

Journal of the Senate

WEDNESDAY, MARCH 23, 2016

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Kim Kie of Barre.

Message from the House No. 37

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 74. An act relating to safety protocols for social and mental health workers.

H. 183. An act relating to security in the Capitol Complex.

H. 261. An act relating to criminal record inquiries by an employer.

H. 518. An act relating to the membership of the Clean Water Fund Board.

H. 560. An act relating to traffic safety.

H. 610. An act relating to clarifying the Clean Water State Revolving Fund and Water Pollution Control Grant Programs.

H. 629. An act relating to a study committee to examine laws related to the administration and issuance of vital records.

H. 789. An act relating to forest integrity and municipal and regional planning.

H. 818. An act relating to stalking.

H. 851. An act relating to the conduct of forestry operations.

H. 855. An act relating to forest fire suppression and forest fire wardens.

H. 869. An act relating to judicial organization and operations.

In the passage of which the concurrence of the Senate is requested.

The House has adopted joint resolution of the following title:

J.R.H. 24. Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

In the adoption of which the concurrence of the Senate is requested.

Bill Called Up

S. 245.

Senate bill of the following title was called up by Senator Ayer, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to disclosure of health care provider affiliations.

Joint Resolution Placed on Calendar

J.R.H. 24.

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution authorizing the Green Mountain Girls State educational program to use the State House.

Whereas, the American Legion Auxiliary Department of Vermont sponsors the Green Mountain Girls State program, which provides an opportunity for girls in high school to study the workings of State government in Montpelier, and

Whereas, as part of their visit to the State's capital city, these young women conduct a mock legislative session in the State House, and

Whereas, this is an invaluable educational experience that provides firsthand knowledge about the legislative process, now therefore be it

Resolved by the Senate and House of Representatives:

That the Sergeant at Arms shall make available the chambers and committee rooms of the State House for the Green Mountain Girls State program on Wednesday, June 22, 2016, from 8:00 a.m. to 4:30 p.m., and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the American Legion Auxiliary Department of Vermont in Montpelier.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bills Referred

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

H. 74.

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

To the Committee on Health & Welfare.

H. 183.

An act relating to security in the Capitol Complex.

To the Committee on Institutions.

H. 261.

An act relating to criminal record inquiries by an employer.

To the Committee on Economic Development, Housing & General Affairs.

H. 518.

An act relating to the membership of the Clean Water Fund Board.

To the Committee on Natural Resources & Energy.

H. 560.

An act relating to traffic safety.

To the Committee on Judiciary.

H. 610.

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

To the Committee on Natural Resources & Energy.

H. 629.

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

To the Committee on Government Operations.

H. 789.

An act relating to forest integrity and municipal and regional planning.

To the Committee on Natural Resources & Energy.

H. 818.

An act relating to stalking.

To the Committee on Judiciary.

H. 851.

An act relating to the conduct of forestry operations.

To the Committee on Natural Resources & Energy.

H. 855.

An act relating to forest fire suppression and forest fire wardens.

To the Committee on Natural Resources & Energy.

H. 869.

An act relating to judicial organization and operations.

To the Committee on Rules.

Bill Amended; Bill Passed**S. 52.**

Senate bill entitled:

An act relating to the Uniform Interstate Family Support Act.

Was taken up.

Thereupon, pending third reading of the bill, Senator White moved to amend the bill by in Sec. 1, Spousal Support and Maintenance Task Force, in subsection (a), by striking out the word "modernizing" and inserting in lieu thereof the words making legislative recommendations to and in subsection (c), by striking out the words "consider amendments" and inserting in lieu thereof the words make legislative recommendations

Which was agreed to.

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

Third Reading Ordered**H. 565.**

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

An act relating to United Methodist Church property.

Reported that the bill ought to pass in concurrence.

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

Bill Amended; Third Reading Ordered

S. 220.

Senate bill entitled:

An act relating to the public financing of campaigns.

Having been called up, was taken up.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, Senators Pollina, Benning, Bray, Collamore, and White moved to amend the recommendation of amendment of the Committee on Government Operations in Sec. 3, 17 V.S.A. § 2983 (Vermont campaign finance grants; conditions), by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

* * *

Which was agreed to.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations?, as amended?, Senator Zuckerman moved to amend the recommendation of amendment of the Committee on Government Operations, as amended by striking out Sec. 1, 17 V.S.A. § 2981 (definitions), in its entirety and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2981 is amended to read:

§ 2981. DEFINITIONS

As used in this subchapter:

* * *

(4) “Vermont campaign finance qualification period” means one of the following periods within which a candidate who intends to seek Vermont campaign finance grants shall be required to obtain qualifying contributions, as chosen by the candidate:

(A) ~~the~~ The period beginning February 15 of each even-numbered year and ending on the date on which primary petitions must be filed under section 2356 of this title.

(B) If another candidate for the office does not intend to seek Vermont campaign finance grants and that candidate registers as a

candidate pursuant to subsection 2921(a) of this chapter prior to February 15 of the even-numbered year, a period beginning on or after the date that the other candidate registers as a candidate and ending no later than 100 days after the beginning of that period or the date on which primary petitions must be filed under section 2356 of this title, whichever occurs first.

Thereupon pending the question, Shall the report of the Committee on Government Operations be amended as recommended by Senator Zuckerman?, Senator Zuckerman requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, the recommendation of amendment of the Committee on Government Operations, as amended was agreed to and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 107.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to the Agency of Health Care Administration.

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

* * * Creation of Agency of Health Care Administration * * *

Sec. 1. 3 V.S.A. chapter 52 is added to read:

CHAPTER 52. AGENCY OF HEALTH CARE ADMINISTRATION

Subchapter 1. Generally

§ 2901. DEFINITIONS

As used in this chapter:

- (1) "Agency" means the Agency of Health Care Administration.
- (2) "Commissioner" means the head of a department, who is responsible to the Secretary for the administration of the department.
- (3) "Department" means a major component of the Agency.
- (4) "Director" means the head of a division of the Agency.
- (5) "Division" means a major component of a department engaged in furnishing services to the public or to units of government at levels other than the State level.

(6) “Secretary” means the head of the Agency, who is a member of the Governor’s cabinet and responsible to the Governor for the administration of the Agency.

§ 2902. CREATION OF AGENCY

An Agency of Health Care Administration is created consisting of the following:

- (1) the Department of Health Access;
- (2) the Department of Mental Health and Substance Abuse;
- (3) the Department of Long Term Care;
- (4) the Department of Public Health;
- (5) the Health Care Board; and
- (6) the Vermont Health Benefit Exchange.

§ 2903. ADVISORY CAPACITY

(a) All boards and commissions that are part of or attached to the Agency pursuant to this chapter shall be advisory only except as otherwise provided in this chapter, and the powers and duties of the boards and commissions, including administrative, policymaking, and regulatory functions, shall vest in and be exercised by the Secretary of the Agency.

(b) Notwithstanding the provisions of subsection (a) of this section, the Board of Health shall retain and exercise all powers and functions given to the Board by law of a quasi-judicial nature, including the power to conduct hearings, adjudicate controversies, and issue and enforce orders in the manner and to the extent provided by law. Boards of registration, certification, and licensure attached to this Agency shall retain and exercise all existing authority with respect to registration, certification, licensure, and maintenance of the standards of persons registered, certified, and licensed.

§ 2904. PERSONNEL DESIGNATION

The Secretary and Deputy Secretary, and any commissioner, deputy commissioner, director, attorney, and member of a board, committee, commission, or council attached to the Agency are exempt from the classified State service. Except as authorized by section 311 of this title or as otherwise provided by law, all other Agency positions shall be within the classified service.

Subchapter 2. Secretary§ 2921. APPOINTMENT OF SECRETARY

The Agency shall be under the direction and supervision of a Secretary, who shall be appointed by the Governor with the advice and consent of the Senate and who shall serve at the pleasure of the Governor. The Secretary shall be responsible to the Governor and shall plan, coordinate, and direct the functions vested in the Agency.

§ 2922. DEPUTY SECRETARY

(a) The Secretary, with the approval of the Governor, may appoint a Deputy Secretary to serve at the Secretary's pleasure and to perform such duties as the Secretary prescribes. The appointment shall be in writing and the Secretary shall record the appointment in the Office of the Secretary of State.

(b) The Deputy Secretary shall discharge the duties and responsibilities of the Secretary in the Secretary's absence. In the event of a vacancy in the Office of the Secretary, the Deputy shall assume and discharge the duties of the Office until the vacancy is filled.

§ 2923. ADVISORY COUNCILS OR COMMITTEES

The Secretary, with the approval of the Governor, may create such advisory councils or committees within the Agency as he or she deems necessary, and may appoint their members for terms not exceeding his or hers.

§ 2924. TRANSFER OF PERSONNEL AND APPROPRIATIONS

(a) The Secretary, with the approval of the Governor, may transfer classified positions between State departments and other components of the Agency, subject only to personnel laws and rules.

(b) The Secretary, with the approval of the Governor, may transfer appropriations or portions of appropriations between departments and other components in the Agency, consistent with the purposes for which the appropriation was made.

Subchapter 3. Commissioners and Directors§ 2951. COMMISSIONERS; DEPUTY COMMISSIONERS; APPOINTMENT; TERM

(a) The Secretary, with the approval of the Governor, shall appoint a commissioner of each department, who shall be the chief executive and administrative officer and who shall service at the pleasure of the Secretary.

(b) For the Department of Health Access, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department:

(1) Medicaid Health Services and Managed Care; and

(2) Medicaid Policy, Fiscal, and Support Services.

(c) For the Department of Mental Health and Substance Abuse, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department:

(1) Mental Health; and

(2) Substance Abuse.

(d) Deputy commissioners shall be exempt from classified service. Their appointments shall be in writing and shall be filed in the Office of the Secretary of State.

§ 2952. MANDATORY DUTIES

(a) The commissioner shall determine the policies of the department, and may exercise the powers and shall perform the duties required for its effective administration.

(b) In addition to other duties imposed by law, the commissioner shall:

(1) administer the laws assigned to the department;

(2) coordinate and integrate the work of the divisions; and

(3) supervise and control all staff functions.

§ 2953. PERMISSIVE DUTIES; APPROVAL OF SECRETARY

The commissioner may, with the approval of the Secretary:

(1) Transfer appropriations or parts thereof within or between divisions, consistent with the purposes for which the appropriation was made.

(2) Transfer classified positions within or between divisions subject only to State personnel laws and regulations.

(3) Cooperate with the appropriate federal agencies and administer federal funds in support of programs within the department.

(4) Submit plans and reports, and in other respects comply with federal law and regulations which pertain to programs administered by the department.

(5) Make rules consistent with law for the internal administration of the department and its programs.

(6) Appoint a deputy commissioner.

(7) Create within the department such advisory councils or committees as he or she deems necessary, and appoint their members for a term not exceeding that of the commissioner.

(8) Provide training and instructions for any employees of the department, at the expense of the department, in educational institutions or other places.

(9) Organize, reorganize, transfer, or abolish divisions, staff functions or sections within the department. This authority shall not extend to divisions or other bodies created by law.

§ 2954. DIRECTORS

(a) A director shall administer each division within the Agency. The commissioners, with the approval of the Secretary, shall appoint the directors for divisions which are part of a department, and the Secretary shall appoint any other directors.

(b) Each division and its officers shall be under the direction and control of the appointing authority except with regard to judicial or quasi-judicial acts or duties vested in them by law.

(c) No rule or regulation may be issued by a director of a division without the approval of the appointing authority.

Subchapter 4. Departments, Divisions, and Boards

§ 2971. DEPARTMENT OF HEALTH ACCESS

The Department of Health Access is created within the Agency of Health Care Administration as the successor to and continuation of the Department of Vermont Health Access.

§ 2972. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE

The Department of Mental Health and Substance Abuse is created within the Agency of Health Care Administration as the successor to and continuation of the Department of Mental Health and the Division of Alcohol and Drug Abuse Programs in the Department of Health. The Department shall be responsible for individuals committed to the care and custody of the Commissioner and for the operation of the Vermont Psychiatric Care Hospital and secure residential recovery facility.

§ 2973. DEPARTMENT OF LONG TERM CARE

The Department of Public Health is created within the Agency of Health Care Administration as the successor to and continuation of the programs within the Department of Disabilities, Aging, and Independent Living related to nursing homes, home- and community-based services, the Choices for Care

program, and certification of long-term care facilities on behalf of the Centers for Medicare and Medicaid Services. It shall also serve as the administrative home within the Agency of Health Care Administration for the designated State agencies for federal Vocational Rehabilitation and Independent Living Programs, as provided by the Rehabilitation Act of 1973, as amended.

§ 2974. DEPARTMENT OF PUBLIC HEALTH

The Department of Public Health is created within the Agency of Health Care Administration as the successor to and continuation of the Department of Health.

§ 2975. OPERATIONS DIVISION

(a) The Operations Division of the Agency is created and shall be administered by a Director of Administration.

(b) The Operations Division shall provide the following services to the Agency and all its components, including components assigned to it for administration:

(1) personnel administration;

(2) financing and accounting activities;

(3) coordination of filing and records maintenance activities;

(4) provision of facilities, office space, and equipment and the care thereof;

(5) requisitioning of supplies, equipment, and other requirements from the Department of Buildings and General Services in the Agency of Administration;

(6) management improvement services;

(7) training;

(8) information systems and technology; and

(9) other administrative functions assigned to it by the Secretary.

(c) Notwithstanding any provision of law to the contrary, all administrative service functions delegated to other components of the Agency shall be performed within the Agency by the Operations Division.

§ 2976. PLANNING DIVISION

(a) The Planning Division of the Agency is created and shall be administered by a Director of Planning appointed by the Secretary.

(b) The Planning Division shall be responsible for:

- (1) centralized strategic planning for all components of the Agency;
- (2) coordination of professional and technical planning of the line components of the Agency, aiming toward maximum service to the public;
- (3) coordinating activities and plans of the Agency with other State agencies and the Governor's office;
- (4) preparing multi-year plans and long-range plans and programs to meet problems and opportunities for service to the public; and
- (5) other planning functions assigned to it by the Secretary.

Subchapter 6. Health Care Board

§ 2991. HEALTH CARE BOARD

(a) The Health Care Board is created within the Agency of Health Care Administration. It consists of seven members. The Governor, with the advice and consent of the Senate, shall appoint members for terms of six years so that not more than three terms expire in the same biennium. The Governor shall designate the Board's Chair.

(b) The duties of the Board shall be to act as a Fair Hearing Board on appeals brought pursuant to section 2992 of this title.

(c) The Board shall hold meetings at times and places warned by the Chair on his or her own initiative or upon request of two Board members or the Governor. Four members shall constitute a quorum, except that three members shall constitute a quorum at any meeting upon the written authorization of the Chair issued in connection with that meeting.

(d) With the approval of the Governor the Board may appoint one or more hearing officers, who shall be outside the classified service, and it may employ such secretarial assistance as it deems necessary in the performance of its duties.

(e) On or before January 15 of each year, the Board shall report to the House Committees on Appropriations, on Human Services, and on Health Care and the Senate Committees on Appropriations, on Health and Welfare, and on Finance regarding the fair hearings conducted by the Board during the three preceding calendar years, including:

(1) the total number of fair hearings conducted over the three-year period and per year;

(2) the number of hearings per year involving appeals of decisions by the Agency itself and each department within the Agency, with the appeals and decisions relating to health insurance through the Vermont Health Benefit Exchange reported distinctly from other programs;

(3) the number of hearings per year based on appeals of decisions regarding:

(A) eligibility;

(B) benefits;

(C) coverage;

(D) financial assistance; and

(E) other categories of appeals;

(4) the number of hearings per year based on appeals of decisions regarding each State program over which the Board has jurisdiction;

(5) the number of decisions per year made in favor of the appellant; and

(6) the number of decisions per year made in favor of the department or the Agency.

§ 2992. HEARINGS

(a) An applicant for or a recipient of assistance, benefits, or services from the Department of Health Access, of Long-Term Care, or of Mental Health and Substance Abuse, or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Health Care Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied or is not acted upon with reasonable promptness; because the individual is aggrieved by any other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.

(b) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. The Chair of the Board may compel, by subpoena, the attendance and testimony of witnesses and the production of books and records. All witnesses shall be examined under oath. The Board shall adopt rules with reference to appeals, which shall not be inconsistent with this chapter. The rules shall provide for reasonable notice to parties, and an opportunity to be heard and be represented by counsel.

(c) The Board or the hearing officer shall issue written findings of fact. If the hearing is conducted by a hearing officer, the hearing officer's findings shall be reported to the Board, and the Board shall approve the findings and adopt them as the findings of the Board unless good cause is shown for disapproving them. Whether the findings are made by the Board, or by a hearing officer and adopted by the Board, the Board shall enter its order based on the findings.

(d) After the fair hearing, the Board may affirm, modify, or reverse decisions of the Agency; it may determine whether an alleged delay was justified; and it may make orders consistent with this title requiring the Agency to provide appropriate relief including retroactive and prospective benefits. The Board shall consider, and shall have the authority to reverse or modify, decisions of the Agency based on rules which the Board determines to be in conflict with State or federal law. The Board shall not reverse or modify Agency decisions which are determined to be in compliance with applicable law, even though the Board may disagree with the results effected by those decisions.

(e) The Board shall give written notice of its decision to the person applying for fair hearing and to the Agency. Unless a continuance is requested or consented to by an aggrieved person, decisions and orders concerning medical assistance (Medicaid) under 33 V.S.A. chapter 19 shall be issued by the Board within 75 days of the request for hearing.

(f) The Agency or the appellant may appeal from decisions of the Board to the Supreme Court under V.R.A.P. 13. Pending the final determination of any appeal, the terms of the order involved shall be given effect by the Agency except insofar as they relate to retroactive benefits.

(g) A party to an order or decree of the Board or the Board itself, or both, may petition the Supreme Court for relief against any disobedience of, or noncompliance with, the order or decree. In the proceedings and upon such notice thereof to the parties as it shall direct, the Supreme Court shall hear and consider the petition and make such order and decree in the premises by way of writ of mandamus, writ of prohibition, injunction, or otherwise, concerning the enforcement of the order and decree of the Board as shall be appropriate.

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning Medicaid. The Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

(i) the Board's findings of fact lack any support in the record; or

(ii) the decision or order implicates the validity or applicability of any Agency policy or rule;

(B) issue a written decision setting forth the legal, factual or policy basis for reversing or modifying a Board decision or order.

(2) Notwithstanding subsections (d) and (f) of this section, a Board decision and order concerning Medicaid shall become the final and binding

decision of the Agency upon its approval by the Secretary. The Secretary shall either approve, modify, or reverse the Board's decision and order within 15 days of the date of the Board's decision and order. If the Secretary fails to issue a written decision within 15 days as required by this subdivision, the Board's decision and order shall be deemed to have been approved by the Secretary.

(3) Notwithstanding subsection (f) of this section, only the claimant may appeal a decision of the Secretary to the Supreme Court. Such appeals shall be pursuant to Rule 13 of the Vermont Rules of Appellate Procedure. The Supreme Court may stay the Secretary's decision upon the claimant's showing of a fair ground for litigation on the merits. The Supreme Court shall not stay the Secretary's order insofar as it relates to a denial of retroactive benefits.

* * * Conforming Revisions to Agency of Human Services * * *

Sec. 2. 3 V.S.A. § 3002(a) is amended to read:

(a) An Agency of Human Services is created consisting of the following:

- (1) The Department of Corrections.
- (2) The Department for Children and Families.
- (3) ~~The Department of Health.~~ [Repealed.]
- (4) The Department of ~~Disabilities, Aging, and~~ Independent Living.
- (5) The Human Services Board.
- (6) ~~The Department of Vermont Health Access.~~ [Repealed.]
- (7) ~~The Department of Mental Health.~~ [Repealed.]

Sec. 3. 3 V.S.A. § 3003(b) is amended to read:

~~(b) Notwithstanding subsection (a) of this section, the Board of Health shall retain and exercise all powers and functions given to the Board by law of quasi-judicial nature, including the power to conduct hearings, to adjudicate controversies, and to issue and enforce orders, in the manner and to the extent provided by law. Boards of registration attached to this Agency shall retain and exercise all existing authority with respect to licensing and maintenance of the standards of the persons registered.~~

Sec. 4. 3 V.S.A. § 3004 is amended to read:

§ 3004. PERSONNEL DESIGNATION

The Secretary, Deputy Secretary, commissioners, deputy commissioners, attorneys, Directors of the Offices of State Economic Opportunity, ~~of Alcohol and Drug Abuse Programs,~~ and of Child Support, and all members of boards,

committees, commissions, or councils attached to the Agency for support are exempt from the classified State service. Except as authorized by section 311 of this title or otherwise by law, all other positions shall be within the classified service.

Sec. 5. 3 V.S.A. § 3051 is amended to read:

§ 3051. COMMISSIONERS; DEPUTY COMMISSIONERS;
APPOINTMENT; TERM

(a) The Secretary, with the approval of the Governor, shall appoint a commissioner of each department, who shall be the chief executive and administrative officer and shall serve at the pleasure of the Secretary.

~~(b) For the Department of Health, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department:~~

~~(1) Public Health;~~

~~(2) Substance Abuse. [Repealed.]~~

(c) For the Department for Children and Families, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department:

(1) Economic Services;

(2) Child Development;

(3) Family Services.

~~(d) For the Department of Vermont Health Access, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department:~~

~~(1) Medicaid Health Services and Managed Care;~~

~~(2) Medicaid Policy, Fiscal, and Support Services;~~

~~(3) Health Care Reform;~~

~~(4) Vermont Health Benefit Exchange. [Repealed.]~~

(e) Deputy commissioners shall be exempt from the classified service. Their appointments shall be in writing and shall be filed in the Office of the Secretary of State.

Sec. 6. 3 V.S.A. § 3085a is amended to read:

§ 3085a. DEPARTMENT OF ~~DISABILITIES, AGING, AND~~
INDEPENDENT LIVING

The Department of ~~Disabilities, Aging, and~~ Independent Living is created within the Agency of Human Services as the successor to and continuation of the Department of Aging and Disabilities, the Developmental Services Division of the Department of Developmental and Mental Health Services, and the personal care and hi-tech programs in the former Department of Prevention, Assistance, Transition, and Health Access to manage programs and to protect the interests of older Vermonters and Vermonters with disabilities. It shall serve as the State unit on aging, as provided by the Older Americans Act of 1965, as amended, ~~and it shall serve as the administrative home within the Agency of Human Services for the designated State agencies for federal Vocational Rehabilitation and Independent Living Programs, as provided by the Rehabilitation Act of 1973, as amended.~~

Sec. 7. 3 V.S.A. § 3090(e) is amended to read:

(e) On or before January 15 of each year, the Board shall report to the House Committees on Appropriations, on Human Services, and on Health Care and the Senate Committees on Appropriations, on Health and Welfare, and on Finance regarding the fair hearings conducted by the Board during the three preceding calendar years, including:

(1) the total number of fair hearings conducted over the three-year period and per year;

(2) the number of hearings per year involving appeals of decisions by the Agency itself and each department within the Agency, ~~with the appeals and decisions relating to health insurance through the Vermont Health Benefit Exchange reported distinctly from other programs;~~

* * *

Sec. 8. 3 V.S.A. § 3091 is amended to read:

§ 3091. HEARINGS

(a) An applicant for or a recipient of assistance, benefits, or social services from the Department for Children and Families, ~~of Vermont Health Access, or of Disabilities, Aging, and~~ Independent Living, ~~or of Mental Health,~~ or an applicant for a license from one of those departments, or a licensee may file a request for a fair hearing with the Human Services Board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits, or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any

other Agency action affecting his or her receipt of assistance, benefits, or services, or license or license application; or because the individual is aggrieved by Agency policy as it affects his or her situation.

* * *

(e) The Board shall give written notice of its decision to the person applying for fair hearing and to the Agency. Unless a continuance is requested or consented to by an aggrieved person, decisions and orders concerning Temporary Assistance to Needy Families (TANF) under 33 V.S.A. chapter 11; and TANF-Emergency Assistance (TANF-EA) under Title IV of the Social Security Act ~~and medical assistance (Medicaid) under 33 V.S.A. chapter 19~~ shall be issued by the Board within 75 days of the request for hearing.

* * *

(h)(1) Notwithstanding subsections (d) and (f) of this section, the Secretary shall review all Board decisions and orders concerning TANF, TANF-EA, and Office of Child Support Cases, ~~and Medicaid.~~ The Secretary shall:

(A) adopt a Board decision or order, except that the Secretary may reverse or modify a Board decision or order if:

(i) the Board's findings of fact lack any support in the record; or

(ii) the decision or order implicates the validity or applicability of any Agency policy or rule.

(B) issue a written decision setting forth the legal, factual, or policy basis for reversing or modifying a Board decision or order.

(2) Notwithstanding subsections (d) and (f) of this section, a Board decision and order concerning TANF, TANF-EA, or Office of Child Support, ~~or Medicaid~~ shall become the final and binding decision of the Agency upon its approval by the Secretary. The Secretary shall either approve, modify, or reverse the Board's decision and order within 15 days of the date of the Board's decision and order. If the Secretary fails to issue a written decision within 15 days as required by this subdivision, the Board's decision and order shall be deemed to have been approved by the Secretary.

* * *

* * * Transitional Provisions * * *

Sec. 9. TRANSFER OF POSITIONS; ADMINISTRATION

(a) Prior to March 1, 2017, the Secretary of Administration shall create the position of the Secretary of Health Care Administration.

(b) Effective March 1, 2017, the Secretary of Administration shall place under the supervision of the Secretary of Health Care Administration:

(1) all employees, professional and support staff, consultants, and positions contained in the departments, divisions, and offices described in Sec. 12 of this act to which the Agency is the successor in interest;

(2) all balances of all appropriation amounts for personal services and operating expenses for the departments, divisions, units, and offices described in Sec. 12 of this act; and

(3) up to 20 positions from the Agency of Human Services to staff the office of the Secretary of Health Care Administration, including the associated appropriation amounts for these personnel and the operating expenses related to these functions.

(c) The Agency of Human Services shall provide fiscal and administrative support for the Agency of Health Care Administration until October 1, 2017.

(d) No later than January 1, 2019, the Secretary of Administration shall complete the transfer to the Agency of Health Care Administration of:

(1) all employees, professional and support staff, consultants, and positions contained in the departments, divisions, and offices described in Sec. 12 of this act to which the Agency is the successor in interest; and

(2) all balances of all appropriation amounts for personal services and operating expenses for the departments, divisions, units, and offices described in Sec. 12 of this act.

(e) No later than January 1, 2019, the Secretary of Administration shall complete the reorganization of the Agency of Human Services into an Agency of Health Care Administration as described in this Act and an Agency of Human Services consisting of the remaining departments, divisions, and offices.

Sec. 10. PROCESS; REORGANIZATION OF DEPARTMENT OF DISABILITIES, AGING, AND INDEPENDENT LIVING

(a) No later than December 1, 2017, the Secretary of Administration or designee shall submit to the House Committees on Appropriations, on Human Services, and on Government Operations and the Senate Committees on Appropriations, on Health and Welfare, and on Government Operations a proposal for dividing the Department of Disabilities, Aging, and Independent Living into a Department of Long-Term Care in the Agency of Health Care Administration and a Department of Independent Living in the Agency of Human Services. The proposal shall include proposed legislative changes necessary to effect the division recommended by the Secretary.

(b)(1) The Department of Long-Term Care shall have the authority to administer the Choices for Care portion of Vermont's Medicaid Section 1115 waiver, regulate nursing homes, regulate organizations providing home- and community-based services, and certify long-term care facilities on behalf of the Centers for Medicare and Medicaid Services.

(2) The Department for Independent Living shall provide services to Vermonters who are elders and to individuals with disabilities to enable them to remain in their homes, including vocational rehabilitation services.

Sec. 11. PROCESS; REORGANIZATION OF DEPARTMENTS, UNITS, AND DIVISIONS

(a) No later than December 1, 2017, the Secretary of Health Care Administration shall propose to the House Committees on Appropriations, on Human Services, and on Government Operations and the Senate Committees on Appropriations, on Health and Welfare, and on Government Operations any additional modifications to the departments, units, and divisions transferred from the Agency of Human Services to the Agency of Health Care Administration needed to reflect the following new departments:

- (1) the Department of Health Access;
- (2) the Department of Mental Health and Substance Abuse; and
- (3) the Department of Public Health;

(b) The proposal may include moving divisions of the transferred departments as necessary to ensure the efficient and rational administration and regulation of Vermont's health care system.

(c) The proposal shall include proposed legislative changes necessary to effect the modifications recommended by the Secretary.

Sec. 12. TRANSITIONAL PROVISIONS

(a) The Agency of Health Care Administration is the successor to and continuation of:

- (1) the Department of Vermont Health Access under 3 V.S.A. § 3088;
- (2) the Department of Mental Health under 3 V.S.A. § 3089;
- (3) the long-term care and home- and community-based service components of the Department of Disabilities, Aging, and Independent Living under 3 V.S.A. § 3085a; and
- (4) the Department of Health under 3 V.S.A. § 3082.

(b) The Agency shall continue the duties of the departments as described in subsection (a) of this section, including the duties contained in 33 V.S.A. chapter 19 (medical assistance).

* * * Conforming Statutory Amendments * * *

Sec. 13. OFFICE OF LEGISLATIVE COUNCIL

On or before December 1, 2016, the Office of Legislative Council shall provide to the House Committees on Government Operations, on Health Care, and on Human Services and the Senate Committees on Finance, on Government Operations, and on Health and Welfare proposed statutory amendments as needed to correct references in the Vermont Statutes Annotated to the agencies and departments created or amended by this act.

* * * Repeals * * *

Sec. 14. REPEALS

3 V.S.A. §§ 3082 (Department of Health), 3088 (Department of Vermont Health Access), and 3089 (Department of Mental Health) are repealed on passage.

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

(a) Secs. 1 (Agency of Health Care Administration) and 2–8 (Agency of Human Services; revisions) shall take effect on October 1, 2017.

(b) The remaining sections shall take effect on passage.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that they have considered the same and recommend that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 1, in 3 V.S.A. § 2973, in the catchline, by striking out the following: “LONG TERM” and inserting in lieu thereof the following: LONG-TERM, in the first sentence, by striking out the following: “Public Health” and inserting in lieu thereof the following: Long-Term Care, and by striking out the second sentence in its entirety.

Second: By striking out Sec. 6, 3 V.S.A. § 3085a, in its entirety and inserting in lieu thereof a new Sec. 6, 3 V.S.A. § 3085a to read as follows:

§ 3085a. DEPARTMENT OF ~~DISABILITIES, AGING, AND~~ INDEPENDENT LIVING

The Department of ~~Disabilities, Aging, and~~ Independent Living is created within the Agency of Human Services as the successor to and continuation of

the Department of Aging and Disabilities, the Developmental Services Division of the Department of Developmental and Mental Health Services, and the personal care and hi-tech programs in the former Department of Prevention, Assistance, Transition, and Health Access to manage programs and to protect the interests of older Vermonters and Vermonters with disabilities. It shall serve as the State unit on aging, as provided by the Older Americans Act of 1965, as amended, and it shall serve as the administrative home within the Agency of Human Services for the designated State agencies for federal Vocational Rehabilitation and Independent Living Programs, as provided by the Rehabilitation Act of 1973, as amended.

Third: In Sec. 9, transfer of positions; administration, in subsections (a) and (b), by striking out the following “March 1, 2017” in both instances and inserting in lieu thereof the following: October 1, 2017

Fourth: In Sec. 9, transfer of positions; administration, in subsection (c), by striking out the following: “October 1, 2017” and inserting in lieu thereof the following: March 1, 2018

Fifth: In Sec. 9, transfer of positions; administration, in subsection (e), by adding a second and third sentence to read as follows:

The financial, legal, and departmental functions of the departments described in Sec. 12 of this act, to which the departments in the Agency of Health Care Administration are the successors in interest, shall be consolidated in the Office of the Secretary of Health Care Administration and shall use existing departmental resources as needed. Any new exempt positions needed as a result of this act shall be transferred and converted from existing vacant exempt positions in the Executive Branch.

Sixth: By adding a new section to be numbered Sec. 15 to read as follows:

Sec. 15. TRANSITION FUNDING

It is the intent of the General Assembly to provide in the appropriations act funding to the Agency of Administration in fiscal year 2017 to be transferred to the Agency of Human Services for transition costs associated with the reorganization of the Agency of Human Services into an Agency of Health Care Administration and an Agency of Human Services as described in this act. Costs may include contracts for finance, accounting, federal funding, and organizational and operational restructuring consultations.

And by renumbering the existing Sec. 15, effective dates, to be Sec. 16

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on

Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Rules Suspended; Bill Committed

S. 230.

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

An act relating to improving the siting of energy projects.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Ashe moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Natural Resources and Energy and the Committee on Finance *intact*,

Which was agreed to.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Thursday, March 24, 2016.