall submit their standards to the Commissioner of Health, who shall review for consistency across health care providers and notify the applicable licensing authority of any inconsistencies identified.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS by November 15, 2013.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the Commissioner of Health shall notify the applicable licensing authority and the provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The Commissioner of Health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

~~(c) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.~~

~~(d) Health~~ Except in the event of electronic or technological failure, health care providers shall query the VPMS with respect to an individual patient in the following circumstances:

(1) at least annually for patients who are receiving ongoing treatment with an opioid Schedule II, III, or IV controlled substance;

(2) when starting a patient on a Schedule II, III, or IV controlled substance for nonpalliative long-term pain therapy of 90 days or more;

(3) the first time the provider prescribes an opioid Schedule II, III, or IV controlled substance written to treat chronic pain; and

(4) prior to writing a replacement prescription for a Schedule II, III, or IV controlled substance pursuant to section 4290 of this title.

(d)(1) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.

(2) Except in the event of electronic or technological failure, dispensers shall query the VPMS in accordance with rules adopted by the Commissioner of Health.

(3) Pharmacies and other dispensers shall report each dispensed prescription for a Schedule II, III, or IV controlled substance to the VPMS within 24 hours or one business day after dispensing.

(e) The Commissioner of Health shall, after consultation with the ~~Unified Pain Management System~~ Controlled Substances and Pain Management Advisory Council, adopt rules necessary to effect the purposes of this section. The Commissioner and the Council shall consider additional circumstances under which health care providers should be required to query the VPMS, including whether health care providers should be required to query the VPMS prior to writing a prescription for any opioid Schedule II, III, or IV controlled substance or when a patient requests renewal of a prescription for an opioid

Schedule II, III, or IV controlled substance written to treat acute pain, and the Commissioner may adopt rules accordingly.

~~(f) Each professional licensing authority for dispensers shall adopt standards, consistent with rules adopted by the Department of Health under this section, regarding the frequency and circumstances under which its respective licensees shall:~~

~~(1) query the VPMS; and~~

~~(2) report to the VPMS, which shall be no less than once every seven days.~~

~~(g)~~ Each professional licensing authority for health care providers and dispensers shall consider the statutory requirements, rules, and standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

* * * Rulemaking * * *

Sec. 2a. PRESCRIBING OPIOIDS FOR ACUTE AND CHRONIC PAIN;
RULEMAKING

(a) The Commissioner of Health, after consultation with the Controlled Substances and Pain Management Advisory Council, shall adopt rules governing the prescription of opioids. The rules may include numeric and temporal limitations on the number of pills prescribed, including a maximum number of pills to be prescribed following minor medical procedures, consistent with evidence-informed best practices for effective pain management. The rules may require the contemporaneous prescription of naloxone in certain circumstances, and shall require informed consent for patients that explains the risks associated with taking opioids, including addiction, physical dependence, side effects, tolerance, overdose, and death. The rules shall also require prescribers prescribing opioids to patients to provide information concerning the safe storage and disposal of controlled substances.

(b) The Commissioner of Health, after consultation with the Board of Pharmacy, retail pharmacists, and the Controlled Substances and Pain Management Advisory Council, shall adopt rules regarding the circumstances in which dispensers shall query the Vermont Prescription Monitoring System, which shall include:

(1) prior to dispensing a prescription for a Schedule II, III, or IV opioid controlled substance to a patient who is new to the pharmacy;

(2) when an individual pays cash for a prescription for a Schedule II, III, or IV opioid controlled substance when the individual has prescription drug coverage on file;

(3) when a patient requests a refill of a prescription for a Schedule II, III, or IV opioid controlled substance substantially in advance of when a refill would ordinarily be due;

(4) when the dispenser is aware that the patient is being prescribed Schedule II, III, or IV opioid controlled substances by more than one prescriber; and

(5) an exception for a hospital-based dispenser dispensing a quantity of a Schedule II, III, or IV opioid controlled substance that is sufficient to treat a patient for 48 hours or fewer.

* * * Expanding Access to Substance Abuse Treatment
with Buprenorphine * * *

Sec. 3. 18 V.S.A. chapter 93 is amended to read:

CHAPTER 93. TREATMENT OF OPIOID ADDICTION

§ 4751. PURPOSE

It is the purpose of this chapter to authorize the ~~department of health~~ Departments of Health and of Vermont Health Access to establish a regional system of opioid addiction treatment.

§ 4752. OPIOID ADDICTION TREATMENT SYSTEM

(a) The ~~department of health~~ Departments of Health and of Vermont Health Access shall establish by rule a regional system of opioid addiction treatment.

* * *

(c) ~~No later than January 15 of each year from 2013 through 2016, inclusive, the commissioner shall report to the house committees on human services and on health care and the senate committee on health and welfare regarding the regional system of opioid addiction treatment, including the system's effectiveness. [Repealed.]~~

* * *

§ 4753. CARE COORDINATION

Prescribing physicians and collaborating health care and addictions professionals may coordinate care for patients receiving medication-assisted treatment for substance use disorder, which may include monitoring adherence

to treatment, coordinating access to recovery supports, and providing counseling, contingency management, and case management services.

Sec. 4. 8 V.S.A. § 4100k is amended to read:

§ 4100k. COVERAGE OF TELEMEDICINE SERVICES

* * *

(g) In order to facilitate the use of telemedicine in treating substance use disorder, health insurers and the Department of Vermont Health Access shall ensure that both the treating clinician and the hosting facility are reimbursed for the services rendered, unless the health care providers at both the host and service sites are employed by the same entity.

(h) As used in this subchapter:

* * *

* * * Expanding Role of Pharmacies and Pharmacists * * *

Sec. 5. 26 V.S.A. § 2022 is amended to read:

§ 2022. DEFINITIONS

As used in this chapter:

* * *

(14)(A) “Practice of pharmacy” means:

(i) the interpretation and evaluation of prescription orders;

(ii) the compounding, dispensing, and labeling of drugs and legend devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and legend devices);

(iii) the participation in drug selection and drug utilization reviews;

(iv) the proper and safe storage of drugs and legend devices and the maintenance of proper records therefor;

(v) the responsibility for advising, where necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and legend devices; ~~and~~

(vi) the providing of patient care services within the pharmacist’s authorized scope of practice;

(vii) the optimizing of drug therapy through the practice of clinical pharmacy; and

(viii) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

(B) “Practice of clinical pharmacy” means:

(i) the health science discipline in which, in conjunction with the patient’s other practitioners, a pharmacist provides patient care to optimize medication therapy and to promote disease prevention and the patient’s health and wellness;

(ii) the provision of patient care services within the pharmacist’s authorized scope of practice, including medication therapy management, comprehensive medication review, and postdiagnostic disease state management services; or

(iii) the practice of pharmacy by a pharmacist pursuant to a collaborative practice agreement.

(C) A rule shall not be adopted by the Board under this chapter that shall require the sale and distribution of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise interfere with the sale and distribution of such medicines.

* * *

(19) “Collaborative practice agreement” means a written agreement between a pharmacist and a health care facility or prescribing practitioner that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the facility’s or practitioner’s patients.

Sec. 6. 26 V.S.A. § 2023 is added to read:

§ 2023. CLINICAL PHARMACY

In accordance with rules adopted by the Board, a pharmacist may engage in the practice of clinical pharmacy.

Sec. 7. 8 V.S.A. § 4089j is amended to read:

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

~~(a) A health insurer and pharmacy benefit manager doing business in Vermont shall permit a retail pharmacist licensed under 26 V.S.A. chapter 36 to fill prescriptions in the same manner and at the same level of reimbursement as they are filled by mail order pharmacies with respect to the quantity of drugs or days’ supply of drugs dispensed under each prescription.~~

(b) As used in this section:

(1) “Health insurer” is defined by shall have the same meaning as in 18 V.S.A. § 9402 and shall also include Medicaid and any other public health care assistance program.

(2) “Pharmacy benefit manager” means an entity that performs pharmacy benefit management. “Pharmacy benefit management” means an arrangement for the procurement of prescription drugs at negotiated dispensing rates, the administration or management of prescription drug benefits provided by a health insurance plan for the benefit of beneficiaries, or any of the following services provided with regard to the administration of pharmacy benefits:

(A) mail service pharmacy;

(B) claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to beneficiaries;

(C) clinical formulary development and management services;

(D) rebate contracting and administration;

(E) certain patient compliance, therapeutic intervention, and generic substitution programs; and

(F) disease management programs.

(3) “Health care provider” means a person, partnership, or corporation, other than a facility or institution, that is licensed, certified, or otherwise authorized by law to provide professional health care service in this State to an individual during that individual’s medical care, treatment, or confinement.

(b) A health insurer and pharmacy benefit manager doing business in Vermont shall permit a retail pharmacist licensed under 26 V.S.A. chapter 36 to fill prescriptions in the same manner and at the same level of reimbursement as they are filled by mail order pharmacies with respect to the quantity of drugs or days’ supply of drugs dispensed under each prescription.

(c) This section shall apply to Medicaid and any other public health care assistance program. Notwithstanding any provision of a health insurance plan to the contrary, if a health insurance plan provides for payment or reimbursement that is within the lawful scope of practice of a pharmacist, the insurer may provide payment or reimbursement for the service when the service is provided by a pharmacist.

Sec. 8. ROLE OF PHARMACIES IN PREVENTING OPIOID ABUSE;

REPORT

(a) The Department of Health, in consultation with the Board of Pharmacy, pharmacists, prescribing health care practitioners, health insurers, pharmacy benefit managers, and other interested stakeholders shall consider the role of pharmacies in preventing opioid misuse, abuse, and diversion. The Department's evaluation shall include a consideration of whether, under what circumstances, and in what amount pharmacists should be reimbursed for counting or otherwise evaluating the quantity of pills, films, patches, and solutions of opioid controlled substances prescribed by a health care provider to his or her patients.

(b) On or before January 15, 2017, the Department shall report to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare its findings and recommendations with respect to the appropriate role of pharmacies in preventing opioid misuse, abuse, and diversion.

* * * Continuing Medical Education * * *

Sec. 9. CONTINUING EDUCATION

(a) All physicians, osteopathic physicians, dentists, pharmacists, advanced practice registered nurses, optometrists, and naturopathic physicians with a registration number from the U.S. Drug Enforcement Administration (DEA), who have a pending application for a DEA number, or who dispense controlled substances shall complete a total of at least two hours of continuing education for each licensing period beginning on or after July 1, 2016 on the topics of the abuse and diversion, safe use, and appropriate storage and disposal of controlled substances; the appropriate use of the Vermont Prescription Monitoring System; risk assessment for abuse or addiction; pharmacological and nonpharmacological alternatives to opioids for managing pain; medication tapering; and relevant State and federal laws and regulations concerning the prescription of opioid controlled substances.

(b) The Department of Health shall consult with the Board of Veterinary Medicine and the Agency of Agriculture, Food and Markets to develop recommendations regarding appropriate safe prescribing and disposal of controlled substances prescribed by veterinarians for animals and dispensed to their owners, as well as appropriate continuing education for veterinarians on the topics described in subsection (a) of this section. On or before January 15, 2017, the Department shall report its findings and recommendations to the House Committees on Agriculture and Forest Products and on Human Services and the Senate Committees on Agriculture and on Health and Welfare.

* * * Medical Education Core Competencies * * *

Sec. 10. MEDICAL EDUCATION CORE COMPETENCIES;
PREVENTION AND MANAGEMENT OF PRESCRIPTION
DRUG MISUSE

The Commissioner of Health shall convene medical educators and other stakeholders to develop appropriate curricular interventions and innovations to ensure that students in medical education programs have access to certain core competencies related to safe prescribing practices and to screening, prevention, and intervention for cases of prescription drug misuse and abuse. The goal of the core competencies shall be to support future health care professionals over the course of their medical education to develop skills and a foundational knowledge in the prevention of prescription drug misuse. These competencies should be clear baseline standards for preventing prescription drug misuse, treating patients at risk for substance use disorders, and managing substance use disorders as a chronic disease, as well as developing knowledge in the areas of screening, evaluation, treatment planning, and supportive recovery.

* * * Community Grant Program for Opioid Prevention * * *

Sec. 11. REGIONAL PREVENTION PARTNERSHIPS

The Department of Health shall establish a community grant program for the purpose of supporting local opioid prevention strategies. This program shall support evidence-based approaches and shall be based on a comprehensive community plan, including community education and initiatives designed to increase awareness or implement local programs, or both. Partnerships involving schools, local government, and hospitals shall receive priority.

* * * Pharmaceutical Manufacturer Fee * * *

Sec. 12. 33 V.S.A. § 2004 is amended to read:

§ 2004. MANUFACTURER FEE

(a) Annually, each pharmaceutical manufacturer or labeler of prescription drugs that are paid for by the Department of Vermont Health Access for individuals participating in Medicaid, Dr. Dynasaur, or VPharm shall pay a fee to the Agency of Human Services. The fee shall be ~~0.5~~ 1.5 percent of the previous calendar year's prescription drug spending by the Department and shall be assessed based on manufacturer labeler codes as used in the Medicaid rebate program.

(b) Fees collected under this section shall fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632

and 4633; analysis of prescription drug data needed by the Office of the Attorney General for enforcement activities; the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A; the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2; statewide unused prescription drug disposal initiatives; prevention of prescription drug misuse, abuse, and diversion; treatment of substance use disorder; exploration of nonpharmacological approaches to pain management; a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; the purchase and distribution of naloxone to emergency medical services personnel; and any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents. The fees shall be collected in the Evidence-Based Education and Advertising Fund established in section 2004a of this title.

(c) The Secretary of Human Services or designee shall make rules for the implementation of this section.

(d) A pharmaceutical manufacturer that fails to pay a fee as required under this section shall be assessed penalties and interest in the same amounts and under the same terms as apply to late payment of income taxes pursuant to 32 V.S.A. chapter 151. The Department shall maintain on its website a list of the manufacturers who have failed to provide timely payment as required under this section.

Sec. 13. 33 V.S.A. § 2004a(a) is amended to read:

(a) The Evidence-Based Education and Advertising Fund is established in the State Treasury as a special fund to be a source of financing for activities relating to fund collection and analysis of information on pharmaceutical marketing activities under 18 V.S.A. §§ 4632 and 4633; for analysis of prescription drug data needed by the Office of the Attorney General for enforcement activities; for the Vermont Prescription Monitoring System established in 18 V.S.A. chapter 84A; for the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2; for statewide unused prescription drug disposal initiatives; for the prevention of prescription drug misuse, abuse, and diversion; for treatment of substance use disorder; for exploration of nonpharmacological approaches to pain management; for a hospital antimicrobial program for the purpose of reducing hospital-acquired infections; for the purchase and distribution of naloxone to emergency medical services personnel; and for the support of any opioid-antagonist education, training, and distribution program operated by the Department of Health or its agents. Monies deposited into the Fund shall be used for the purposes described in this section.

* * * Controlled Substances and Pain Management Advisory Council * * *

Sec. 14. 18 V.S.A. § 4255 is added to read:

§ 4255. CONTROLLED SUBSTANCES AND PAIN MANAGEMENT
ADVISORY COUNCIL

(a) There is hereby created a Controlled Substances and Pain Management Advisory Council for the purpose of advising the Commissioner of Health on matters related to the Vermont Prescription Monitoring System and to the appropriate use of controlled substances in treating acute and chronic pain and in preventing prescription drug abuse, misuse, and diversion.

(b)(1) The Controlled Substances and Pain Management Advisory Council shall consist of the following members:

(A) the Commissioner of Health or designee, who shall serve as chair;

(B) the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs or designee;

(C) the Commissioner of Mental Health or designee;

(D) the Commissioner of Public Safety or designee;

(E) the Commissioner of Labor or designee;

(F) the Vermont Attorney General or designee;

(G) the Director of the Blueprint for Health or designee;

(H) the Medical Director of the Department of Vermont Health Access;

(I) the Chair of the Board of Medical Practice or designee, who shall be a clinician;

(J) a representative of the Vermont State Dental Society, who shall be a dentist;

(K) a representative of the Vermont Board of Pharmacy, who shall be a pharmacist;

(L) a faculty member of the academic detailing program at the University of Vermont's College of Medicine;

(M) a faculty member of the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(N) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(O) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(P) a representative from the Vermont Board of Osteopathic Physicians, who shall be an osteopath;

(Q) a representative from the Vermont Association of Naturopathic Physicians, who shall be a naturopathic physician;

(R) a representative of the Federally Qualified Health Centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(S) a representative of the Vermont Ethics Network;

(T) a representative of the Hospice and Palliative Care Council of Vermont;

(U) a representative of the Office of the Health Care Advocate;

(V) a representative of health insurers, to be selected by the three health insurers with the most covered lives in Vermont;

(W) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(X) a clinician who specializes in occupational medicine, to be selected by the Commissioner of Health;

(Y) a clinician who specializes in physical medicine and rehabilitation, to be selected by the Commissioner of Health;

(Z) a member of the Vermont Board of Nursing Subcommittee on APRN Practice, who shall be an advanced practice registered nurse who has clinical experience that includes working with patients who are experiencing acute or chronic pain;

(AA) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(BB) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the Board of Psychological Examiners;

(CC) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;

(DD) a retail pharmacist, to be selected by the Vermont Pharmacists Association;

(EE) an advanced practice registered nurse full-time faculty member from the University of Vermont's College of Nursing and Health Sciences with a current clinical practice that includes caring for patients with acute or chronic pain;

(FF) a licensed acupuncturist with experience in pain management, to be selected by the Vermont Acupuncture Association;

(GG) a representative of the Vermont Substance Abuse Treatment Providers Association;

(HH) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain; and

(II) a consumer representative who is or has been an injured worker and has been prescribed opioids.

(2) In addition to the members appointed pursuant to subdivision (1) of this subsection (b), the Council shall consult with the Opioid Prescribing Task Force, specialists, and other individuals as appropriate to the topic under consideration.

(c) Advisory Council members who are not employed by the State or whose participation is not supported through their employment or association shall be entitled to a per diem and expenses as provided by 32 V.S.A. § 1010.

(d)(1) The Advisory Council shall provide advice to the Commissioner concerning rules for the appropriate use of controlled substances in treating acute pain and chronic noncancer pain; the appropriate use of the Vermont Prescription Monitoring System; and the prevention of prescription drug abuse, misuse, and diversion.

(2) The Advisory Council shall evaluate the use of nonpharmacological approaches to treatment for pain, including the appropriateness, efficacy, and cost-effectiveness of using complementary and alternative therapies such as chiropractic, acupuncture, and massage.

(e) The Commissioner of Health may adopt rules pursuant to 3 V.S.A. chapter 25 regarding the appropriate use of controlled substances in treating acute pain and chronic noncancer pain; the appropriate use of the Vermont

Prescription Monitoring System; and the prevention of prescription drug abuse, misuse, and diversion, after seeking the advice of the Council.

* * * Unused Prescription Drug Disposal Program * * *

Sec. 14a. 18 V.S.A. § 4224 is added to read:

§ 4224. UNUSED PRESCRIPTION DRUG DISPOSAL PROGRAM

The Department of Health shall establish and maintain a statewide unused prescription drug disposal program to provide for the safe disposal of Vermont residents' unused and unwanted prescription drugs. The program may include establishing secure collection and disposal sites and providing medication envelopes for sending unused prescription drugs to an authorized collection facility for destruction.

* * * Acupuncture * * *

Sec. 15. INSURANCE COVERAGE FOR ACUPUNCTURE; REPORT

Each nonprofit hospital and medical service corporation licensed to do business in this State pursuant to both 8 V.S.A. chapters 123 and 125 and providing coverage for pain management shall evaluate the evidence supporting the use of acupuncture as a modality for treating and managing pain in its enrollees, including the experience of other states in which covered by health insurance plans. On or before January 15, 2017, each such corporation shall report to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare its assessment of whether its insurance plans should provide coverage for acupuncture when used to treat or manage pain.

Sec. 15a. ACUPUNCTURE; MEDICAID PILOT PROJECT

(a) The Department of Vermont Health Access shall develop a pilot project to offer acupuncture services to Medicaid-eligible Vermonters with a diagnosis of chronic pain. The project would provide acupuncture services for a defined period of time to determine if acupuncture treatment as an alternative or adjunctive to prescribing opioids is as effective or more effective than opioids alone for returning individuals to social, occupational, and psychological function. The project shall include:

(1) an advisory group of pain management specialists and acupuncture providers familiar with the current science on evidence-based use of acupuncture to treat or manage chronic pain;

(2) specific patient eligibility requirements regarding the specific cause or site of chronic pain for which the evidence indicates acupuncture may be an appropriate treatment; and

(3) input and involvement from the Department of Health to promote consistency with other State policy initiatives designed to reduce the reliance on opioid medications in treating or managing chronic pain.

(b) On or before January 15, 2017, the Department of Vermont Health Access, in consultation with the Department of Health, shall provide a progress report on the pilot project to the House Committees on Health Care and on Human Services and the Senate Committee on Health and Welfare that includes an implementation plan for the pilot project described in this section. In addition, the Departments shall consider any appropriate role for acupuncture in treating substance use disorder, including consulting with health care providers using acupuncture in this manner, and shall make recommendations in the progress report regarding the use of acupuncture in treating Medicaid beneficiaries with substance use disorder.

* * * Health Department Position * * *

Sec. 16. HEALTH DEPARTMENT; POSITION

One new permanent classified position—a substance abuse program manager—is authorized in the Department of Health in order to coordinate a secure prescription drug collection and disposal program as part of the unused prescription drug disposal program established pursuant to Sec. 14a of this act. The position shall be transferred and converted from an existing vacant position in the Executive Branch of State government.

* * * Appropriations * * *

Sec. 17. APPROPRIATIONS

(a) The sum of \$250,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of funding the evidence-based education program established in 18 V.S.A. chapter 91, subchapter 2, including evidence-based information about safe prescribing of controlled substances and alternatives to opioids for treating pain.

(b) The sum of \$625,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of funding statewide unused prescription drug disposal initiatives, of which \$100,000.00 shall be used for a secure prescription drug collection and disposal program and the program manager established by Sec. 16 of this act, \$50,000.00 shall be used for unused medication envelopes for a mail-back program, \$225,000.00 shall be used for a public information campaign on the safe disposal of controlled substances, and \$250,000.00 shall

be used for a public information campaign on the responsible use of prescription drugs.

(c) The sum of \$150,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of purchasing and distributing opioid antagonist rescue kits.

(d) The sum of \$250,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of establishing a hospital antimicrobial program to reduce hospital-acquired infections.

(e) The sum of \$32,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Health in fiscal year 2017 for the purpose of purchasing and distributing naloxone to emergency medical services personnel throughout the State.

(f) The sum of \$200,000.00 is appropriated from the Evidence-Based Education and Advertising Fund to the Department of Vermont Health Access in fiscal year 2017 for the purpose of exploring nonpharmacological approaches to pain management by implementing the pilot project established in Sec. 15a of this act to evaluate the use of acupuncture in treating chronic pain in Medicaid beneficiaries.

Sec. 18. REPEAL

2013 Acts and Resolves No. 75, Sec. 14, as amended by 2014 Acts and Resolves No. 199, Sec. 60 (Unified Pain Management System Advisory Council), is repealed.

* * * Effective Dates * * *

Sec. 19. EFFECTIVE DATES

(a) Secs. 1–2 (VPMS), 3 (opioid addiction treatment care coordination), 4 (telemedicine), 13 (use of Evidence-Based Education and Advertising Fund), 14 (Controlled Substances and Pain Management Advisory Council), 16 (Health Department position), 17 (appropriations), and 18 (repeal) shall take effect on July 1, 2016, except that in Sec. 2, 18 V.S.A. § 4289(f)(2) (dispenser reporting to VPMS) shall take effect 30 days following notice and a determination by the Commissioner of Health that daily reporting is practicable.

(b) Secs. 2a (rulemaking), 5–7 (clinical pharmacy), 8 (role of pharmacies; report), 10 (medical education), 11 (regional partnerships), 14a (unused drug disposal program), 15–15a (acupuncture studies), and this section shall take effect on passage.

(c) Sec. 9 (continuing education) shall take effect on July 1, 2016 and shall apply beginning with licensing periods beginning on or after that date.

(d) Notwithstanding 1 V.S.A. § 214, Sec. 12 (manufacturer fee) shall take effect on passage and shall apply retroactive to January 1, 2016.

(Committee vote: 10-1-0)

(For text see Senate Journal March 30, 2016)

Rep. Till of Jericho, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Human Services** and when further amended as follows:

First: In Sec. 9, continuing education, in subsection (a), following “medication tapering”, by inserting before the semicolon “and cessation of the use of controlled substances”

Second: In Sec. 10, medical education core competencies; prevention and management of prescription drug misuse, by striking out “medical education programs”, and inserting in lieu thereof “undergraduate and graduate medical education and dental and pharmacy residency programs”

(Committee Vote: 11-0-0)

S. 250

An act relating to alcoholic beverages

Rep. Stevens of Waterbury, for the Committee on **General, Housing & Military Affairs**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

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

* * *

(5) “~~Cabaret license~~”: ~~a first class license or first and third class licenses where the business is devoted primarily to providing entertainment, dancing, and the sale of alcoholic beverages to the public and not the service of food. The holder of a “cabaret license” shall serve food at all times when open for business and shall have adequate and sanitary space and equipment for preparing and serving food. However, the gross receipts from the sale of food shall be less than the combined receipts from the sales of alcoholic beverages,~~

~~entertainment, and dancing in the prior reporting year. All laws and regulations pertaining to a first-class license or first- and third-class licenses shall apply to the first-class or first- and third-class cabaret licenses. [Repealed.]~~

(6) “Caterer’s license”: a license issued by the Liquor Control Board authorizing the holder of a first-class license or first- and third-class licenses for a ~~cabaret~~, restaurant; or hotel premises to serve malt or vinous beverages, spirits, or fortified wines at a function located on premises other than those occupied by a first-, first- and third-, or second-class licensee to sell alcoholic beverages.

* * *

(15) “Manufacturer’s or rectifier’s license”: a license granted by the Liquor Control Board that permits the holder to manufacture or rectify ~~spirits or malt beverages, or vinous beverages and fortified wines, or spirits and fortified wines. Spirits and fortified wines may be manufactured or rectified by a license holder for export and sale to the Liquor Control Board, or and malt beverages and vinous beverages may be manufactured or rectified by a license holder for export and sale to bottlers or wholesale dealers.~~ This license permits a manufacturer of vinous beverages or fortified wines to receive from another manufacturer licensed in or outside this State bulk shipments of vinous beverages to rectify with the licensee’s own product, provided that the vinous beverages or fortified wines produced by a Vermont manufacturer may contain no more than 25 percent imported vinous beverage. The Liquor Control Board may grant to a licensed manufacturer or rectifier of spirits, fortified wines, vinous beverages, or malt beverages a first-class ~~restaurant or cabaret~~ license or a first- and a third-class ~~restaurant or cabaret~~ license permitting the licensee to sell alcoholic beverages to the public only at the manufacturer’s premises; which for the purposes of a manufacturer of malt beverages, includes up to two licensed establishments that are located on the contiguous real estate of the holder of the manufacturer’s license, provided the manufacturer or rectifier owns or has direct control over those establishments. ~~A manufacturer of malt beverages who also holds a first-class restaurant or cabaret license may serve to a customer malt beverage by the glass, not to exceed eight glasses at one time and not to exceed four ounces in each glass.~~ The Liquor Control Board may grant to a licensed manufacturer or a rectifier of malt beverages a second-class license permitting the licensee to sell alcoholic beverages to the public anywhere on the manufacturer’s or rectifier’s premises. A licensed manufacturer or rectifier ~~of vinous beverages~~ may serve, with or without charge, at an event held on the premises of the licensee or the vineyard property at a location on the contiguous real estate of the licensee, spirits, fortified wines, vinous beverages, and malt beverages, provided the licensee

gives the Department written notice of the event, including details required by the Department, at least five days before the event. Any beverages not manufactured by the licensee and served at the event shall be purchased on invoice from a licensed manufacturer or wholesale dealer or the Liquor Control Board.

(16) "Person;": as applied to licensees, means ~~individuals~~ an individual who ~~are citizens~~ is a citizen or a lawful permanent resident of the United States, ~~partnerships; a partnership~~ composed of individuals, a majority of whom are citizens or lawful permanent residents of the United States, ~~and corporations; a corporation~~ organized under the laws of this State or another state in which a majority of the directors are citizens or lawful permanent residents of the United States ~~and to; or a limited liability companies company~~ organized under the laws of this State or another state in which a majority of the members or managers are citizens or lawful permanent residents of the United States.

* * *

(27) "Special events permit": a permit granted by the Liquor Control Board permitting a ~~person holding a manufacturer's or rectifier's license~~ licensed manufacturer or rectifier to sell by the glass or by unopened bottle spirits, fortified wines, malt beverages, or vinous beverages manufactured or rectified by the license holder at an event open to the public that has been approved by the local licensing authority. For the purposes of tasting only, the permit holder may distribute, with or without charge, beverages manufactured by the permit holder by the glass no more than two ounces per product and eight ounces total of malt beverages or vinous beverages and no more than one ounce in total of spirits or fortified wines to each individual. No more than 104 special events permits may be issued to a ~~holder of a manufacturer's or rectifier's license~~ licensed manufacturer or rectifier during a year. A special ~~event~~ events permit shall be valid for the duration of each public event or four days, whichever is shorter. Requests for a special events permit, accompanied by the fee as required by subdivision 231(13) of this title, shall be submitted to the Department of Liquor Control at least five days prior to the date of the event. Each manufacturer or rectifier planning to attend a single special event under this permit may be listed on a single permit. However, each attendance at a special event shall count toward the manufacturer's or rectifier's annual limit of 104 special event permit limitation special events permits.

(28) "Fourth-class license" or "farmers' market license": the license granted by the Liquor Control Board permitting a ~~manufacturer or rectifier of malt beverages, vinous beverages, fortified wines, or spirits~~ licensed manufacturer or rectifier to sell by the unopened container and distribute by the

glass with or without charge, beverages manufactured by the licensee. No more than a combined total of ten fourth-class and farmers' market licenses may be granted to a licensed manufacturer or rectifier. At only one fourth-class license location, a ~~manufacturer or rectifier of vinous beverages, malt beverages, fortified wines, or spirits~~ licensed manufacturer or rectifier may sell by the unopened container and distribute by the glass, with or without charge, vinous beverages, malt beverages, fortified wines, or spirits produced by no more than five additional manufacturers or rectifiers, provided these beverages are purchased on invoice from the manufacturer or rectifier. A ~~manufacturer or rectifier of vinous beverages, malt beverages, fortified wines, or spirits~~ may sell its product to no more than five additional manufacturers or rectifiers. A fourth-class licensee may distribute by the glass no more than two ounces of malt beverages or vinous beverages with a total of eight ounces to each retail customer and no more than one-quarter ounce of spirits or fortified wine with a total of one ounce to each retail customer for consumption on the manufacturer's premises or at a farmers' market. A ~~fourth-class~~ fourth-class licensee may distribute by the glass up to four mixed drinks containing a combined total of no more than one ounce of spirits or fortified wine to each retail customer for consumption only on the manufacturer's premises. A farmers' market license is valid for all dates of operation for a specific farmers' market location.

* * *

(36) "Outside consumption permit": a permit granted by the Liquor Control Board allowing the holder of a first-class ~~or, first-~~ and third-class license holder and, or fourth-class license holder to allow for consumption of alcohol in a delineated outside area.

* * *

(40) "Retail delivery permit": a permit granted by the Liquor Control Board that permits a second-class licensee to deliver malt beverages or vinous beverages sold from the licensed premises for consumption off the premises to an individual who is at least 21 years of age at a physical address in Vermont.

(41) "Destination resort master license": a license granted by the Liquor Control Board pursuant to section 472 of this title permitting a destination resort to designate licensed caterers and commercial caterers that will be permitted to cater individual events within the boundaries of the resort without being required to obtain a request to cater permit for each individual event. For purposes of a destination resort master license, a "destination resort" is a resort that contains at least 100 acres of land, offers at least 50 units of sleeping accommodations, offers food and beverage service to the public for consideration, and has related sports and recreational facilities for the

convenience or enjoyment of its guests. "Destination resort" does not include the University of Vermont, the Vermont State Colleges, or any other university, college, or postsecondary school.

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

§ 67. ALCOHOLIC BEVERAGE TASTINGS; PERMIT; PENALTIES

* * *

(d) Promotional alcoholic beverage tasting:

(1) At the request of a holder of a first- or second-class license, a holder of a manufacturer's, rectifier's, or wholesale dealer's license may distribute without charge to the first- or second-class licensee's management and staff, provided they are of legal drinking age and are off duty for the rest of the day, two ounces per person of vinous or malt beverages for the purpose of promoting the beverage. At the request of a holder of a third-class license, a manufacturer or rectifier of spirits or fortified wines may distribute without charge to the third-class licensee's management and staff, provided they are of legal drinking age and are off duty for the rest of the day, one-quarter ounce of each beverage and no more than a total of one ounce to each individual for the purpose of promoting the beverage. No permit is required under this subdivision, but written notice of the event shall be provided to the Department of Liquor Control at least ~~five days~~ two days prior to the date of the tasting.

* * *

(e) Tastings for product quality assurance. A licensed manufacturer or rectifier may distribute to its management and staff who are directly involved in the production of the licensee's products, provided they are of legal drinking age and at the licensed premises, samples of the licensee's products for the purpose of assuring the quality of the products. Each sample of vinous or malt beverages shall be no larger than two ounces, and each sample of spirits or fortified wines shall be no larger than one-quarter ounce. No permit is required under this subsection.

(f) Age and training of servers. No individual who is under ~~the age of~~ 18 years of age or who has not received training as required by the Department may serve alcoholic beverages at an event under this section.

~~(f)~~(g) Penalties. The holder of a permit issued under this section that provides alcoholic beverages to an underage individual or permits an individual under ~~the age of~~ 18 years of age to serve alcoholic beverages at a beverage tasting event under this section shall be fined not less than \$500.00 nor more than \$2,000.00 or imprisoned not more than two years, or both.

Sec. 3. 7 V.S.A. § 231 is amended to read:

§ 231. FEES FOR LICENSES AND PERMITS; DISPOSITION OF FEES

(a) The following fees shall be paid:

(1) For a manufacturer's or rectifier's license to manufacture or rectify malt beverages ~~and, or~~ vinous beverages and fortified wines, or ~~to manufacture or rectify~~ spirits and fortified wines, \$285.00 for ~~either~~ each license.

* * *

(11) For up to ten fourth-class ~~vinous~~ licenses, \$70.00.

* * *

(25) For a retail delivery permit, \$100.00.

(26) For a destination resort master license, \$1,000.00.

* * *

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

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

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

(1) Upon making application and paying the license fee provided in section 231 of this title, a first-class license which authorizes the dealer to sell malt and vinous beverages for consumption only on those premises, and upon satisfying the Liquor Control Board that the premises are leased, rented, or owned by the retail dealer and are devoted primarily to dispensing meals to the public, except clubs ~~and cabarets~~, and that the premises have adequate and sanitary space and equipment for preparing and serving meals. The term "public" includes patrons of hotels, boarding houses, restaurants, dining cars, and similar places where meals are served. A retail dealer carrying on business in more than one place shall acquire a first-class license for each place where the retail dealer sells malt and vinous beverages. No malt or vinous beverages shall be sold by a first-class licensee to a minor. Partially consumed bottles of vinous beverages or specialty beers that were purchased with a meal may be removed from first-class licensed premises provided the beverages are recapped or resealed.

* * *

(7)(A)(i) The Liquor Control Board may grant a retail delivery permit to a second-class licensee if the licensee files an application accompanied by the fee provided in section 231 of this title.

(ii) Notwithstanding subdivision (i) of this subdivision (7)(A), the Liquor Control Board shall not grant a retail delivery permit in relation to a second-class license issued to a licensed manufacturer or rectifier for the manufacturer's or rectifier's premises.

(B) A retail delivery permit holder may deliver malt beverages or vinous beverages sold from the licensed premises for consumption off the premises to an individual who is at least 21 years of age subject to the following requirements:

(i) Deliveries shall only be made by the permit holder or an employee of the permit holder.

(ii) Deliveries shall only occur between the hours of 9:00 a.m. and 5:00 p.m.

(iii) Deliveries shall only be made to a physical address located in Vermont.

(iv) An employee of a retail delivery permit holder shall not be permitted to make deliveries of malt beverages or vinous beverages pursuant to the permit unless he or she has completed a training program approved by the Department as required pursuant to section 239 of this chapter.

(v) Malt beverages and vinous beverages delivered pursuant to a retail delivery permit shall be for personal use and not for resale.

Sec. 5. RETAIL DELIVERY PERMIT; RULEMAKING

On or before January 1, 2017, the Liquor Control Board shall adopt rules necessary to implement the retail delivery permit created by Sec. 4 of this act. The rules shall include:

(1) minimum insurance requirements for a retail delivery permit holder;

(2) limitations on the quantity of malt beverages and vinous beverages that may be delivered;

(3) training and age requirements for employees permitted to make deliveries; and

(4) requirements related to age verification of delivery recipients, recordkeeping, labeling of deliveries, and the identification of delivery personnel or delivery vehicles.

Sec. 6. 7 V.S.A. § 224 is amended to read:

§ 224. THIRD-CLASS LICENSES; OPEN CONTAINERS

(a) The Liquor Control Board may grant to a person who operates a hotel, restaurant, ~~cabaret~~, or club a license of the third class if the person files an application accompanied by the license fee as provided in section 231 of this title for the premises in which the business of the hotel, restaurant, ~~cabaret~~, or club is carried on. The holder of a third-class license may sell spirits and fortified wines for consumption only on the premises covered by the license. The applicant for a third-class license shall satisfy the Liquor Control Board that the applicant is the bona fide owner or lessee of the premises and that the premises are operated for the purpose covered by the license.

* * *

Sec. 7. 7 V.S.A. § 242 is added to read:

§ 242. DESTINATION RESORT MASTER LICENSES

(a) The Liquor Control Board may grant a destination resort master license to a person that operates a destination resort if the applicant files an application with the Liquor Control Board accompanied by the license fee provided in section 231 of this title. In addition to any information required pursuant to rules adopted by the Board, the application shall:

(1) designate all licensed caterers and commercial caterers that are proposed to be permitted to cater individual events within the boundaries of the resort pursuant to the destination resort master license;

(2) demonstrate that the destination resort:

(A) contains at least 100 acres of land; and

(B) offers at least 50 units of sleeping accommodations; and

(3) include a plan of the destination resort that sets forth:

(A) the destination resort boundaries;

(B) the ownership of the destination resort lands;

(C) the location and general design of buildings and other improvements within the resort boundaries; and

(D) the location of any sports and recreational facilities within the resort boundaries.

(b) A licensee may, upon five days' notice to the Department, amend the list of licensed caterers and commercial caterers that are designated in the destination resort master license.

(c) The holder of the destination resort master license shall, at least two days prior to the date of the event, provide the Department and local control commissioners with written notice of an event within the resort boundaries that will be catered pursuant to the master license. A licensed caterer or commercial caterer that is designated in the master license shall not be required to obtain a request to cater permit to cater an event occurring within the destination resort boundaries if the master licensee has provided the Department and local control commissioners with the required notice pursuant to this subsection.

(d) Real estate of a destination resort master license holder that is not contiguous with the license holder's principal premises or is located in a different municipality from the license holder's principal premises may be included in the destination resort's boundaries if it is clearly identified and delineated on the plan of the destination resort that is submitted pursuant to subsection (a) of this section.

Sec. 8. 7 V.S.A. § 421 is amended to read:

§ 421. TAX ON MALT AND VINOUS BEVERAGES

(a) Every bottler and wholesaler shall pay to the Commissioner of Taxes the sum of 26 and one-half cents per gallon for every gallon or its equivalent of malt beverage containing not more than six percent of alcohol by volume at 60 degrees Fahrenheit sold by them to retailers in the State and the sum of 55 cents per gallon for each gallon of malt beverage containing more than six percent of alcohol by volume at 60 degrees Fahrenheit and each gallon of vinous beverages sold by them to retailers in the State and shall also pay to the Liquor Control Board all fees for bottler's and wholesaler's licenses. A manufacturer or rectifier of malt or vinous beverages shall pay the taxes required by this subsection to the Commissioner of Taxes for all malt and vinous beverages manufactured or rectified by them and sold at retail.

* * *

(c)(1) For the purpose of ascertaining the amount of tax, ~~on or before the tenth day of each calendar month~~ on the filing dates set out in subdivision (2) of this subsection according to tax liability, each bottler and wholesaler shall transmit to the Commissioner of Taxes, upon a form prepared and furnished by the Commissioner, a statement or return under oath or affirmation showing the quantity of malt and vinous beverages sold by the bottler or wholesaler during the preceding ~~calendar month~~ filing period, and report any other information requested by the Commissioner accompanied by payment of the tax required by this section. The amount of tax computed under subsection (a) of this section shall be rounded to the nearest whole cent. At the same time this form

is due, each bottler and wholesaler also shall transmit to the Commissioner in electronic format a separate report showing the description, quantity, and price of malt and vinous beverages sold by the bottler or wholesaler to each retail dealer as defined in subdivision 2(18) of this title; provided, however, for direct sales to retail dealers by manufacturers or rectifiers of vinous beverages, the report required by this subsection may be submitted in a nonelectronic format.

(2) Where the tax liability for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year):

(A) \$2,000.00 or less, then payment of the tax and submission of the documents required by this section shall be due and payable in quarterly installments on or before the 25th day of the calendar month succeeding the quarter ending the last day of March, June, September, and December of each year; or

(B) More than \$2,000.00, then payment of the tax and submission of the documents required by this section shall be due and payable monthly on or before the 25th (23rd of February) day of the month following the month for which the tax is due.

* * *

Sec. 9. 7 V.S.A. § 423 is amended to read:

§ 423. REGULATIONS RULES

(a) The ~~tax commissioner~~ Commissioner of Taxes and the ~~liquor control board~~ Liquor Control Board shall ~~make~~ adopt such rules and ~~regulations~~ as they deem necessary for the proper administration and collection of the tax imposed under section 422 of this title.

(b) Notwithstanding subsection (a) of this section, where the spirits and fortified wines tax liability of a manufacturer or rectifier under section 422 of this title for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year) \$1,000.00 or less, the tax imposed on the manufacturer or rectifier by section 422 of this title shall be due and payable in one annual payment on or before the 25th day of January. Where the spirits and fortified wines tax liability of a manufacturer or rectifier under section 422 of this title for the immediately preceding full calendar year has been (or would have been in cases when the business was not operating for the entire year) more than \$1,000.00, the tax imposed on the manufacturer or rectifier by section 422 of this title shall be due and payable in quarterly installments on or before the 25th day of the

calendar month succeeding the quarter ending the last day of March, June, September, and December of each year.

Sec. 10. 7 V.S.A. § 424 is amended to read:

§ 424. COLLECTION

The ~~liquor control board~~ Liquor Control Board shall collect the tax imposed under section 422 of this title ~~from the purchaser thereof.~~ The taxes so collected on sales by the Liquor Control Board shall be paid weekly to the ~~state treasurer~~ State Treasurer, and the taxes collected on sales by a manufacturer or rectifier shall be paid quarterly to the State Treasurer.

Sec. 11. 32 V.S.A. § 9202 is amended to read:

§ 9202. DEFINITIONS

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

* * *

(4) “Operator” means any person, or his or her agent, operating a hotel, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise; and any person, or his or her agent, charging for a taxable meal or alcoholic beverage; and any person, or his or her agent, engaged in both of the foregoing activities. In the event that an operator is a corporation or other entity, the term “operator” shall include any officer or agent of such corporation or other entity who, as an officer or agent of the corporation, is under a duty to pay the gross receipts tax to the Commissioner as required by this chapter.

* * *

(11) “Alcoholic beverages” means any malt beverages, vinous beverages, ~~or spirituous liquors~~ spirits, or fortified wines as defined in 7 V.S.A. § 2 and served ~~on premises by a holder of a first or third class license issued under 7 V.S.A. chapter 9~~ for immediate consumption. “Alcoholic beverages” do not include any beverages served under the circumstances enumerated in subdivision 9202(10)(D)(ii) of this chapter under which beverages are excepted from the definition of “taxable meal.”

* * *

Sec. 12. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(10) Sales of meals or alcoholic beverages taxed or exempted under chapter 225 of this title, or any alcoholic beverages provided for immediate consumption.

* * *

Sec. 13. DEPARTMENT OF TAXES; STUDY OF TRANSFER OF MALT BEVERAGES BETWEEN LICENSED MANUFACTURING LOCATIONS; REPORT

(a) The Department of Taxes, in consultation with the Department of Liquor Control and interested stakeholders, shall study the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership. In particular, the Department shall study:

(1) what legislative, regulatory, or administrative changes, if any, are necessary to enable the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership; and

(2) whether permitting the bulk transfer of malt beverages without the payment of taxes pursuant to 7 V.S.A. § 421 between licensed manufacturers of malt beverages that are under the same ownership would adversely impact the State's tax revenues.

(b) On or before January 15, 2017, the Department of Taxes shall submit a written report to the House Committees on General, Housing and Military Affairs and on Ways and Means, and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding its findings and any recommendations for legislative action.

(c) For purposes of this section, two licensed manufacturers of malt beverages are "under the same ownership" if:

(1) the manufacturers are part of the same company;

(2) one manufacturer owns the controlling interest in the other manufacturer; or

(3) the controlling interest in each manufacturer is owned by the same person.

Sec. 14. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF
LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The Department of Liquor Control, created by 3 V.S.A. § 212, shall include the Commissioner of Liquor Control and the Liquor Control Board.

(b)(1) The Liquor Control Board shall consist of five persons, not more than three members of which shall belong to the same political party.

~~(2)(A) Biennially, with~~ With the advice and consent of the Senate, the Governor shall appoint ~~a person as a member~~ members of ~~such~~ the Board for a ~~staggered five-year term, whose~~ staggered five-year terms.

(B) The Governor shall fill a vacancy occurring during a term by an appointment for the unexpired term in accordance with the provisions of 3 V.S.A. § 257(b).

(C) A member's term of office shall commence on February 1 of the year in which such appointment is made the member is appointed.

(3) The Governor shall biennially designate a member of such the Board to be its Chair.

Sec. 15. 7 V.S.A. § 102 is amended to read:

§ 102. REMOVAL

~~After~~ Notwithstanding any provision of 3 V.S.A. § 2004 to the contrary, ~~after~~ notice and hearing, the ~~governor~~ Governor may remove a member of the ~~liquor control board~~ Liquor Control Board for incompetency, failure to discharge his or her duties, malfeasance, immorality, or other cause inimical to the general good of the ~~state~~ State. In case of such removal, the ~~governor~~ Governor shall appoint a person to fill the unexpired term.

Sec. 16. 7 V.S.A. § 106 is amended to read:

§ 106. COMMISSIONER OF LIQUOR CONTROL; REPORTS;
RECOMMENDATIONS

~~The board shall employ an executive officer, who shall be the secretary of the board and shall be called the commissioner of liquor control. The commissioner shall be appointed for an indefinite period and shall be subject to removal upon the majority vote of the entire board. At such times and in such detail as the board directs, the commissioner shall make reports to the board concerning the liquor distribution system of the state, together with such~~

~~recommendations as he deems proper for the promotion of the general good of the state.~~

(a)(1) With the advice and consent of the Senate, the Governor shall appoint from among no fewer than three candidates proposed by the Liquor Control Board a Commissioner of Liquor Control for a term of four years.

(2) The Board shall review the applicants for the position of Commissioner of Liquor Control and by a vote of the majority of the members of the Board shall select candidates to propose to the Governor. The Board shall consider each applicant's administrative expertise and his or her knowledge regarding the business of distributing and selling alcoholic beverages.

(b) The Commissioner shall serve at the pleasure of the Governor until the end of the term for which he or she is appointed or until a successor is appointed.

Sec. 17. 7 V.S.A. § 107 is amended to read:

§ 107. DUTIES OF COMMISSIONER OF LIQUOR CONTROL

The Commissioner of Liquor Control shall:

(1) In towns ~~which that~~ vote to permit the sale of spirits and fortified wines, establish ~~such number of~~ local agencies ~~therein~~ as the Board shall determine, ~~enter into agreements for the rental of necessary and adequate quarters, and employ suitable assistants for the operation thereof.~~ However, it ~~shall not be obligatory upon~~ the Liquor Control Board shall not be obligated to establish an agency in every town ~~which that~~ votes to permit the sale of spirits and fortified wines.

(2) ~~Make regulations~~ Recommend rules subject to ~~the approval of and adoption by~~ the Board governing the hours during which ~~such local agencies~~ shall be open for the sale of spirits and fortified wines ~~and governing, the qualifications, department, and salaries of the agencies' employees, and the business, operational, financial, and revenue standards that must be met for the establishment of an agency and its continued operation.~~

(3) ~~Make regulations~~ Recommend rules subject to ~~the approval of and adoption by~~ the Board governing:

(A) the prices at which spirits shall be sold by local agencies, the method for their delivery, and the quantities of spirits that may be sold to any one person at any one time; and

(B) the minimum prices at which fortified wines shall be sold by local agencies and second-class licensees that hold fortified wine permits, the

method for their delivery, and the quantities of fortified wines that may be sold to any one person at any one time.

(4) Supervise the quantities and qualities of spirits and fortified wines to be kept as stock in local agencies and ~~make regulations~~ recommend rules subject to ~~the approval of~~ and adoption by the Board regarding the filling of requisitions therefor on the Commissioner of Liquor Control.

(5) Purchase through the Commissioner of Buildings and General Services spirits and fortified wines for and in behalf of the Liquor Control Board, supervise ~~the their~~ storage thereof and ~~the~~ distribution to local agencies, druggists and, ~~licensees of the third class,~~ third-class licensees, and holders of fortified wine permits, and ~~make regulations~~ recommend rules subject to ~~the approval of~~ and adoption by the Board regarding the sale and delivery from the central storage plant.

(6) Check and audit the income and disbursements of all local agencies, and the central storage plant.

(7) Report to the Board regarding the State's liquor control system and make recommendations for the promotion of the general good of the State.

(8) Devise methods and plans for eradicating intemperance and promoting the general good of the ~~state~~ State and make effective such methods and plans as part of the administration of this title.

Sec. 18. RULEMAKING

On or before July 1, 2017, the Commissioner shall prepare and submit to the Liquor Control Board for its approval and adoption his or her recommendation for rules to govern the business, operational, financial, and revenue standards for local agencies as necessary to implement this act.

Sec. 19. LEGISLATIVE COUNCIL; DRAFT LEGISLATION

On or before January 15, 2017, the Office of Legislative Council shall prepare and submit a draft bill to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs that makes statutory amendments of a technical nature to improve the clarity of Title 7 through the reorganization of its provisions and the modernization of its statutory language. The draft bill shall also identify provisions of Title 7 that may require amendment in order to remove out-of-date and obsolete provisions or to reflect more accurately the current practices and programs of the Liquor Control Board and the Department of Liquor Control. The Office of Legislative Council shall consult with the Commissioner of Liquor Control, the Liquor Control Board, and the Office of the Attorney General to identify language requiring modernization

and provisions that are out-of-date, obsolete, or do not reflect accurately the current practices and programs of the Liquor Control Board and the Department of Liquor Control.

Sec. 20. COMMISSIONER OF LIQUOR CONTROL; CURRENT TERM;
APPOINTMENT OF SUCCESSOR

The Commissioner of Liquor Control in office on the effective date of this act shall be deemed to have commenced a four-year term pursuant to 7 V.S.A. § 106(a)(1) on February 1, 2016. The Commissioner shall serve until the end of the four-year term or until a successor is appointed as provided pursuant to 7 V.S.A. § 106. Notwithstanding any provision of 3 V.S.A. § 2004 or 7 V.S.A. § 106(b) to the contrary, during this current term, the Governor may remove the Commissioner for cause after notice and a hearing.

Sec. 21. EFFECTIVE DATES

(a) In Sec. 3, 7 V.S.A. § 231, subdivisions (a)(1) (manufacturer's or rectifier's license) and (a)(11) (fourth-class license) shall take effect on July 2, 2016. The remaining provisions of Sec. 3 shall take effect on July 1, 2016.

(b) In Sec. 4, 7 V.S.A. § 222, subdivision (7) shall take effect on January 1, 2017. The remaining provisions of Sec. 4 shall take effect on July 1, 2016.

(c) This section and the remaining sections of this act shall take effect on July 1, 2016.

(Committee vote: 8-0-0)

(For text see Senate Journal March 18, 2016)

Rep. Clarkson of Woodstock, for the Committee on **Ways & Means**, recommends the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on **General, Housing & Military Affairs** and when further amended as follows:

First: In Sec. 4, 7 V.S.A. § 222, in subdivision (7)(B)(ii), after the words "Deliveries shall only occur between the hours of 9:00 a.m. and" by striking out "5:00 p.m." and by inserting in lieu thereof "9:00 p.m."

Second: In Sec. 14, 7 V.S.A. § 101, by striking out Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 to read as follows:

Sec. 14. 7 V.S.A. § 101 is amended to read:

§ 101. COMPOSITION OF DEPARTMENT; COMMISSIONER OF
LIQUOR CONTROL; LIQUOR CONTROL BOARD

(a) The Department of Liquor Control, created by 3 V.S.A. § 212, shall include the Commissioner of Liquor Control and the Liquor Control Board.

(b)(1) The Liquor Control Board shall consist of five persons, not more than three members of which shall belong to the same political party.

~~(2)(A) Biennially, with~~ With the advice and consent of the Senate, the Governor shall appoint ~~a person as a member~~ members of ~~such~~ the Board for a ~~staggered five-year term, whose~~ staggered five-year terms.

(B) The Governor shall fill a vacancy occurring during a term by an appointment for the unexpired term in accordance with the provisions of 3 V.S.A. § 257(b).

(C) A member's term of office shall commence on February 1 of the year in which such appointment is made the member is appointed.

(3) A member of the Board may serve for no more than two consecutive full terms. A member who is appointed to fill a vacancy occurring during a term may serve two consecutive full terms in addition to the unexpired portion of the term during which the member is first appointed.

(4) The Governor shall biennially designate a member of ~~such~~ the Board to be its Chair.

Third: After Sec. 20, Commissioner of Liquor Control; Current Term; Appointment of Successor, by inserting Secs. 21 and 22 to read as follows:

Sec. 21. CURRENT LIQUOR CONTROL BOARD MEMBERS; TERM
LIMIT

For purposes of the term limit set forth in 7 V.S.A. § 101(b)(3), the current term of each of the Liquor Control Board members in office on the effective date of this act shall be deemed to be that member's first consecutive term as a member of the Board.

Sec. 22. RECAPTURE OF LOST SALES OF SPIRITS AND FORTIFIED
WINES; DEPARTMENT OF LIQUOR CONTROL; PROPOSAL

(a) In order to increase revenue by recapturing sales of spirits and fortified wines that are lost to neighboring states, the Commissioner of Liquor Control shall develop a written proposal to improve, diversify, and increase the number of Vermont's agency liquor stores. The proposal shall include an optimal

number of State agency liquor stores, taking into account population, geography, and proximity to Vermont's borders, and a recommendation for any legislative action that is necessary to implement it.

(b) The proposal also shall consider and address the following:

(1) The distribution of agency liquor stores in rural areas and underserved portions of the State, and whether additional stores that are permitted to carry a smaller or more limited selection of products should be added to serve such areas.

(2) Whether to create a new type of agency liquor store that owns the spirits and fortified wines it sells.

(3) Whether to permit certain agency liquor stores to decide to carry a modified selection of products subject to minimum requirements established by the Liquor Control Board.

(c) On or before January 15, 2017, the Commissioner shall submit the proposal to the House Committees on General, Housing and Military Affairs and on Ways and Means, and the Senate Committees on Economic Development, Housing and General Affairs and on Finance.

and by renumbering the remaining section to be numerically correct

(Committee Vote: 11-0-0)

S. 257

An act relating to residential rental agreements

Rep. Stevens of Waterbury, for the Committee on **General, Housing & Military Affairs**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 4451 is amended to read:

§ 4451. DEFINITIONS

As used in this chapter:

* * *

(9) “Sublease” means a rental agreement, written or oral, embodying terms and conditions concerning the use and occupancy of a dwelling unit and premises between two tenants, a sublessor and a sublessee.

(10) “Tenant” means a person entitled under a rental agreement to occupy a residential dwelling unit to the exclusion of others.

Sec. 2. 9 V.S.A. § 4452 is amended to read:

§ 4452. EXCLUSIONS

Unless created to avoid the application of this chapter, this chapter does not apply to any of the following:

* * *

(7) transient residence in a campground, which for the purposes of this chapter means any property used for seasonal or short-term vacation or recreational purposes on which are located cabins, tents, or lean-tos, or campsites designed for temporary set-up of portable or mobile camping, recreational, or travel dwelling units, including tents, campers, and recreational vehicles such as motor homes, travel trailers, truck campers, and van campers; ~~or~~

(8) transient occupancy in a hotel, motel, or lodgings during the time the occupant is a recipient of General Assistance or Emergency Assistance temporary housing assistance, regardless of whether the occupancy is subject to a tax levied under 32 V. S.A. chapter 225; or

(9) occupancy of a dwelling unit without right or permission by a person who is not a tenant.

Sec. 3. 9 V.S.A. § 4456b is added to read:

§ 4456b. SUBLEASES; LANDLORD AND TENANT RIGHTS AND OBLIGATIONS

(a)(1) A landlord may condition or prohibit subleasing a dwelling unit under the terms of a written rental agreement, and may require a tenant to provide written notice of the name and contact information of any sublessee occupying the dwelling unit.

(2) If the terms of a written rental agreement prohibit subleasing the dwelling unit, the landlord or tenant may bring an action for ejectment pursuant to 12 V.S.A. §§ 4761 and 4853b against a person that is occupying the dwelling unit without right or permission. This subdivision (2) shall not be construed to limit the rights and remedies available to a landlord pursuant to this chapter.

(b) In the absence of a written rental agreement, a tenant shall provide the landlord with written notice of the name and contact information of any sublessee occupying the dwelling unit.

Sec. 4. 12 V.S.A. § 4761 is amended to read:

§ 4761. WHEN MAINTAINABLE; PARTIES

A person having claim to the seisin or possession of lands, tenements or hereditaments shall have an action of ejectment, according to the nature of the case, which shall be brought as well against the landlord, if any, as against the tenant in possession of the premises, or against a person that is occupying a dwelling unit, for which subleasing is prohibited pursuant to a written rental agreement, without right or permission pursuant to 9 V.S.A. § 4456b(a)(2); and, if otherwise brought, on motion, the same shall be abated. Tenants in common of lands may join in an action concerning their common interest in such lands.

Sec. 5. 12 V.S.A. § 4853b is added to read:

§ 4853b. UNLAWFUL OCCUPANT; EXPEDITED HEARING

(a)(1) In an action for ejectment, the landlord, the landlord's agent, or the tenant may file a motion for a judgment that the plaintiff is entitled to immediate possession of the premises on the grounds that the defendant is a person that is occupying a dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2).

(2) The motion may be filed and served with the complaint or at any time after the complaint has been filed. The motion shall be accompanied by an affidavit setting forth particular facts in support of the motion and a copy of the lease agreement.

(b) A hearing on the motion shall be held any time after 10 days' notice to the parties.

(c) At any time before the hearing, the defendant may oppose the motion pursuant to Rule 78(b) of the Vermont Rules of Civil Procedure by filing an affidavit, a signed written statement, or a memorandum in opposition to the motion. The affidavit, signed written statement, or memorandum shall set forth particular facts to show that a genuine dispute of fact exists in relation to the motion.

(d)(1) If the defendant fails to appear for the hearing, or to file an affidavit, signed written statement, or memorandum in opposition to the plaintiff's motion, or has failed to file an answer in the time provided pursuant to Rule 12 of the Vermont Rules of Civil Procedure, the plaintiff shall be entitled to judgment by default for immediate possession of the premises.

(2) If the court finds that the defendant is a person that is occupying the dwelling unit without right or permission and the written rental agreement for the dwelling unit prohibits subleasing pursuant to 9 V.S.A. § 4456b(a)(2), the

court shall grant the plaintiff's motion and issue judgment in favor of the plaintiff for immediate possession of the premises.

(e) If the court issues judgment in favor of the plaintiff pursuant to subsection (d) of this section, the court shall, on the date judgment is entered, issue a writ of possession directing the sheriff of the county in which the property or a portion thereof is located to serve the writ upon the defendant and, no sooner than five days after the writ is served, to put the plaintiff into possession.

(f) At any time prior to the execution of the writ of possession, the defendant may file an affidavit, signed written statement, or a motion with the court setting forth facts demonstrating that the defendant is occupying the premises lawfully. The court shall treat an affidavit, signed written statement, or a motion filed under this subsection as a motion pursuant to Rule 59 or 60 of the Vermont Rules of Civil Procedure, as appropriate.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee vote: 8-0-0)

(For text see Senate Journal March 17, 2016)

Senate Proposal of Amendment

H. 95

An act relating to jurisdiction over delinquency proceedings by the Family Division of the Superior Court

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

* * * Effective July 1, 2018 * * *

Sec. 1. 33 V.S.A. § 5280 is added to read:

§ 5280. COMMENCEMENT OF YOUTHFUL OFFENDER PROCEEDINGS IN THE FAMILY DIVISION

(a) A proceeding under this subchapter shall be commenced by:

(1) the filing of a youthful offender petition by a State's Attorney; or

(2) transfer to the Family Court of a proceeding from the Criminal Division of the Superior Court as provided in section 5281 of this title.

(b) A State's Attorney may commence a proceeding in the Family Division of the Superior court concerning a child who is alleged to have committed an

offense after attaining 16 years of age, but not 22 years of age that could otherwise be filed in the Criminal Division.

(c) If a State's Attorney files a petition under subdivision (a)(1) of this section, the case shall proceed as provided under subsection 5281(b) of this title.

Sec. 2. 33 V.S.A. § 5281 is amended to read:

§ 5281. MOTION IN CRIMINAL DIVISION OF SUPERIOR COURT

(a) A motion may be filed in the Criminal Division of the Superior Court requesting that a defendant under ~~18~~ 22 years of age in a criminal proceeding who had attained ~~the age of 10~~ 12 years of age but not ~~the age of 18~~ 22 years of age at the time the offense is alleged to have been committed be treated as a youthful offender. The motion may be filed by the State's Attorney, the defendant, or the Court on its own motion.

(b) Upon the filing of a motion under this section ~~and the entering of a conditional plea of guilty by the youth, the Criminal Division shall enter an order deferring the sentence and transferring the case to~~ or the filing of a youthful offender petition pursuant to § 5280 of this title, the Family Division ~~for shall hold a hearing on the motion pursuant to § 5283 of this title.~~ Copies of all records relating to the case shall be forwarded to the Family Division. Conditions of release and any Department of Corrections supervision or custody shall remain in effect until the Family Division ~~approves the motion~~ accepts the case for treatment as a youthful offender and orders conditions of juvenile probation pursuant to section 5284 of this title, or the case is otherwise concluded.

~~(c) A plea of guilty entered by the youth pursuant to subsection (b) of this section shall be conditional upon the Family Division granting the motion for youthful offender status.~~

~~(d)(1) If the Family Division denies the motion~~ rejects the case for youthful offender treatment pursuant to subsection 5284 of this title, the case shall be ~~returned~~ transferred to the Criminal Division, ~~and the youth shall be permitted to withdraw the plea.~~ The conditions of release imposed by the Criminal Division shall remain in effect, and the case shall proceed as though the motion for youthful offender treatment or youthful offender petition had not been made filed.

(2) Subject to Rule 11 of the Vermont Rules of Criminal Procedure and Rule 410 of the Vermont Rules of Evidence, the Family Division's denial of the motion for youthful offender treatment and any information related to the

youthful offender proceeding shall be inadmissible against the youth for any purpose in the subsequent Criminal Division proceeding.

(d) If the Family Division accepts the case for youthful offender treatment, the case shall proceed to a confidential merits hearing or admission pursuant to sections 5227–5229 of this title. If the youth is adjudicated, the Court will create a criminal case reflecting the charge and conviction.

Sec. 3. 33 V.S.A. § 5282 is amended to read:

§ 5282. REPORT FROM THE DEPARTMENT

(a) Within 30 days after the case is transferred to the Family Division or a youthful offender petition is filed in the Family Division, unless the Court extends the period for good cause shown, the Department shall file a report with the Family Division of the Superior Court.

(b) A report filed pursuant to this section shall include the following elements:

(1) a recommendation as to whether youthful offender status is appropriate for the youth;

(2) a disposition case plan including proposed services and proposed conditions of juvenile probation in the event youthful offender status is approved and the youth is adjudicated;

(3) a description of the services that may be available for the youth when he or she reaches 18 years of age.

(c) A report filed pursuant to this section is privileged and shall not be disclosed to any person other than the Department, the Court, the State's Attorney, the youth, the youth's attorney, the youth's guardian ad litem, the Department of Corrections, or any other person when the Court determines that the best interests of the youth would make such a disclosure desirable or helpful.

Sec. 4. 33 V.S.A. § 5283 is amended to read:

§ 5283. HEARING IN FAMILY DIVISION

(a) Timeline. A hearing on the motion for youthful offender status shall be held no later than 35 days after the transfer of the case from the Criminal Division or filing of a youthful offender petition in the Family Division.

(b) Notice. Notice of the hearing shall be provided to the State's Attorney; the youth; the youth's parent, guardian, or custodian; the Department; and the Department of Corrections.

(c) Hearing procedure.

(1) If the motion is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those persons making the reports, but sources of confidential information need not be disclosed.

(2) Hearings under subsection 5284(a) of this title shall be open to the public. All other youthful offender proceedings shall be confidential.

(d) The burden of proof shall be on the moving party to prove by a preponderance of the evidence that a child should be granted youthful offender status. If the Court makes the motion, the burden shall be on the youth.

(e) Further hearing. On its own motion or the motion of a party, the Court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case.

Sec. 5. 33 V.S.A. § 5284 is amended to read:

§ 5284. YOUTHFUL OFFENDER DETERMINATION AND DISPOSITION ORDER

(a) In a hearing on a motion for youthful offender status, the Court shall first consider whether public safety will be protected by treating the youth as a youthful offender. If the Court finds that public safety will not be protected by treating the youth as a youthful offender, the Court shall deny the motion and ~~return~~ transfer the case to the Criminal Division of the Superior Court pursuant to subsection 5281(d) of this title. If the Court finds that public safety will be protected by treating the youth as a youthful offender, the Court shall proceed to make a determination under subsection (b) of this section.

(b)(1) The Court shall deny the motion if the Court finds that:

(A) the youth is not amenable to treatment or rehabilitation as a youthful offender; or

(B) there are insufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(2) The Court shall grant the motion if the Court finds that:

(A) the youth is amenable to treatment or rehabilitation as a youthful offender; and

(B) there are sufficient services in the juvenile court system and the Department to meet the youth's treatment and rehabilitation needs.

(c) If the Court approves the motion for youthful offender treatment after an adjudication pursuant to subsection 5281(d) of this title, the Court:

(1) shall approve a disposition case plan and impose conditions of juvenile probation on the youth; and

(2) may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or Commissioner, provided that any transfer of custody shall expire on the youth's 18th birthday.

(d) The Department shall be responsible for supervision of and providing services to the youth until he or she reaches ~~the age of 18 years of age~~. A lead case manager shall be designated who shall have final decision-making authority over the case plan and the provision of services to the youth. The youth shall be eligible for appropriate community-based programming and services provided by the Department.

(e) The youth shall not be permitted to withdraw his or her plea of guilty after youthful offender status is approved except to correct manifest injustice pursuant to Rule 32(d) of the Vermont Rules of Criminal Procedure.

* * * Effective January 1, 2018 * * *

Sec. 6. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The Family Division of the Superior Court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other Family Division proceedings and any order of another court of this State, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent may be extended until six months beyond the child's ~~18th~~ 19th birthday if ~~the offense for which the child has been adjudicated delinquent is a nonviolent~~

~~misdemeanor~~ and the child was 16 or 17 years old when he or she committed the offense.

(B) In no case shall custody of a child ~~aged~~ 18 years of age or older be retained by or transferred to the Commissioner for Children and Families.

(C) Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

~~(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.~~

(d) The Court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the Court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the Commissioner;

(2) upon an order of the Court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision;

(3) upon the adoption of a child following a termination of parental rights proceeding.

Sec. 7. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining 14 years of age, but not 18 years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining ~~17~~ 18 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 8. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time the offense charged was alleged to have been committed and the offense charged is a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~17~~ 18 years of age at the time a felony offense not listed in subsection 5204(a) of this title was alleged to have been committed, that Court shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~16~~ under 18 years of age at the time the felony offense charged was alleged to have been committed and the felony charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney shall file charges in the Family Division of the Superior Court.

* * *

* * * Effective January 1, 2017 * * *

Sec. 9. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

(a) Proceedings under this chapter shall be commenced by:

(1) transfer to the Court of a proceeding from another court as provided in section 5203 of this title; or

(2) the filing of a delinquency petition by a State's Attorney.

(b) If the proceeding is commenced by transfer from another court, no petition need be filed; however, the State's Attorney shall provide to the Court the name and address of the child's custodial parent, guardian, or custodian and the name and address of any noncustodial parent if known.

(c) ~~Consistent with applicable provisions of Title 4, any~~ Any proceeding concerning a child who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining ~~the age of 14~~ years of age, but not ~~the age of 18~~ years of age, shall originate in the Criminal Division of the Superior Court, provided that jurisdiction may be transferred in accordance with this chapter.

(d) Any proceeding concerning a child who is alleged to have committed a misdemeanor offense before attaining 17 years of age shall originate in the Family Division of the Superior Court.

(e) Any proceeding concerning a child who is alleged to have committed a felony offense other than those specified in subsection 5204(a) of this title before attaining 17 years of age shall originate in the Family Division of the Superior Court provided that jurisdiction may be transferred in accordance with this chapter.

(f) If the State requests that custody of the child be transferred to the Department, a temporary care hearing shall be held as provided in subchapter 3 of this chapter.

~~(e)~~(g) A petition may be withdrawn by the State's Attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

Sec. 10. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a Criminal Division of the Superior Court that the defendant was under ~~the age of 16~~ 17 years of age at the time the offense charged was alleged to have been committed and the offense charged is ~~not one of those specified in subsection 5204(a) of this title~~ a misdemeanor, that Court shall forthwith transfer the case to the Family Division of the Superior Court under the authority of this chapter.

(b) If it appears to a Criminal Division of the Superior Court that the defendant was ~~over the age of 16 years and under the age of 18~~ 17 years of age at the time ~~the~~ a felony offense ~~charged~~ not specified in subsection 5204(a) of this title was alleged to have been committed, ~~or that the defendant had~~

~~attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that Court may~~ shall forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the State's Attorney that the defendant was ~~over the age of 16 years of age and under the age of 18~~ at the time the ~~offense felony~~ charged was alleged to have been committed and the ~~offense felony~~ charged is not an offense specified in subsection 5204(a) of this title, the State's Attorney ~~may~~ shall file charges in the Family ~~or Criminal~~ Division of the Superior Court. ~~If charges in such a matter are filed in the Criminal Division of the Superior Court, the Criminal Division of the Superior Court may forthwith transfer the proceeding to the Family Division of the Superior Court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.~~

(d) ~~Any such~~ A transfer under this section shall include a transfer and delivery of a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. Upon any such transfer, that court shall order that the defendant be taken forthwith to a place of detention designated by the Family Division of the Superior Court or to that court itself, or shall release the child to the custody of his or her parent or guardian or other person legally responsible for the child, to be brought before the Family Division of the Superior Court at a time designated by that court. The Family Division of the Superior Court shall then proceed as provided in this chapter as if a petition alleging delinquency had been filed with the Court under section 5223 of this title on the effective date of such transfer.

(e) Motions to transfer a case to the Family Division of the Superior Court for youthful offender treatment shall be made under section 5281 of this title.

Sec. 11. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained 16 years of age but not 18 years of age at the time the act was alleged to have occurred and the delinquent act set forth in the petition ~~was not one of those specified in subdivisions (1)-(12) of this subsection~~ is a felony not specified in subdivisions (1)-(12) of this subsection

or if the child had attained 12 years of age but not 14 years of age at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

* * *

(i) If a juvenile 16 years of age or older has been prosecuted as an adult for an offense not listed in subsection (a) of this section and is not convicted of a felony, but is convicted of a lesser included misdemeanor, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of a crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(j) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

* * * Effective July 1, 2016 * * *

Sec. 12. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM FAMILY DIVISION OF THE SUPERIOR COURT

(a) After a petition has been filed alleging delinquency, upon motion of the State's Attorney and after hearing, the Family Division of the Superior Court may transfer jurisdiction of the proceeding to the Criminal Division of the Superior Court, if the child had attained ~~the age of 16 years of age~~ but not ~~the age of 18 years of age~~ at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivisions (1)-(12) of this subsection or if the child had attained ~~the age of 14 years of age~~ but not ~~the age of 14 years of age~~ at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);
- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

(b) The State's Attorney of the county where the juvenile petition is pending may move in the Family Division of the Superior Court for an order transferring jurisdiction under subsection (a) of this section at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the Family Division of the Superior Court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the Family Division of the Superior Court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed ~~an act listed in subsection (a) of this section~~ the charged offense; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to the Family Division of the Superior Court and delinquent children.

* * *

(g) The order granting or denying transfer of jurisdiction shall ~~not~~ constitute a final ~~judgment or~~ order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained ~~the age of~~ 16 years of age at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the Family Division of the Superior Court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in the Family Division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to the Family Division under this subsection, the Court shall order the sealing of all applicable files and records of the Court, and such order shall be carried out as provided in subsection 5119(e) of this title.

* * *

Sec. 13. 33 V.S.A. § 5106 is amended to read:

§ 5106. POWERS AND DUTIES OF COMMISSIONER

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the Court, and in addition to any other powers granted to the Commissioner under the laws of this State, the Commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

(1) To undertake assessments and make reports and recommendations to the Court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the Commissioner's supervision or in the Commissioner's legal custody by order of the Court, and to administer sanctions in accordance with graduated sanctions established by policy and that are consistent with the juvenile probation certificate.

* * *

Sec. 14. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING; RISK ASSESSMENT

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the Court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the Department or by a community provider that has contracted with the Department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the Department or the community provider shall report the risk level result of the screening to the State's Attorney. In lieu of filing a charge, the State's Attorney may refer a child directly to a youth-appropriate community-based provider that has been approved by the Department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the State's Attorney to file a charge. If the community-based provider does not accept the case or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child's case shall return to the State's Attorney for charging consideration. If a charge is brought in the Family Division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the Court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

(d) At the preliminary hearing, the Court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the Court may appoint a guardian ad litem other than a parent, guardian or custodian.

(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission,

the disposition case plan required by section 5230 of this title may be waived and the Court may proceed directly to disposition, provided that the juvenile, the custodial parent, the State's Attorney, the guardian ad litem, and the Department agree.

(f) The Court may order the child to abide by conditions of release pending a merits or disposition hearing.

Sec. 15. 33 V.S.A. § 5285 is amended to read:

§ 5285. MODIFICATION OR REVOCATION OF DISPOSITION

(a) If it appears that the youth has violated the terms of juvenile probation ordered by the Court pursuant to subdivision 5284(c)(1) of this title, a motion for modification or revocation of youthful offender status may be filed in the Family Division of the Superior Court. The Court shall set the motion for hearing as soon as practicable. The hearing may be joined with a hearing on a violation of conditions of probation under section 5265 of this title. A supervising juvenile or adult probation officer may detain in an adult facility a youthful offender who has attained ~~the age of 18~~ years of age for violating conditions of probation.

(b) A hearing under this section shall be held in accordance with section 5268 of this title.

(c) If the Court finds after the hearing that the youth has violated the terms of his or her probation, the Court may:

(1) maintain the youth's status as a youthful offender, with modified conditions of juvenile probation if the Court deems it appropriate;

(2) revoke the youth's status as a youthful offender status and return the case to the Criminal Division for sentencing; or

(3) transfer supervision of the youth to the Department of Corrections with all of the powers and authority of the Department and the Commissioner under Title 28, including graduated sanctions and electronic monitoring.

(d) If a youth's status as a youthful offender is revoked and the case is returned to the Criminal Division under subdivision (c)(2) of this section, the Court shall hold a sentencing hearing and impose sentence. When determining an appropriate sentence, the Court may take into consideration the youth's degree of progress toward rehabilitation while on youthful offender status. The Criminal Division shall have access to all Family Division records of the proceeding.

Sec. 16. 28 V.S.A. § 1101 is amended to read:

§ 1101. POWERS AND RESPONSIBILITIES OF THE COMMISSIONER

REGARDING JUVENILE SERVICES

The Commissioner is charged with the following powers and responsibilities regarding the administration of juvenile services:

(1) to provide appropriate, separate facilities for the custody and treatment of ~~children~~ offenders under 25 years of age committed to his or her custody in accordance with the laws of the State;

* * *

Sec. 17. 33 V.S.A. § 5206 is added to read:

§ 5206. CITATION OF 16- AND 17-YEAR-OLDS

(a)(1) If a child was over 16 years of age and under 18 years of age at the time the offense was alleged to have been committed and the offense is not specified in subsection (b) of this section, law enforcement shall cite the child to the Family Division of the Superior Court.

(2) If, after the child is cited to the Family Division, the State's Attorney chooses to file the charge in the Criminal Division of the Superior Court, the State's Attorney shall state in the information the reason why filing in the Criminal Division is in the interest of justice.

(b) Offenses for which a law enforcement officer is not required to cite a child to the Family Division of the Superior Court shall include:

(1) 23 V.S.A. §§ 674 (driving while license suspended or revoked); 1128 (accidents—duty to stop); and 1133 (eluding a police officer).

(2) Fish and wildlife offenses that are not minor violations as defined by 10 V.S.A. § 4572.

(3) A listed crime as defined in 13 V.S.A. § 5301.

(4) An offense listed in subsection 5204(a) of this title.

Sec. 18. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

* * *

(j) Any juvenile between 14 and 16 years of age who is charged with a listed crime as defined in subdivision 5301(7) of this title shall appear before a judicial officer and be ordered released pending trial in accordance with this section within 24 hours of the juvenile's arrest.

Sec. 19. 4 V.S.A. § 33 is amended to read:

§ 33. JURISDICTION; FAMILY DIVISION

(a) Notwithstanding any other provision of law to the contrary, the Family Division shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990:

* * *

(b) The Family Division has nonexclusive jurisdiction to hear and dispose of proceedings involving misdemeanor motor vehicle offenses filed or pending on or after July 1, 2016, pursuant to 33 V.S.A. §§ 5201, 5203, and 5280. The Family Division of the Superior Court shall forward a record of any conviction for violation of a law related to motor vehicle traffic control, other than a parking violation, to the Commissioner of Motor Vehicles pursuant to 23 V.S.A. § 1709.

Sec. 20. 33 V.S.A. § 5102 is amended to read:

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

* * *

(28) “Victim” shall have the same meaning as in 13 V.S.A. § 5301(4).

(29) “Youth” shall mean a person who is the subject of a motion for youthful offender status or who has been granted youthful offender status.

Sec. 21. 33 V.S.A. § 5234 is amended to read:

§ 5234. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS
INVOLVING A LISTED CRIME

(a) The victim in a delinquency proceeding involving a listed crime shall have the following rights:

(1) To be notified by the prosecutor’s office in a timely manner of the following:

(A) when a delinquency petition has been filed, the name of the child and any conditions of release initially ordered for the child or modified by the Court that are related to the victim or a member of the victim’s family or current household;

(B) his or her rights as provided by law, information regarding how a case proceeds through a delinquency proceeding, the confidential nature of delinquency proceedings, and that it is unlawful to disclose confidential information concerning the proceedings to another person;

(C) when a predispositional or dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled-; and

~~(2)(D) To be notified by the prosecutor's office as to whether delinquency has been found and disposition has occurred, including and any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household and any restitution relevant to the victim, when ordered.~~

(2) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and the need for restitution.

(3) To attend the disposition hearing and to present a victim's victim impact statement at the disposition hearing in accordance with subsection 5233(b) of this title, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title, and to be notified as to the disposition pursuant to subsection 5233(d) of this title, including probation. The court shall consider the victim's statement when ordering disposition. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the court finds that the victim's presence is necessary in the interest of justice.

(4) Upon request, to be notified by the agency having custody of the delinquent child before he or she is discharged from a secure or staff-secured residential facility. The name of the facility shall not be disclosed. An agency's inability to give notification shall not preclude the release. However, in such an event, the agency shall take reasonable steps to give notification of the release as soon thereafter as practicable. Notification efforts shall be deemed reasonable if the agency attempts to contact the victim at the address or telephone number provided to the agency in the request for notification.

~~(5) To obtain the name of the child in accordance with sections 5226 and 5233 of this title. To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition.~~

~~(6) To be notified by the Court of the victim's rights under this section. [Repealed.]~~

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 22. 33 V.S.A. § 5234a is added to read:

§ 5234a. RIGHTS OF VICTIMS IN DELINQUENCY PROCEEDINGS INVOLVING A NONLISTED CRIME

(a) The victim in a delinquency proceeding involving an offense that is not a listed crime shall have the following rights:

(1) To be notified by the prosecutor's office in a timely manner of the following:

(A) his or her rights as provided by law, information regarding how a delinquency proceeding is adjudicated, the confidential nature of juvenile proceedings, and that it is unlawful to disclose confidential information concerning the proceedings;

(B) when a delinquency petition is filed, and any conditions of release initially ordered for the child or modified by the Court that relate to the victim or a member of the victim's family or current household; and

(C) when a dispositional court proceeding is scheduled to take place and when a court proceeding of which he or she has been notified will not take place as scheduled.

(2) That delinquency has been found and disposition has occurred, and any conditions of release or conditions of probation that are related to the victim or a member of the victim's family or current household and any restitution ordered.

(3) To file with the Court a written or recorded statement of the impact of the delinquent act on the victim and any need for restitution.

(4) To attend the disposition hearing for the sole purpose of presenting to the Court a victim impact statement, including testimony in support of his or her claim for restitution pursuant to section 5235 of this title. The victim shall not be personally present at any portion of the disposition hearing except to present a victim impact statement or to testify in support of his or her claim for restitution unless the Court finds that the victim's presence is necessary in the interest of justice.

(5) To have the Court take his or her views into consideration in the Court's disposition order. If the victim is not present, the Court shall consider whether the victim has expressed, either orally or in writing, views regarding disposition and shall take those views into account when ordering disposition. The Court shall order that the victim be notified as to the identity of the child upon disposition if the Court finds that release of the child's identity to the victim is in the best interests of both the child and the victim and serves the interests of justice.

(b) The prosecutor's office shall keep the victim informed and consult with the victim through the delinquency proceedings.

Sec. 23. 14 V.S.A. § 2666 is amended to read:

§ 2666. MODIFICATION; TERMINATION

* * *

(b) Where the permanent guardianship is terminated by the ~~probate division of the superior court~~ Probate Division of the Superior Court order or the death of the permanent guardian, the custody and guardianship of the child shall not revert to the parent, but to the ~~commissioner for children and families~~ Commissioner for Children and Families as if the child had been abandoned.

(1) Upon the death of the permanent guardian or when the permanent guardianship is otherwise terminated by order of the Probate Division, the Probate Division shall issue an order placing the child in the custody of the Commissioner and shall immediately notify the Department for Children and Families, the State's Attorney, and the Family Division.

(2) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(3) After the Probate Division issues the order transferring legal custody of the child, the State shall commence proceedings under the authority of 33 V.S.A. chapters 51-53 as if the child were abandoned.

* * *

Sec. 24. 14 V.S.A. § 2667 is amended to read:

§ 2667. ORDER FOR VISITATION, CONTACT, OR INFORMATION;
IMMEDIATE HARM TO THE MINOR

(a) The ~~probate division of the superior court~~ Probate Division of the Superior Court shall have exclusive jurisdiction to hear any action to enforce, modify, or terminate the initial order issued by the ~~family division of the superior court~~ Family Division of the Superior Court for visitation, contact, or information.

(b) Upon a showing by affidavit of immediate harm to the child, the ~~probate division of the superior court~~ Probate Division of the Superior Court may temporarily stay the order of visitation or contact on an ex parte basis until a hearing can be held, or stay the order of permanent guardianship and ~~assign parental rights and responsibilities~~ transfer legal custody of the child to the commissioner for children and families Commissioner for Children and Families.

(1) The order transferring the child's legal custody to the Commissioner shall have the same legal effect as a similar order issued by the Family Division under the authority of 33 V.S.A. chapters 51-53.

(2) The Probate Division shall then immediately notify the Department for Children and Families, the State’s Attorney, and the Family Division when it has issued an order transferring the child’s legal custody to the Commissioner, and nothing in this subsection shall prohibit the State from commencing proceedings under 33 V.S.A. chapters 51–53.

* * *

Sec. 25. 33 V.S.A. § 5223 is amended to read:

§ 5223. FILING OF PETITION

(a) When notice to the child is provided by citation, the State’s Attorney shall file the petition and supporting affidavit at least 10 business days prior to the date for the preliminary hearing specified in the citation.

(b) The Court shall send or deliver a copy of the petition and affidavit to the Commissioner after a finding of probable cause. A copy of the petition and affidavit shall be made available at the State’s Attorney’s office to all persons required to receive notice, including the noncustodial parent, as soon as possible after the petition is filed and at least five business days prior to the date set for the preliminary hearing.

Sec. 26. 33 V.S.A. § 5229 is amended to read:

§ 5229. MERITS ADJUDICATION

* * *

(g) If, based on the child’s admission or the evidence presented, the Court finds beyond a reasonable doubt that the child has committed a delinquent act, the Court shall order the Department to prepare a disposition case plan ~~within 28 days of the merits adjudication and shall set the matter for a~~ not later than seven business days before the disposition hearing. In no event, shall a disposition hearing be held later than 35 days after a finding that a child is delinquent.

(h) The Court may proceed directly to disposition providing that the child, the custodial parent, the State’s Attorney, and the Department agree.

Sec. 27. 33 V.S.A. § 5230 is amended to read:

§ 5230. DISPOSITION CASE PLAN

(a) Filing of case plan. ~~The~~ Following the finding by the Court that a child is delinquent, the Department shall file a disposition case plan ~~no~~ not later than 28 days from the date of the finding by the Court that a child is delinquent seven business days before the scheduled disposition hearing. The disposition

case plan shall not be used or referred to as evidence prior to a finding that a child is delinquent.

* * *

Sec. 28. 33 V.S.A. § 5315 is amended to read:

§ 5315. MERITS ADJUDICATION

* * *

(f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding. A dismissal pursuant to this subsection is a final order subject to appeal.

(g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan ~~within 28 days of the merits hearing and shall set the matter for a~~ not later than seven business days before a scheduled disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.

* * *

Sec. 29. 33 V.S.A. § 5315a is added to read:

§ 5315a. MERITS STIPULATION

(a) At any time after the filing of the CHINS petition and prior to an order of adjudication on the merits, the court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.

(b) The court may approve a written stipulation if:

(1) the parties to the petition, as defined in subdivision 5102(22) of this title, agree to the terms of the stipulation; and

(2) the court determines that:

(A) the agreement between the parties is voluntary;

(B) the parties to the agreement understand the nature of the allegation; and

(C) the parties to the agreement understand the rights waived if the court approves of and issues an order based upon the stipulation.

Sec. 30. 33 V.S.A. § 5316 is amended to read:

§ 5316. DISPOSITION CASE PLAN

(a) The Following a finding by the court that a child is in need of care or supervision, the Department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title ~~no not~~ later than 28 days from the date of the finding by the Court that a child is in need of care or supervision seven business days before the scheduled disposition hearing.

* * *

Sec. 31. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

(a) Any family or household member may seek relief from abuse by another family or household member on behalf of ~~him~~ him- or herself or his or her children by filing a complaint under this chapter. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this chapter, may file a complaint under this chapter seeking relief on his or her own behalf. The plaintiff shall submit an affidavit in support of the order.

* * *

Sec. 32. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the Court that the defendant has abused the plaintiff or his or her children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in §1101(2) of this chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

* * *

Sec. 33. DEPARTMENT OF CHILDREN AND FAMILIES; DEPARTMENT OF CORRECTIONS; YOUTHFUL OFFENDERS; REPORT

The Commissioners for Children and Families and of Corrections shall consider the implications of adjudicating as youthful offenders all defendants who have attained 18 years of age, but not 21 years of age, who have not been charged with an offense specified in 33 V.S.A. § 5204(a). The Commissioners shall report their findings and any associated recommendations or proposed legislation to the Joint Legislative Justice Oversight Committee on or before November 1, 2016.

Sec. 34. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;
2016 LEGISLATIVE INTERIM

During the 2016 legislative interim, the Joint Legislative Justice Oversight Committee shall:

(1) evaluate the fiscal implications of adjudicating in the Family Division of the Superior Court all offenders 18–20 years of age who are not charged with an offense specified in 33 V.S.A. § 5204(a);

(2) consider whether the creation of an Office for Youth Justice or similar with jurisdiction to coordinate supervision and services for youth adjudicated juvenile delinquents and youthful offenders 25 years of age and younger would improve outcomes for youth in the justice system;

(3) consider expanding youthful offender status eligibility to offenders 24 years of age and younger, while requiring offenders 22–24 years of age to be under Department of Corrections supervision;

(4) consider whether State’s Attorneys should have the discretion to bring charges against 14 and 15 year olds alleged to have committed an act specified in subsection 5204(a) in either the Criminal or Family Division of the Superior Court;

(5) explore options for housing offenders 16 and 17 years of age serving a sentence for an offense specified in 33 V.S.A. § 5204(a);

(6) evaluate the resources necessary to expand the jurisdiction of the juvenile courts for offenders 21 years of age and younger as contemplated by other state legislatures; and

(7) evaluate the resources necessary to expand youthful offender treatment for offenders 24 years of age and younger.

Sec. 35. AGENCY OF EDUCATION; RESTORATIVE JUSTICE
PRACTICES

The Agency of Education shall explore the use of restorative and similar practices regarding school climate and culture, truancy, bullying and harassment, and school discipline. The Agency shall consider the research that demonstrates that restorative approaches lead to reductions in absenteeism, suspensions, and expulsions and to improved educational outcomes.

Sec. 36. REPEAL

33 V.S.A. §§ 5226 (notification of conditions of release) and 5233 (victim’s statement at disposition) are repealed.

Sec. 37. EFFECTIVE DATES

(a) Secs. 9 (Commencement of Delinquency Proceedings), 10 (Transfer from the Courts), and 11 (transfer from Family Division of the Superior Court) shall take effect on January 1, 2017.

(b) Secs. 6 (Jurisdiction), 7 (commencement of delinquency proceedings), and 8 (Transfer from other Courts) shall take effect on January 1, 2018.

(c) Secs. 1 (Commencement of Youthful Offender Proceedings in the Family Division), 2 (Motion in Criminal Division of Superior Court), 3 (Report from the Department), 4 (Hearing in Family Division), and 5 (Youthful Offender Determination and Disposition Order) shall take effect on July 1, 2018.

(d) The remaining sections shall take effect on July 1, 2016.

(For text see House Journal March 18, 2015)

H. 595

An act relating to potable water supplies from surface waters

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

Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that

employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

Sec. 4. 10 V.S.A. § 1982 is added to read:

§ 1982. TESTING OF NEW GROUNDWATER SOURCES

(a) As used in this section, “groundwater source” means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Prior to use of a new groundwater source as a potable water supply, where testing is not otherwise required, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may require testing for a parameter by region or specific geographic area of concern.

(d) The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, the Vermont Realtors, the Vermont Association of Professional Home Inspectors, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsection (b) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to conduct the test;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER
SOURCE TESTING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2016. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2017.

Sec. 6. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The ~~commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

* * *

(f) A laboratory certified to conduct testing of groundwater sources or water supplies ~~from~~ under 10 V.S.A. § 1982 or other statute for use by a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the ~~department of health~~ Department of Health and the ~~agency of natural resources~~ Agency of Natural Resources in a format required by the ~~department of health~~ Department of Health.

Sec. 7. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section;~~

* * *

Sec. 8. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable cause to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform a cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release under section 6615 of this title.

(2) A person served with an information request shall respond within 10 days of receipt of the request or by the date specified by the Secretary in the request.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to information that was related to the request; or

(B) copy and furnish to the Secretary all such information at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivisions (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information that qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, “information” means any written or recorded information, including all documents, records, photographs, recordings, e-mail, or correspondence.

Sec. 9. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;
RULEMAKING

(a) Definitions. As used in this section:

(1) “Baseline condition” means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material not occurred.

(2) “Damages” means the amount of money sought by the Secretary for the injury, destruction, or loss of natural resources.

(3) “Destruction” means the total and irreversible loss of natural resources.

(4) “Injury” means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(5) “Loss” means a measurable adverse reaction of a chemical or physical quality of viability of a natural resource.

(6) “Natural resources” means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(7) “Natural resource damage assessment” means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to natural resources.

(8) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation” means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource’s physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release or threatened release of hazardous material for injury to, destruction of, or loss of natural resources from the release or threatened release. The measure of damages that may be assessed for natural resources damages shall include the cost of restoring or rehabilitating injured, damaged, or destroyed natural resources, compensation for the interim injury to or loss of natural resources pending recovery, and any reasonable costs of the Secretary in conducting a natural resources damage assessment.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resources damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resources damages, including requirements for:

(A) notification of the Secretary or other necessary persons;

(B) authorized emergency response to natural resources damages, and

(C) sampling or screening of the potentially injured natural resources;

(2) requirements for the a natural resources damages assessment plan to ensure that the natural resources damage assessment is performed in a designed and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening costs;

(C) the types of assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are determined;

(3) requirements for post-natural resources damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resources damages under this section when the person liable for the release or threatened release:

(1) demonstrates that the alleged natural resources damages were identified as a potential irreversible or irretrievable environmental effect on natural resource damages in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license or other required authorization;

(2) the Secretary authorized the identified effect on natural resources in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release or threatened release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resources damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

Sec. 10. NATURAL RESOURCES DAMAGES; COMMENCEMENT;
ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties in the adoption of rules under 10 V.S.A. § 6615d.

(b) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before January 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before November 1, 2017.

(c) On or before February 15, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review.

(d) The Secretary of Natural Resources shall not seek natural resources damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) are effective.

Sec. 11. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

Sec. 12. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) recommend actions the State of Vermont could take to improve how data is collected and what data is collected regarding the location of sites where toxic chemicals, hazardous materials, or hazardous waste is used, stored, or managed; and the proximity of these sites to both public and private water supplies;

(2) recommend actions the State of Vermont could take to improve what information is made available to the public, and how it is made publically available, regarding the risks to private and public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(3) recommend actions the State of Vermont could take to improve the identification process and consistency of listing and regulating hazardous materials, hazardous waste, and toxic chemicals regulated within DEC and the

Department of Health, to ensure the State is adequately identifying chemicals that pose a threat to human health, and that it has the necessary tools to prevent and respond to chemical threats to human health;

(4) recommend actions the State of Vermont could take to improve the prevention, detection, and response to the contamination of public drinking water supplies and groundwater from toxic chemicals, hazardous materials, or hazardous waste;

(5) identify potential fiscal issues related to its recommendations, and make recommendations on actions the State of Vermont could take to better fund existing programs and any recommended improvements; and

(6) develop recommended legislative changes that may be needed to implement recommendations and strategies.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

Sec. 13. EFFECTIVE DATES

(a) This section and Secs. 1 (ANR authorization to adopt surface water rules), 3 (surface water source rules; potable water supply), 6 (certification of laboratories), 7 (Environmental Contingency Fund), 8 (ANR information requests), 9–10 (natural resources damages), 11 (ANR enforcement), and 12 (ANR working group on toxic chemicals) shall take effect on passage.

(b) Secs. 4–5 (testing of new groundwater sources) shall take effect on passage, except that 10 V.S.A. § 1982(b) (the requirement to test new groundwater sources) shall take effect on January 1, 2017.

(c) Sec. 2 (permitting of surface water sources) shall take effect July 1, 2017.

(For text see House Journal March 16, 2016)

Amendment to be offered by Rep. Krebs of South Hero to H. 595

That the House concur in the Senate proposal of amendment with the following further proposal of amendment by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Surface Water Sources; Potable Water Supply * * *

Sec. 1. 10 V.S.A. § 1978(a) is amended to read:

(a) The Secretary shall adopt rules, in accordance with 3 V.S.A. chapter 25, necessary for the administration of this chapter. These rules shall include the following:

* * *

(15) Provisions authorizing the use by a residential dwelling of surface water as a source of a potable water supply permitted under this chapter.

Sec. 2. 10 V.S.A. § 1981 is added to read:

§ 1981. SURFACE WATER SOURCE; POTABLE WATER SUPPLY

The Secretary shall approve the use of a surface water as the source of a potable water supply under this chapter if the following conditions are satisfied:

(1) the building or structure using the surface water as a source is a single-family residence occupied by the owner of record;

(2) only one single-family residence shall be served by a potable water supply using a surface water as a source;

(3) a single-family residence with a potable water supply using a surface water as a source shall not be used as the site of a home occupation that employs persons other than family members and is visited by the public in a manner or duration that would presume the need for use of a potable water supply;

(4) a professional engineer shall design the potable water supply using a surface water as a source, including a treatment system for the surface water;

(5) only surface waters that meet criteria adopted by the Secretary by rule are eligible as the source of a potable water supply permitted under this chapter; and

(6) the applicant or permit holder shall comply with other criteria and requirements adopted by the Secretary by rule for potable water supplies using a surface water as a source.

Sec. 3. SURFACE WATER SOURCE; RULEMAKING

The Secretary shall adopt rules to implement 10 V.S.A. § 1981 on or before July 1, 2017.

* * *Groundwater Testing; Technical Advisory Committee* * *

Sec. 4. TECHNICAL ADVISORY COMMITTEE; RECOMMENDATIONS
ON GROUNDWATER TESTING

(a) The Secretary of Natural Resources shall seek the recommendations of the Technical Advisory Committee on Wastewater Systems and Potable Water Supplies regarding whether and how to test for contamination in groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64. The recommendations shall address:

(1) whether the State should require testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64;

(2) if testing is recommended:

(A) in what situations or upon what occurrences should testing be required;

(B) from what component of a potable water supply the sample should be taken, including whether a sample from the wellhead of the potable water supply is sufficient;

(C) who should be authorized to take the sample; and

(D) what parameters or contaminants should be tested for in groundwater;

(3) any additional issues or requirements that the Technical Advisory Committee deems relevant to the testing of groundwater sources used by potable water supplies permitted under 10 V.S.A. chapter 64.

(b) The Secretary of Natural Resources shall submit the recommendations of the Technical Advisory Committee to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy on or before January 15, 2017.

* * * Environmental Contingency Fund * * *

Sec. 5. 10 V.S.A. § 1283(b) is amended to read:

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation which is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency

situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

* * *

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties ~~where those responsible parties have contributed monies to the Fund pursuant to a written agreement under subsection (f) of this section;~~

* * *

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

* * * ANR Information Requests; Hazardous Material Releases * * *

Sec. 6. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a)(1) When the Secretary has reasonable grounds to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release under section 6615 of this title, the Secretary may require the person to furnish information related to:

(A) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.

(B) The nature or extent of a release or threatened release of a hazardous material from a facility.

(C) Financial information related to the ability of a person to pay for or to perform the cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of

release under section 6615 of this title, provided that the person has notified the Secretary that he or she does not have the ability to pay, refuses to perform, or fails to respond to a deadline established under section 6615b of this title to commit to performing a corrective action.

(2) A person served with an information request shall respond within 30 days of receipt of the request or by the date specified by the Secretary in the request, provided that the Secretary may require a person to respond within 10 days of receipt of a request when there is an imminent threat to the environment or other emergency that requires an expedited response.

(3) When the Secretary submits a request for information under this section, the Secretary shall provide the person who received the request information regarding the person's right to object or not comply with the request for information. The information shall include the potential actions that the Secretary may pursue if the person objects to or does not comply with the request for information.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records responsive to the request; or

(B) copy and furnish to the Secretary all information responsive to the request at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and a reference to the permit, enforcement action, or other matter under which the Secretary obtained the requested information.

(2) A person responding to a request under subsection (a) of this section may assert any privilege under statute, rule, or common law that is recognized in the State of Vermont to limit access to such information, including the attorney-client privilege. A person responding to a request for information under this section shall not assert privileges related to business confidentiality, including trade secrets, in order to withhold requested information. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivision (a)(1) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail.

(e) A response to a request under this section shall be personally certified by the person responding to the request that, under penalty of perjury and to the best of the person's knowledge:

(1) the response is accurate and truthful; and

(2) the person has not omitted responsive information or will provide the responsive information according to a production schedule approved by the Secretary.

(f) Information identified as qualifying for the trade secret exemption under 1 V.S.A. § 317(c)(9) and other financial information submitted under this section shall be confidential and shall not be subject to inspection and copying under the Public Records Act. A person subject to an information request under this section shall be responsible for proving that submitted information qualifies for the trade secret exemption under 1 V.S.A. § 317(c)(9). The following information is not trade secret information or financial information for the purposes of this subsection:

(1) the trade name, common name, or generic class or category of the hazardous material;

(2) the physical properties of the hazardous material, including its boiling point, melting point, flash point, specific gravity, vapor density, solubility in water, and vapor pressure at 20 degrees Celsius;

(3) the hazards to health and the environment posed by the hazardous material, including physical hazards and potential acute and chronic health hazards;

(4) the potential routes of human exposure to the hazardous material at the facility;

(5) the location of disposal of any waste stream at the facility;

(6) any monitoring data or analysis of monitoring data pertaining to disposal activities;

(7) any hydrogeologic or geologic data; or

(8) any groundwater monitoring data.

(g) As used in this section, "information" means any written or recorded information, including all documents, records, photographs, recordings, e-mail, correspondence, or other machine readable material.

Sec. 7. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

* * * Natural Resource Damages * * *

Sec. 8. 10 V.S.A. § 6615d is added to read:

§ 6615d. NATURAL RESOURCE DAMAGES; LIABILITY;

RULEMAKING

(a) Definitions. As used in this section:

(1) "Acquisition of or acquiring the equivalent or replacement" means the substitution for an injured resource with a resource that provides the same or substantially similar services, when the substitution:

(A) is in addition to a substitution made or anticipated as part of a response action; and

(b) exceeds the level of response action determined appropriate for the site under section 6615b of this title.

(2) “Baseline condition” means the condition or conditions that would have existed at the area of assessed damages had the release of hazardous material at or from the facility in question not occurred.

(3) “Damages” means the amount of money sought by the Secretary for the injury, destruction, or loss of a natural resource.

(4) “Destruction” means the total and irreversible loss of natural resources.

(5) “Injury” means a measurable adverse long-term or short-term change in the chemical or physical quality or viability of a natural resource resulting either directly or indirectly from exposure to a release of hazardous material or exposure to a product of reactions from a release of hazardous materials.

(6) “Loss” means a measurable adverse reduction of a chemical or physical quality or viability of a natural resource.

(7) “Natural resource damage assessment” means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine the damages for injuries to a natural resource.

(8) “Natural resources” means fish, wildlife, biota, air, surface water, groundwater, wetlands, drinking water supplies, or State-held public lands.

(9) “Restoring,” “restoration,” “rehabilitating,” or “rehabilitation” means actions undertaken to return an injured natural resource to its baseline condition, as measured in terms of the injured resource’s physical, chemical, or biological properties or the services it had previously provided, when such actions are in addition to a response action under section 6615 of this title.

(10) “Services” means the physical and biological functions performed by the natural resource, including the human uses of those functions.

(b) Authorization. The Secretary may assess damages against any person found to be liable under section 6615 of this title for a release of hazardous material for injury to, destruction of, or loss of a natural resource from the release. The measure of damages that may be assessed for natural resource damages shall include the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured, damaged, or destroyed natural resources or the services the natural resources provided, compensation for the interim injury to or loss of natural resources pending recovery, and any reasonable costs of the Secretary in conducting a natural resource damage assessment. The Secretary also may seek compensation for the interim injury

to or loss of a natural resource pending recovery of services to the baseline condition of the natural resource.

(c) Rulemaking; methodology. The Secretary shall adopt rules to implement the requirements of this section, including a methodology by which the Secretary shall assess and value natural resource damages. The rules shall include:

(1) requirements or acceptable standards for the preassessment of natural resource damages, including requirements for:

(A) notification of the Secretary, natural resource trustees, or other necessary persons of potential damages to natural resources under investigation for the coordination of the assessments, investigations, and planning;

(B) authorized emergency response to natural resource damages when immediate action to avoid destruction of a natural resource is necessary or a situation in which there is a similar need for emergency action, and where the potentially liable party under section 6615 of this title fails to take emergency response actions requested by the Secretary; and

(C) sampling or screening of the potentially injured natural resource;

(2) requirements for a natural resource damages assessment plan to ensure that the natural resource damage assessment is performed in a planned and systematic manner, including:

(A) the categories of reasonable and necessary costs that may be incurred as part of the assessment plan;

(B) the methodologies for identifying and screening costs;

(C) the types of reasonably reliable assessment procedures available to the Secretary, when the available procedures are authorized, and the requirements of the available procedures;

(D) how injury or loss shall be determined and how injury or loss is quantified; and

(E) how damages are measured in terms of the cost of:

(i) the restoration or rehabilitation of the injured natural resources to a condition where they can provide the level of services available at baseline condition; or

(ii) the replacement or acquisition of equivalent natural resources or services;

(3) requirements for post-natural resource damages assessment, including:

(A) the documentation that the Secretary shall produce to complete the assessment;

(B) how the Secretary shall seek recovery; and

(C) when and whether the Secretary shall require a restoration plan; and

(4) other requirements deemed necessary by the Secretary for implementation of the rules.

(d) Exceptions. The Secretary shall not seek to recover natural resource damages under this section when:

(1) the person liable for the release demonstrates that the nature and degree of the destruction, injury, or loss to the natural resources were identified in an application for, renewal of, review of, or other environmental assessment of a permit, certification, license, or other required authorization;

(2) the Secretary authorized the nature and degree of the destruction, injury, or loss to the natural resource in an issued permit, certification, license, or other authorization; and

(3) the person liable for the release was operating within the terms of its permit, certification, license, or other authorization.

(e) Limitations. The natural resource damages authorized under this section and the requirements for assessment under the rules authorized by this section shall not limit the authority of the Secretary of Natural Resources to seek or recover natural resource damages under other State law, federal law, or common law.

(f) Limit on double recovery. The Secretary or other natural resource trustee shall not recover natural resource damages under this section for the costs of damage assessment or restoration, rehabilitation, or acquisition of equivalent resources or services recovered by the Secretary or the other trustee under other authority of this chapter or other law for the same release of hazardous material and the same natural resource.

(g) Actions for natural resource damages. No action may be commenced for natural resource damages under this chapter, unless that action is commenced within six years after the date of the discovery of the loss and its connection with the release of hazardous material in question.

(h) Limit on preenactment damages. There shall be no recovery under this section for natural resource damages that occurred wholly before the adoption of rules under subsection (c) of this section.

(i) Use of funds. Damages recovered as natural resource damages shall be deposited in the Environmental Contingency Fund established pursuant to section 1283 of this title.

Sec. 9. NATURAL RESOURCE DAMAGES; COMMENCEMENT;

ADOPTION

(a) The Secretary of Natural Resources shall consult with interested parties in the adoption of rules under 10 V.S.A. § 6615d. The Secretary shall convene a working group as part of this consultation. The Secretary shall convene the working group on or before July 1, 2016.

(b) On or before February 1, 2017, the Secretary of Natural Resources shall submit to the Senate and House Committees on Natural Resources and Energy and the House Committee on Fish, Wildlife and Water Resources a copy of the draft rules for natural resource damages required under 10 V.S.A. § 6615d for review and any recommended amendments to 10 V.S.A. § 6615d for review.

(c) The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 6615d on or before July 1, 2017. The Secretary shall adopt rules under 10 V.S.A. § 6615d on or before March 1, 2018.

(d) The Secretary of Natural Resources shall not seek natural resource damages under 10 V.S.A. § 6615d until the rules required under 10 V.S.A. § 6615d(c) have taken effect.

* * * Working Group on Toxic Chemicals * * *

Sec. 10. AGENCY OF NATURAL RESOURCES' WORKING GROUP ON
TOXIC CHEMICAL USE IN THE STATE

(a) Formation. On or before July 1, 2016, the Secretary of Natural Resources shall establish a working group of interested parties to develop recommendations for how to improve the ability of the State to:

(1) prevent citizens and communities in the State from being exposed to toxic chemicals, hazardous materials, or hazardous wastes;

(2) identify and regulate the use of toxic chemicals or hazardous materials that currently are unregulated by the State; and

(3) inform communities and citizens in the State of potential exposure to toxic chemicals, including contamination of groundwater, public drinking water systems, and private potable water supplies

(b) Duties. The Working Group shall:

(1) Identify the existing State or federal programs that establish reporting or management requirements regarding the use or generation of a toxic substance, hazardous waste, or hazardous material. The Working Group shall identify how those programs identify the toxic substance, hazardous waste, or hazardous material for regulation and briefly describe the management of the waste or substance.

(2) Evaluate the State or federal programs identified in subdivision (1) of this subsection to determine:

(A) the program's effectiveness in preventing releases of toxic substances, hazardous wastes, or hazardous materials;

(B) whether gaps or duplication exists between the programs that should be addressed to reduce threats to human health and the environment; and

(C) whether the programs are adequately funded and staffed to meet their statutory and regulatory purpose.

(3) Identify State or federal programs that require a response to the release to a toxic substance, hazardous waste, or hazardous material and assess their effectiveness in responding to releases in a manner that minimizes impacts to human health and the environment.

(4) Identify programs in place in other states that address the threat to human health and the environment from emerging contaminants and assess their effectiveness in accomplishing those objectives.

(5) Evaluate the State of Vermont's existing sources of publicly available information about toxic chemicals, including emerging contaminants, hazardous waste, and hazardous materials in Vermont.

(6) Evaluate whether civil remedies under Vermont law are sufficient to ensure that private individuals are adequately protected from releases of hazardous materials, hazardous wastes, and toxic chemicals and that persons responsible for such releases pay for any harm caused.

(7) Evaluate the obligations on the Environmental Contingency Fund established under 10 V.S.A. § 1283 and funding alternatives that would ensure the long-term solvency of the Fund.

(c) The Working Group shall submit a report to the Senate and House Committees on Natural Resources and Energy and to the House Committee on Fish, Wildlife and Water Resources with its findings and recommendations on or before January 15, 2017.

* * * Chemicals of High Concern to Children * * *

Sec. 11. 18 V.S.A. § 1775 is amended to read:

§ 1775. DISCLOSURE OF INFORMATION ON CHEMICALS OF HIGH CONCERN

(a) Notice of chemical of high concern to children. ~~Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, beginning on July 1, 2016, and biennially thereafter, a~~ A manufacturer of a children's product or a trade association representing a manufacturer of children's products shall submit to the Department the notice described in subsection (b) of this section for each chemical of high concern to children in a children's product if a chemical of high concern to children is:

* * *

(1) Submission of notice; dates. Unless the Commissioner adopts by rule a phased-in reporting requirement under section 1776 of this title, a manufacturer shall submit the notice required under subsection (a) of this section by:

(1) January 1, 2017; and

(2) August 31, 2018, and biennially thereafter.

* * * Basin Planning; Natural Resources Conservation Council * * *

Sec. 12. 10 V.S.A. § 1253(d) is amended to read:

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and ~~natural resource conservation districts~~ the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule

for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

* * *

(G) develop, in consultation with the ~~applicable~~ regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

* * *

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission or the Natural Resources Conservation Council to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission or the Natural Resources Conservation Council to assist in or produce a basin plan, the Secretary may require the regional planning commission or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection;

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations to better meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to assure cost effective use of State and federal funds.

* * * State Grants; Water Quality Certification * * *

Sec. 13. SECRETARY OF ADMINISTRATION; WATER QUALITY STANDARDS CERTIFICATION FOR STATE-FUNDED GRANTS; REPORT

(a) As used in this section:

(1) “Applicant” shall include all entities, including businesses in which the applicant has a greater than 10 percent interest, or land owned or controlled by the applicant.

(2) “Good standing” means the applicant:

(A) is not a named party in any administrative order, consent decree, or judicial order relating to Vermont water quality standards issued by the State or any of its agencies or departments; and

(B) is in compliance with all federal and State water quality laws and regulations.

(b)(1) The Secretary of Administration shall amend the Standard State Provisions for Contracts and Grants, referred to as Attachment C to Administrative Bulletin 5, to require an applicant for a State-funded grant to certify, under penalty of perjury, that the applicant is in good standing with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets.

(2) The requirement under this subsection shall allow for an attachment or include space for an applicant who cannot certify under subdivision (1) of this subsection to explain the circumstances surrounding the applicant’s inability to certify under subdivision (1) of this subsection.

(3) At any time prior to the award of a State-funded grant or during implementation of a State-funded grant, an applicant shall notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets.

(c) A State agency or department may consider an applicant’s certification or explanation under subsection (b) of this section in determining whether or not to award a State-funded grant to the applicant.

(d)(1) If a State-funded grant applicant knowingly provides a false certification or explanation under subsection (b) of this section or fails to notify the State agency or department administering the State-funded grant if the applicant is no longer in good standing with the Agency of Natural Resources or the Agency of Agriculture, Food and Markets as required in subdivision (b)(3) of this section, the State or its agencies or departments may:

(A) seek to recover the grant award; and

(B) deny any future grant award to the applicant, based on the false certification or explanation or failure to notify, for up to five years.

(2) In recovering a grant award under this section, the State or its agencies or departments shall be entitled to costs and expenses, including attorney’s fees.

(e) This section shall not apply to federally funded grants, contracts, or tax credits or federal or State loan programs.

(f) On or before January 15, 2021, the Secretary of Administration shall submit a report to the House Committees on Fish, Wildlife and Water Resources and on Commerce and Economic Development and the Senate Committees on Natural Resources and Energy and on Economic Development, Housing and General Affairs regarding methods to require all economic development assistance applications to include a certification that the applicant is not in violation of the requirements of programs enforced by the Agency of Natural Resources under 10 V.S.A. § 8003(a). The report shall also include information regarding any enforcement action taken by the State or its agencies or departments under subsection (d) of this section.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This act shall take effect on passage, except that:

(1) Sec. 13 (State grants; water quality certification) shall take effect on July 1, 2016; and

(2) Sec. 2 (permitting of surface water sources) shall take effect on July 1, 2017.

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 363

House concurrent resolution in memory of former Representative and Senator John C. Page of Bennington and his wife, Marjorie Page

H.C.R. 364

House concurrent resolution congratulating the Windsor High School team on winning the 2016 3D Vermont architecture competition

H.C.R. 365

House concurrent resolution congratulating Windsor public schools' student winners of the 2016 State Science Fair

H.C.R. 366

House concurrent resolution honoring Nancy Remsen, on the conclusion of her journalism career, as a fair, perceptive, and thoughtful reporter and editor

H.C.R. 367

House concurrent expressing sincere appreciation for the presence of General Electric's Aviation and Healthcare units in Vermont and for their major contribution to the State's economy

H.C.R. 368

House concurrent resolution congratulating the 2016 Mt. Anthony Union High School Patriots State championship wrestling team

H.C.R. 369

House concurrent resolution congratulating recent Vermont recipients of the Girl Scout Gold Award

H.C.R. 370

House concurrent resolution welcoming Shen Yun Performing Arts to Vermont

H.C.R. 371

House concurrent resolution congratulating Dismas of Vermont on its 30th anniversary

H.C.R. 372

House concurrent resolution congratulating the Montshire Museum in Norwich on the 40th anniversary of its opening

H.C.R. 373

House concurrent resolution congratulating the Southwestern Vermont Medical Center for its award-winning renal care services

H.C.R. 374

House concurrent resolution congratulating the Southwestern Vermont Medical Center on its receipt of a fourth Magnet recognition

H.C.R. 375

House concurrent resolution honoring James Harrison of Chittenden for his exemplary leadership of the Vermont Retail & Grocers Association

H.C.R. 376

House concurrent resolution honoring Gary Rutkowski for his 40 years of outstanding editorial leadership at the *St. Albans Messenger*

H.C.R. 377

House concurrent resolution recognizing the economic vibrancy of the Northeast Kingdom

H.C.R. 378

House concurrent resolution congratulating Rutland's United Neighborhoods Community Justice Center on its 15th anniversary

S.C.R. 43

Senate concurrent resolution congratulating the Green Mountain United Way on its 40th anniversary

For Informational Purposes

The end of session is fast approaching. If you want to be assured your House Concurrent Resolution will be adopted before the the final adjournment, please touch base with Michael Chernick by Monday, May 2nd, to be sure Michael has time to put it together before we adjourn.