

Journal of the Senate

TUESDAY, APRIL 19, 2016

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

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

Bills Referred to Committee on Finance

House bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

H. 570. An act relating to hunting, fishing, and trapping.

H. 571. An act relating to driver's license suspensions, driving with a suspended license, and DUI penalties.

H. 868. An act relating to miscellaneous economic development provisions.

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

H. 857. An act relating to timber harvesting.

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

Joint Senate Resolution Adopted on the Part of the Senate

J.R.S. 52.

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

By Senators Baruth and Benning,

J.R.S. 52. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, April 22, 2016, it be to meet again no later than Tuesday, April 26, 2016.

Bill Ordered to Lie**H. 74.**

Senate bill entitled:

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

Was taken up.

Thereupon, pending the third reading of the bill, on motion of Senator Campbell, the bill was ordered to lie.

Bills Passed in Concurrence with Proposals of Amendment

House bills of the following title were severally read the third time and passed in concurrence with proposals of amendment:

H. 559. An act relating to an exemption from licensure for visiting team physicians.

H. 845. An act relating to legislative review of certain report requirements.

Third Reading Ordered**H. 399.**

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

An act relating to the Department for Children and Families' Registry Review Unit.

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.

Proposal of Amendment; Third Reading Ordered**H. 249.**

Senator Collamore, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to intermunicipal services..

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

Sec. 1. 24 V.S.A. § 4345b is added to read:

§ 4345b. INTERMUNICIPAL SERVICE AGREEMENTS

(a)(1) Prior to exercising the authority granted under this section, a regional planning commission shall:

(A) draft bylaws specifying the process for entering into, method of withdrawal from, and method of terminating service agreements with municipalities; and

(B) hold one or more public hearings within the region to hear from interested parties and citizens regarding the draft bylaws.

(2) At least 30 days prior to any hearing required under this subsection, notice of the time and place and a copy of the draft bylaws, with a request for comments, shall be delivered to the chair of the legislative body of each municipality within the region. The regional planning commission shall make copies available to any individual or organization requesting a copy.

(3) The regional planning commission may make revisions to the draft bylaws at any time prior to adoption of the bylaws. If revisions are made to the draft bylaws, the regional planning commission shall hold a final hearing and shall deliver notice as required in subdivision (2) of this subsection.

(b)(1) The draft bylaws required under subsection (a) of this section shall be adopted by a vote of at least 67 percent of the commissioners of the regional planning commission in accordance with the voting procedures of the regional planning commission.

(2) The draft bylaws shall be considered duly adopted and shall take effect 35 days after a vote required under this subsection, unless, within 35 days of the date of adoption, the regional planning commission receives certification from the legislative bodies of a majority of the municipalities in the region vetoing the proposed bylaws. In such case, the bylaws shall be deemed repealed.

(c) Upon adoption of the bylaws under subsection (b) of this section, a regional planning commission may:

(1) promote cooperative arrangements and coordinate, implement, and administer service agreements among municipalities, including arrangements and action with respect to planning, community development, joint purchasing, intermunicipal services, infrastructure, and related activities; and

(2) exercise any power, privilege, or authority, as defined within a service agreement under subsection (d) of this section, capable of exercise by a

municipality as necessary or desirable for dealing with problems of local or regional concern.

(d)(1) In exercising the powers set forth in subsection (c) of this section, a regional planning commission shall enter into a service agreement with one or more municipalities.

(2) Participation by a municipality shall be voluntary and only valid upon appropriate action by the legislative body of the municipality. To become effective, a service agreement shall be ratified by the regional planning commission and the legislative bodies of the municipalities who are a party to the service agreement.

(3) A service agreement shall describe the services to be provided and the amount of funds payable by each municipality that is a party to the service agreement. Service of personnel, use of equipment and office space, and other necessary services may be accepted from municipalities as part of their financial support.

(4) Any modification to a service agreement shall not become effective unless approved by the legislative body of the municipalities who are a party to the service agreement.

(e) A regional planning commission shall not have the following powers under this section:

(1) essential legislative functions;

(2) taxing authority; or

(3) eminent domain.

(f)(1) Funds provided for regional planning under section 4341a or 4346 of this chapter shall not be used to provide services under a service agreement without prior written authorization from the State agency or other entity providing the funds.

(2) A commission shall not use municipal funds or grants provided for regional planning services under this chapter to cover the costs of providing services under any service agreement under this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

Proposal of Amendment; Third Reading Ordered**H. 297.**

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

An act relating to the sale of ivory or rhinoceros horn.

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

Sec. 1. 10 V.S.A. chapter 175 is added to read:

CHAPTER 175. IVORY AND RHINOCEROS HORN

§ 7701. SALE OF IVORY OR RHINOCEROS HORN

(a) Definitions. As used in this chapter:

(1) “Ivory” means any tusk composed of ivory from an elephant or mammoth, or any piece thereof, whether raw ivory or worked ivory, or made into, or part of, an ivory product.

(2) “Ivory product” means any item that contains, or is wholly or partially made from, any ivory.

(3) “Raw ivory” means any ivory the surface of which, polished or unpolished, is unaltered or minimally changed by carving.

(4) “Rhinoceros horn” means the horn, or any piece thereof, of any species of rhinoceros.

(5) “Rhinoceros horn product” means any item that contains, or is wholly or partially made from, any rhinoceros horn.

(6) “Total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products” means the fair market value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products, or the actual price paid for the ivory, ivory products, rhinoceros horn, and rhinoceros horn products, whichever is greater.

(7) “Worked ivory” means ivory that has been embellished, carved, marked, or otherwise altered so that it can no longer be considered raw ivory.

(b) Prohibition. Except as authorized under subsections (c) and (f) of this section, a person in this State shall not import, sell, offer for sale, purchase, barter, or possess with intent to sell, any ivory, ivory product, rhinoceros horn, or rhinoceros horn product.

(c) Exceptions.

(1) The prohibitions of this section shall not apply to:

(A) Employees or agents of the federal government or the State undertaking any law enforcement activities pursuant to federal or State law or any mandatory duties required by federal or State law.

(B) The import of legally acquired ivory, ivory products, rhinoceros horn, or rhinoceros horn products:

(i) expressly authorized by federal law, license, or permit; or

(ii) as part of a personal or household move into the State.

(C) The sale of legally acquired ivory or ivory products provided that the item is accompanied by a sworn statement that complies with subsection (d) of this section.

(2) In connection with any action alleging violation of this section, any person claiming the benefit of any exception under this section shall have the burden of proving that the exception is applicable and was valid and in force at the time of the alleged violation.

(d) Ivory certification.

(1) In order to sell an ivory item or ivory product on or after July 1, 2017, a person shall certify the ivory or ivory product with a sworn statement as required by this subsection.

(2) A sworn statement under this subsection shall:

(A) include a statement, under pains and penalties of perjury, certifying ownership of the item and attesting that the ivory or ivory product has been legally acquired and its sale will not violate any federal or State law.

(B) include a detailed description of the item, the approximate age of the item, and a picture; and

(C) be notarized by a Vermont notary public prior to July 1, 2017.

(3)(A) A sworn statement under this subsection shall not certify multiple pieces of ivory or ivory products, unless the pieces, taken together, are part of a larger product and are to be sold together.

(B) A person shall not notarize his or her own sworn statement under this subsection.

(C) Upon sale of the ivory or ivory product, the sworn statement shall be transferred with the item to the new owner. A subsequent owner is authorized to sell the ivory or ivory product, if they maintain the original sworn statement required by this subsection.

(e) Presumption of intent to sell. The possession in this State of any ivory, ivory product, rhinoceros horn, or rhinoceros horn product in a retail or wholesale outlet commonly used for the buying or selling of similar products shall constitute presumptive evidence of possession with intent to sell under this section. Nothing in this subsection shall preclude a finding of intent to sell based on any evidence that may serve independently to establish intent to sell. The act of obtaining an appraisal of ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product alone shall not constitute possession with intent to sell.

(f) Authorized conveyance to beneficiaries. A person may convey ivory, an ivory product, rhinoceros horn, or a rhinoceros horn product to the legal beneficiary of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product that is part of an estate or other items being conveyed to lawful beneficiaries upon the death of the owner of the ivory, ivory product, rhinoceros horn, or rhinoceros horn product or in anticipation of that death.

(g) Enforcement; civil penalties.

(1) This section may be enforced by a law enforcement officer as defined in 20 V.S.A. § 2358.

(2) A person who violates this section commits a civil violation and shall be assessed a civil penalty as follows:

(A) For a first offense, \$1,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

(B) For a second or subsequent offense, \$5,000.00 or an amount equal to two times the total value of the ivory, ivory products, rhinoceros horn, and rhinoceros horn products involved in the offense, whichever is greater.

(3) The penalties provided in this section shall be in addition to any penalty that may be imposed under federal law.

(h) Educational information. The Secretary of Natural Resources shall maintain on its website information regarding the prohibition of the sale and purchase of ivory and rhinoceros horns in this State.

Sec. 2. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

(27) Violations of 10 V.S.A. § 7701, relating to the sale or import of ivory or rhinoceros horn.

Sec. 3. REPORT ON IVORY AND RHINOCEROS HORN PROHIBITION

On or before January 15, 2022, the Secretary of Natural Resources, after consultation with the U.S. Fish and Wildlife Service, shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy a report regarding the implementation of 10 V.S.A. § 7701, including a summary of:

(1) enforcement activities taken by the State, including the outcome of any items seized;

(2) the financial impact of the prohibition of the sale of ivory and rhinoceros horns on Vermont businesses;

(3) what actions other states have taken with regard to the sale of ivory and rhinoceros horns; and

(4) recommendations regarding necessary changes to Vermont law, including the extension or repeal of the prohibition.

Sec. 4. EFFECTIVE DATES

This act shall take effect on July 1, 2017, except that subsection (d) shall take effect on passage.

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

Proposals of Amendment; Third Reading Ordered

H. 512.

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

An act relating to adequate shelter of dogs and cats.

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

First: In Sec. 2, 13 V.S.A. § 365, by striking out subsection (f) and inserting in lieu thereof a new subsection (f) to read as follows:

(f) Tethering of dog.

(1) ~~A~~ Except as provided under subdivision (2) of this subsection, a dog ~~chained to a shelter must~~ maintained outdoors on a tether shall be on a tether ~~chain~~ at least four times the length of the dog as measured from the tip of its nose to the base of its tail, and shall allow the dog access to the shelter.

(2)(A) A dog regularly used in training or participation in competitive or recreational sled dog activities and housed outdoors in close proximity with other dogs may, if necessary for the safety of the dog, be maintained on a tether three times the length of the dog, as measured from the tip of its nose to the base of its tail.

(B) If a tethering method involves the use of a trolley and cable and allows the dog to move freely along the length of the cable, the tether shall be long enough to allow the dog to lie down within its shelter without discomfort.

(3) A tether used for any dog shall be attached to both the dog and the anchor using swivels or similar devices that prevent the tether from becoming entangled or twisted. The tether shall be attached to a well-fitted collar or harness on the dog. The tether shall be of a size and weight that will not cause discomfort to a tethered dog. A choke collar shall not be used as part of a tethering method. Unless the dog is tethered to a trolley and cable system in accordance with subdivision (2)(B) of this subsection, the tether shall be attached to the anchor at a height no greater than that of the dog's withers while standing.

Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof six new sections to be numbered Secs. 3, 4, 5, 6, 7 and 8 to read as follows:

Sec. 3. 24 V.S.A. § 1943 is added to read:

§ 1943. ANIMAL CRUELTY INVESTIGATION ADVISORY BOARD

(a) An Animal Cruelty Investigation Advisory Board is created within the Department of Public Safety to advise the Governor, the General Assembly, and the Commissioner of Public Safety on issues involving the cooperation and coordination of all agencies that exercise animal welfare responsibilities. The Governor shall appoint the following to serve on the Board:

- (1) the Commissioner of Public Safety or designee;
- (2) the Executive Director of State's Attorneys and Sheriffs or designee;
- (3) the Secretary of Agriculture, Food and Markets or designee;
- (4) the Commissioner of Fish and Wildlife or designee;
- (5) two members to represent the interests of organizations dedicated to promoting the welfare of animals;
- (6) three members to represent the interests of law enforcement;
- (7) a member to represent the interests of humane officers working with companion animals;

(8) a member to represent the interests of humane officers working with large animals (livestock);

(9) a member to represent the interests of dog breeders and associated groups;

(10) a member to represent the interests of veterinarians;

(11) a member to represent the interests of the Criminal Justice Training Council;

(12) a member to represent the interests of sportsmen and women; and

(13) a member to represent the interests of town health officers.

(b) The Board shall elect a chair and a vice chair which shall rotate among the various member representatives. Each member shall serve a term of two years. The Board shall meet at the call of the Chair. A quorum shall consist of eight members, and decisions of the Board shall require the approval of a majority of those members present and voting.

(c) The Board shall have the following duties:

(1) undertake an ongoing formal review process of animal cruelty investigations and practices with a goal of developing a systematic, collaborative approach to providing the best services to Vermont's animals, given monies available;

(2) work with the Department of Public Safety to study the feasibility of designating one law enforcement agency to receive, dispatch, and document the outcome of animal cruelty complaints, and with the assistance of the Vermont Sheriffs' Association, develop a uniform response protocol for assigning complaints to the appropriate local law enforcement agencies;

(3) to ensure that investigations of serious animal cruelty complaints are systematic and documented, develop written standard operating procedures and checklists to support the objective investigation of cruelty complaints that include objective measures of both environmental and clinical evidence of cruelty;

(4) ensure that requests for voluntary compliance are made in writing, with clear requests and timelines, and include a timeline for the investigator to perform a follow-up visit to confirm actions taken;

(5) develop a guide for animal cruelty prosecution, including a review of current sentencing recommendations for State's Attorneys;

(6) research the feasibility of developing and implementing an animal cruelty prevention and education program for offenders to be used as a part of offenders' sentencing;

(7) explore potential private and public sources of funding for animal cruelty investigations, including animal care expenses;

(8) develop trainings, protocols, procedures, and guidance documents for agencies engaging in animal welfare responsibilities;

(9) develop an animal cruelty investigation certification program for humane officers in accordance with 13 V.S.A. § 356, and provide a means by which a person who has been actively engaged in this State as a humane officer conducting animal cruelty investigations for at least five years preceding July 1, 2016 shall be eligible for certification without completion of the certification program requirements;

(10) develop recommendations for providing liability protection and reducing uncompensated costs to animal shelters and animal welfare groups that assist law enforcement authorities in animal cruelty investigations;

(11) explore changing the annual deadline for dog licensure under 20 V.S.A. § 3582 to better align with the time of year dogs require annual veterinary care; and

(12) determine what should appropriately constitute an enforcement action triggering the obligation of the Agency of Agriculture to assist law enforcement pursuant to 13 V.S.A. § 354(a).

(d) The Board shall meet no fewer than six times a year to undertake its duties as outlined in subsection (a) of this section. The Board shall present its findings and recommendations in brief summary to the House and Senate Committees on Judiciary annually on or before January 15.

Sec. 4. 20 V.S.A. § 2365b is added to read:

§ 2365b. ANIMAL CRUELTY RESPONSE TRAINING

As part of basic training in order to become certified as a Level Two and Level Three law enforcement officer, a person shall receive a two-hour training module on animal cruelty investigations as approved by the Vermont Criminal Justice Training Council and the Animal Cruelty Investigation Advisory Board.

Sec. 5. 13 V.S.A. § 356 is added to read:

§ 356. HUMANE OFFICER REQUIRED TRAINING

All humane officers, as defined in subdivision 351(4) of this title shall complete a certification program on animal cruelty investigation training as developed and approved by the Animal Cruelty Investigation Advisory Board.

Sec. 6. 13 V.S.A. § 354 is amended to read:

§ 354. ENFORCEMENT; POSSESSION OF ABUSED ANIMAL;
SEARCHES AND SEIZURES; FORFEITURE

(a) The Secretary of Agriculture, Food and Markets shall be consulted prior to any enforcement action brought pursuant to this chapter which involves livestock and poultry. Law enforcement may consult with the Secretary in person or by electronic means, and the Secretary shall assist law enforcement in determining whether the practice, animal condition, or both represent acceptable livestock or poultry husbandry practices.

* * *

Sec. 7. DEPARTMENT OF CORRECTIONS; ANIMAL CARE PILOT PROGRAM

The Commissioner of Corrections shall implement a pilot program in at least one correctional facility that would permit qualified inmates to provide temporary care, on-site, for animals on a weekly or more frequent basis. The program shall be established on or before January 1, 2017, and the Commissioner shall report on this program, with recommendations as to whether it could be expanded to care for animals that have been seized or relinquished in cruelty or neglect investigations, to the Joint Committee on Justice Oversight on or before November 1, 2017.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

Proposal of Amendment; Third Reading Ordered

H. 761.

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

An act relating to cataloguing and aligning health care performance measures.

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

Sec. 1. GREEN MOUNTAIN CARE BOARD; PERFORMANCE MEASURES

The Green Mountain Care Board, in consultation with the Vermont Medical Society, shall survey and catalogue all existing performance measures required of primary care providers in Vermont, including the Centers for Medicare and Medicaid Services' quality measures. The Board shall develop a plan to align performance measures across programs that impact primary care. The plan's goal shall be to reduce the administrative burden of reporting requirements for providers while balancing the need to evaluate quality of and access to care adequately. The Board shall submit the plan to the Senate Committee on Health and Welfare and to the House Committee on Health Care on or before January 15, 2017.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

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

Proposal of Amendment; Third Reading Ordered

H. 854.

Senator White, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to timber trespass.

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

Sec. 1. 13 V.S.A. chapter 77 is amended to read:

CHAPTER 77. TREES AND PLANTS

§ 3601. DEFINITIONS

As used in this chapter:

(1) "Diameter breast height" or "DBH" means the diameter of a standing tree at four and one-half feet from the ground.

(2) "Harvest" means the cutting, felling, or removal of timber.

(3) "Harvest unit" means the area of land from which timber will be harvested or the area of land on which timber stand improvement will occur.

(4) “Harvester” means a person, firm, company, corporation, or other legal entity that harvests timber.

(5) “Landowner” means the person, firm, company, corporation, or other legal entity that owns or controls the land or owns or controls the right to harvest timber on the land.

(6) “Landowner’s agent” means a person, firm, company, corporation, or other legal entity representing the landowner in a timber sale, timber harvest, or land management.

(7) “Stump diameter” means the diameter of a tree stump remaining after cutting, felling, or destruction.

(8) “Forest products” means logs; pulpwood; veneer; bolt wood; wood chips; stud wood; poles; pilings; biomass; fuel wood; or bark.

(9) “Timber” means:

(A) trees of every size, nature, kind, and description; and

(B) sprouts from which trees may grow, seedlings, saplings, bushes, or shrubs that have been planted or cultivated by a person who owns or controls the property where they are located.

§ 3602. UNLAWFUL CUTTING OF TREES VALUATION OF TREES OR TIMBER

(a) Any person who cuts, fells, destroys to the point of no value, or substantially damages the potential value of a tree without the consent of the owner of the property on which the tree stands shall be assessed a civil penalty in the following amounts for each tree over two inches in diameter that is cut, felled, or destroyed who is entitled to damages pursuant to section 3606 of this title or who is entitled to restitution for a violation of section 3606a of this title may provide an assessment of the value, based upon the kind, condition, location, and use of the timber cut down, destroyed, removed, injured, damaged, or carried away or, in the alternative, may assess the value of the timber as follows:

(1) if ~~the~~ a tree is no more than six inches in stump diameter or DBH, ~~not more than \$25.00~~ \$50.00;

(2) if ~~the~~ a tree is more than six inches and not more than ten inches in stump diameter or DBH, ~~not more than \$50.00~~ \$100.00;

(3) if ~~the~~ a tree is more than 10 inches and not more than 14 inches in stump diameter or DBH, ~~not more than \$150.00~~ \$300.00;

(4) if ~~the~~ a tree is more than 14 inches and not more than 18 inches in stump diameter or DBH, ~~not more than \$500.00~~ \$750.00;

(5) if ~~the~~ a tree is more than 18 inches and not more than 22 inches in stump diameter or DBH, ~~not more than \$1,000.00~~ \$1,500.00;

(6) if ~~the~~ a tree is greater than 22 inches in stump diameter or DBH, ~~not more than \$1,500.00~~ \$2,000.00;

(7) for a bush or shrub, \$50.00.

~~(b) In calculating the diameter and number of trees cut, felled, or destroyed under this section, a law enforcement officer may rely on a written damage assessment completed by a professional arborist or forester.~~

§ 3603. MARKING HARVEST UNITS

~~A~~ As a best management practice, a landowner who authorizes timber harvesting or who in fact harvests timber ~~shall~~ should clearly and accurately mark the harvest unit with ~~flagging or other temporary and visible means~~ the harvest unit. ~~Each mark of a harvest unit shall be visible from the next and shall not exceed 100 feet apart. The marking of a harvest unit shall be completed prior to commencement of a timber harvest. If a violation as described in section 3602 of this title occurs due to the failure of a landowner to mark a harvest unit, the landowner who failed to mark a harvest unit in accordance with the requirements of this subsection shall be assessed a civil penalty of not less than \$250.00 and not more than \$1,000.00.~~

§ 3604. EXEMPTIONS

The cutting, felling, or destruction of a tree or the harvest of timber by the following ~~is exempt from the requirements of sections 3602, 3603, and 3606~~ shall not be subject to a civil action under section 3606 of this title or a criminal penalty under section 3606a of this title:

(1) ~~The Agency of Transportation, or its representatives, conducting brush removal on State highways or Agency-maintained trails~~ vegetation management.

(2) A municipality conducting brush removal subject to the requirements of 19 V.S.A. § 904.

(3) A utility conducting vegetation ~~maintenance~~ management within the boundaries of the utility's established right-of-way.

~~(4) A harvester harvesting timber that a landowner has authorized for harvest within a harvest unit that has been marked by a landowner under section 3603 of this title. A landowner who harvests timber on his or her own property shall not be a "harvester" for the purposes of this subdivision. [Repealed.]~~

(5) A railroad conducting ~~vegetation maintenance or brush removal in the railroad right-of-way~~ management.

(6) A licensed surveyor establishing boundaries between abutting parcels under 27 V.S.A. § 4.

§ 3606. ~~TREBLE DAMAGES FOR CONVERSION OF TREES OR DEFACING MARKS ON LOGS~~ TRESPASS; CIVIL ACTION

(a) ~~If~~ In addition to any other civil liability or criminal penalty allowed by law, if a person cuts down, fells, destroys, removes, injures, damages, or carries away any tree or trees, brush, or shrubs ~~timber~~ placed or growing for any use or purpose whatsoever, or ~~timber, wood, or underwood~~ forest products standing, lying, or growing belonging to another person, without ~~leave~~ permission from the owner of ~~such trees, the timber, wood, or underwood or forest product, or cuts out, alters, or defaces the mark of a log or other valuable timber, in a river or other place~~ forest product, the party injured may recover of such person, in an action on this statute, ~~treble damages or for each tree the same amount that would be assessed as a civil penalty under section 3602 of this title, whichever is greater~~ for the value of the timber or forest product, and any damage caused to the land or improvements thereon as a result of such action. The injured party or landowner may rely on an assessment of damages based on the kind, condition, location, and use of the timber or forest product by the injured party or landowner, or alternatively, may elect to rely on the values established under section 3602 of this title.

(b) ~~However, if it appears on trial that the defendant acted through mistake, or~~ If the defendant in an action brought pursuant to subsection (a) of this section establishes by a preponderance of the evidence that he or she had good reason to believe that the trees, timber, wood, or underwood or forest products belonged to him or her, or that he or she had a legal right to perform the acts complained of, the plaintiff shall recover single damages only, with costs.

(c) ~~For purposes of~~ As used in this section, “damages” shall include any damage caused to the land or improvements thereon as a result of a person cutting, felling, destroying ~~to the point of no value, substantially reducing the potential value,~~ removing, injuring, damaging, or carrying away ~~a trees, timber, wood, or forest products~~ without the ~~consent~~ permission of the owner of the property on which the ~~tree~~ timber stands. ~~If a person cuts down, destroys, or carries away a tree or trees placed or growing for any use or purpose whatsoever or timber, wood, or underwood standing, lying, or growing belonging to another person due to the failure of the landowner or the landowner’s agent to mark the harvest unit properly, as required under section 3603 of this title, a cause of action for damages may be brought against the landowner.~~

§ 3606a. TRESPASS; CRIMINAL PENALTY

(a) No person shall knowingly or recklessly:

(1) cut down, fell, destroy, remove, injure, damage, or carry away any timber or forest product placed or growing for any use or purpose whatsoever, or timber or forest product lying or growing belonging to another person, without permission from the owner of the timber or forest product; or

(2) deface the mark of a log, forest product, or other valuable timber in a river or other place.

(b) Any person who violates subsection (a) of this section shall:

(1) for a first offense, be imprisoned not more than one year or fined not more than \$20,000.00, or both; or

(2) for a second or subsequent offense, be imprisoned not more than two years or fined not more than \$50,000.00, or both.

Sec. 2. 4 V.S.A. § 1102(b) is amended to read:

(b) The Judicial Bureau shall have jurisdiction of the following matters:

* * *

~~(21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units. [Repealed.]~~

Sec. 3 . EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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

Proposal of Amendment; Third Reading Ordered

H. 860.

Senator Starr, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to on-farm livestock slaughter.

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

Sec. 1. 6 V.S.A. § 3311a is amended to read:

§ 3311a. LIVESTOCK; INSPECTION; LICENSING; PERSONAL SLAUGHTER; ITINERANT SLAUGHTER

(a) As used in this section:

(1) “Assist in the slaughter of livestock” means the act of slaughtering or butchering an animal and shall not mean the farmer’s provision of a site on the farm for slaughter, provision of implements for slaughter, or the service of disposal of the carcass or offal from slaughter.

(2) “Sanitary conditions” means a site on a farm that is:

(A) clean and free of contaminants; and

(B) located or designed in a way to prevent:

(i) the occurrence of water pollution; and

(ii) the adulteration of the livestock or the slaughtered meat.

(b) The requirement for a license under section 3306 of this title or for inspection under this chapter shall not apply to the slaughter by an individual of livestock that the individual raised for the individual’s exclusive use or for the use of members of his or her household and his or her nonpaying guests and employees.

(c) The requirement for a license under section 3306 of this title or for inspection under this chapter shall not apply to the slaughter of livestock that occurs in a manner that meets all of the following requirements:

(1) an individual purchases livestock from a farmer that raised the livestock;

(2) the farmer is registered with the Secretary, on a form provided by the Secretary, as selling livestock for slaughter under this subsection;

(3) the individual who purchased the livestock performs the act of slaughtering the livestock;

~~(3)~~(4) the act of slaughter occurs, after approval from the farmer who sold the livestock, on a site on the farm where the livestock was purchased;

~~(4)~~(5) the slaughter is conducted under sanitary conditions;

~~(5)~~(6) the farmer who sold the livestock to the individual does not assist in the slaughter of the livestock;

~~(6)~~(7) no more than the following number of livestock per year are slaughtered under this subsection:

- (A) ~~10~~ 15 swine;
 (B) ~~three~~ five cattle;
 (C) ~~25~~ 40 sheep or goats; or

(D) any combination of swine, cattle, sheep, or goats, provided that no more than ~~3,500~~ 6,000 pounds of the live weight of livestock are slaughtered per year; ~~and~~

~~(7)~~(8) the farmer who sold the livestock to the individual maintains a record of each slaughter conducted under this subsection and reports to the Secretary, on a form provided by the Secretary, on or before the 15th day of each month regarding all slaughter activity conducted under this subsection in the previous month calendar quarter. If a farmer fails to report slaughter activity conducted under this subsection, the Secretary, in addition to any enforcement action available under this chapter or chapter 1 of this title, may suspend the authority of the farmer to sell animals to an individual for slaughter under this subsection; and

(9) the slaughtered livestock may be halved or quartered by the individual who purchased the livestock but solely for the purpose of transport from the farm.

* * *

Sec. 2. 2013 Acts and Resolves No. 83, Sec. 13 is amended to read:

Sec. 13. REPEAL; LIVESTOCK SLAUGHTER EXEMPTIONS

6 V.S.A. § 3311a (livestock slaughter inspection and license exemptions) shall be repealed on July 1, ~~2016~~ 2019.

Sec. 3. EDUCATION AND OUTREACH; ON-FARM SLAUGHTER

The Secretary of Agriculture, Food and Markets, in consultation with interested parties, shall conduct outreach and education regarding the availability of and requirements for livestock slaughter under 6 V.S.A. § 3311a(c). The education and outreach may include educational materials, workshops, or classes regarding compliance with the requirements of 6 V.S.A. § 3311a(c).

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

Proposal of Amendment; Third Reading Ordered

H. 861.

Senator Zuckerman, for the Committee on Agriculture, to which was referred House bill entitled:

An act relating to regulation of treated article pesticides.

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

Sec. 1. 6 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

As used in this chapter unless the context clearly requires otherwise:

* * *

(4) “Economic poison” shall have the meaning stated in subdivision 911(5) of this title.

(5) “Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organisms, which the ~~secretary~~ Secretary declares as being injurious to health or environment. Pest shall not mean any viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals.

(6) “Pesticide” for the purposes of this chapter shall be used interchangeably with “~~economic poison~~” poison.”

(7) “Treated article” means a pesticide or class of pesticides exempt under 40 C.F.R. § 152.25(a) from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136-136y.

Sec. 2. 6 V.S.A. § 1102 is amended to read:

§ 1102. PESTICIDE ADVISORY COUNCIL ESTABLISHED

(a) The Pesticide Advisory Council is established and attached to the Agency of Agriculture, Food and Markets. Members of the Council, except those public members appointed by the Governor, shall be qualified individuals who, by experience and training, are knowledgeable in one or more areas associated with pest control. The Secretary, or Commissioner as the case may be, shall represent each Department or Agency on the Council:

- (1) The Department of Fish and Wildlife.
- (2) The Department of Environmental Conservation.

-
- (3) The Agency of Agriculture, Food and Markets.
 - (4) The Department of Forests, Parks and Recreation.
 - (5) The Department of Health.
 - (6) The Agency of Transportation.
 - (7) One physician from the College of Medicine of the University of Vermont nominated by its dean.
 - (8) One representative in the area of entomology, plant pathology, or weed control from the University of Vermont Extension ~~Service~~ to be named by the director.
 - (9) One representative in the area of pesticide research from the Vermont Agricultural Experiment Station named by the dean of the College of Agriculture and Life Sciences of the University of Vermont.
 - (10) Two members appointed by the Governor. In choosing these members, the ~~governor~~ Governor shall consider people who have knowledge and qualities that could be useful in pursuing the goals and functions of the Council. One of these members shall have practical experience in commercial agricultural production and shall be appointed in consultation with the Secretary.

* * *

(d) The functions of the Council are:

- (1) To review insect, plant disease, weed, nematode, rodent, noxious wildlife, and other pest control programs within the State and to assess the effect of such programs on human health and comfort, natural resources, water, wildlife, and food and ~~fi~~ fiber production; and, where necessary, make recommendations for greater safety and efficiency.
- (2) To serve as the advisory group to State agencies having responsibilities for the use of pesticides as well as to other State agencies and departments.
- (3) To advise the Executive Branch of State government with respect to legislation concerning the use of various pest control measures.
- (4) To suggest programs, policies, and legislation for wise and effective pesticide use that lead to an overall reduction in the use of pesticides in Vermont consistent with sound pest or vegetative management practices.
- (5) To recommend studies necessary for the performance of its functions as established under this section.

(6) To recommend targets with respect to the State goal of achieving an overall reduction in the use of pesticides consistent with sound pest or vegetative management practices, and to issue an annual report to the General Assembly, detailing the State's progress in reaching those targets and attaining that goal. The targets should be designed to enable evaluation of multiple measures of pesticide usage, use patterns, and associated risks. Targets should take into consideration at a minimum the following:

- (A) reducing the amount of acreage where pesticides are used;
- (B) reducing the risks associated with the use of pesticides;
- (C) increasing the acreage managed by means of integrated pest management techniques;
- (D) decreasing, within each level of comparable risk, the quantity of pesticides applied per acre; and
- (E) making recommendations regarding the implementation of other management practices that result in decreased pesticide use.

(7) To recommend to the Secretary policies, proposed rules, or legislation for the regulation of the use of a treated article when the Council determines that use of the treated article will have a hazardous or long-term deleterious effect on the environment in Vermont, presents a likely risk to human health, or is dangerous. In developing recommendations under this subdivision, the Council shall review:

- (A) alternatives available to a user of a treated article; and
- (B) the potential effects on the environment or risks to human health from use of the available alternatives to a treated article.

(e) The Council shall meet semiannually, once in the fall and once in the spring. Meetings at other times may be called by the Governor, by the Chair, or by a member of the Council. Attendance at Council meetings shall not be required of the Commissioners of Departments within the Agency of Natural Resources, or their designees; however, at least one of these Commissioners, or the Commissioner's designee, shall attend each meeting of the Council. ~~Council~~ The Council's proceedings shall be open to the public and its deliberations shall be recorded and made available to the public, along with its work product.

Sec. 3. 6 V.S.A. § 1105a is added to read:

§ 1105a. TREATED ARTICLES; POWERS OF SECRETARY; BEST MANAGEMENT PRACTICES

(a) The Secretary of Agriculture, Food and Markets, upon the recommendation of the Pesticide Advisory Council, may adopt by rule:

(1) best management practices, standards, procedures, and requirements relating to the sale, use, storage, or disposal of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(2) requirements for the response to or corrective actions for exigent circumstances or contamination from a treated article that presents a threat to human health or the environment;

(3) requirements by the Secretary for the examination or inspection of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous;

(4) requirements for persons selling treated articles to keep or make available to the Secretary records of sale of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous; or

(5) requirements for reporting of incidents resulting from accidental contamination from or misuse of treated articles the use of which the Pesticide Advisory Council has determined will have a hazardous or long-term deleterious effect on the environment, presents a likely risk to human health, or is dangerous.

(b) At least 30 days prior to pre-filing a rule authorized under subsection (a) of this section with the Interagency Committee on Administrative Rules under 3 V.S.A. § 837, the Secretary shall submit a copy of the draft rule to the Senate Committee on Agriculture and the House Committee on Agriculture and Forest Products for review.

Sec. 4. 6 V.S.A. § 1104(3) is amended to read:

(3) Adopt standards, procedures, and requirements relating to the display, sale, use, application, treatment, storage, or disposal of economic poisons or their waste products and limit the conditions under which the same may be sold, used, treated, stored, or disposed of. The use of pesticides which the ~~secretary~~ Secretary finds to have a hazardous or ~~long-term~~ long-term deleterious effect on the environment shall be restricted, and permits shall be required for their use in accordance with regulations adopted by the ~~secretary~~ Secretary. Specific uses of certain pesticides deemed to ~~be unwise or~~ present a likely risk to human health or be dangerous shall be restricted by regulation or by ordering the deletion of certain uses for registered pesticides from the label on pesticide products to be marketed in the ~~state~~ State. Approved methods for

the safe display, storage, and shipping of poisonous pesticides shall be prescribed and enforced. Procedures for the disposal of pesticides which are illegal, obsolete, surplus, or in damaged containers shall be adopted and enforced with the cooperation of the ~~agency of natural resources~~ Agency of Natural Resources;

Sec. 5. CONSISTENCY OF TREATED ARTICLE REQUIREMENTS

The Secretary of Agriculture, Food and Markets shall not establish requirements, best management practices, standards, or procedures under 6 V.S.A. § 1105a for a treated article, class of treated articles, or release from a treated article when, and to the extent that, the sale, use, storage, disposal, inspection, recordkeeping, reporting, or corrective action of a treated article, class of treated article, or release from a treated article is regulated by another agency, department, board, or instrumentality of the State under rule, order, practice, procedure, or exercise of statutory authority.

Sec. 6. EFFECTIVE DATE

The act shall take effect on July 1, 2016.

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

Recess

On motion of Senator Campbell the Senate recessed until 12:15 P.M.

Called to Order

The Senate was called to order by the President.

Senate Resolution Adopted

S.R. 12.

Senate resolution entitled:

Senate resolution amending the permanent rules of the Senate

Was taken up.

Thereupon, pending the question, Shall the Senate resolution be adopted?, Senators Ayer Baruth, Benning, Campbell, Flory and Mazza move to amend SR.12 in the first instance by striking out Rule 102(c) in its entirety and inserting in lieu thereof the following:

(c) The Rules Committee shall develop and adopt a policy and procedure for receiving and reviewing allegations of ethical violations of Senators and procedures for when information and documents are confidential

and public. Revisions to the policy and procedure may be proposed by the Panel to the Rules Committee, which shall consider the proposal and report the proposal to the full Senate with recommendation for the Senate's consideration.

Which was agreed to.

Thereupon, pending the question, Shall the Senate resolution be adopted?, Senator Lyons, Baruth, Benning, Campbell, Flory and Mazza move to amend SR.12 in the second instance by striking out Rule 103 in its entirety and inserting in lieu thereof the following:

103. Disclosure:

On or before the 10th day of the beginning of the biennium, each senator shall submit to the Secretary a disclosure form. The form shall be signed by the senator and be publicly available. A senator shall update the senator's disclosure form as circumstances require. The initial form shall be developed by the Secretary. Changes to the form shall be proposed by the Panel to the Rules Committee, which shall consider the proposal and report the proposal to the full Senate with recommendation.

Which was agreed to.

Thereupon, the Senate reviewed, amended and approved the initial disclosure form.

Thereupon, the Senate resolution was adopted.

On motion of Senator Campbell, the Vermont Senate Ethics Panel Procedure adopted by the Committee on Rules pursuant to the provisions of Senate Rule 102 and the initial disclosure form pursuant to Senate Rule 103 were ordered entered into the Journal, and are as follows:

Procedure for Handling Reported Alleged Ethical Violations

1. Reports must be in writing and signed by the Reporter. A report may be made by any person, but it must be in regard to alleged unethical conduct committed by a member during the current biennium or during the period between when the Senate adjourned during the last year of the prior biennium and the end of the current biennium.
2. The Panel shall provide the Respondent a copy of the report. The Respondent may file a response with the Panel. No Panel member shall participate as a Panel member for a report for which the Panel member is the Reporter or the Respondent.
3. The Panel shall make a preliminary review of the report to determine whether there is probable cause to believe an ethical violation

pertaining to the Vermont Constitution or Senate Rules has occurred, which may include judging the qualifications of a member.

- A. If this criterion is not met, the report is closed and remains confidential. Notice is sent to the Reporter and the Respondent.
- B. If this criterion is met, the Panel proceeds with an investigation.

4. Investigations.

- A. General. An investigation includes interviewing witnesses and collecting any available documents.
- B. Confidentiality. The investigation is confidential.
- C. All proceedings of the Committee pursuant to this paragraph shall remain confidential.

D. Outcome of investigation.

- i. If the Panel determines that no ethical violation occurred; an ethical violation occurred but it is minor in nature; or there is not enough evidence to support a charge of an ethical violation, the complaint is closed and remains confidential. Notice of the Panel's decision is sent to the Reporter and the Respondent.

- ii. If the Panel determines there are reasonable grounds to believe the Respondent committed an ethical violation and the report of an alleged ethical violation is not closed as provided in subdivision (i) of this subdivision (D):

- I. The Panel may enter into a confidential stipulation with the Respondent that may include a warning or discipline, such as a reprimand. The Panel shall advise the Reporter of the specifics of the remedial action taken.

- II. If the Respondent chooses not to enter into a stipulation, the Panel shall draft charges and set the matter for a hearing. The Reporter and the Respondent shall receive a copy of the charges and the details regarding the time, date, and location of the hearing. The Respondent may file an answer to the charges, a copy of which the Panel shall provide to the Reporter.

5. Hearings.

- A. General. The Panel shall conduct a hearing on the charges. The Committee shall have the power to take testimony under oath and to issue subpoenas and to issue subpoenas duces tecum in accordance with Vermont law. The Respondent shall be entitled to appear, present his or her position, present evidence, cross examine witnesses, and call witnesses. The Chair of the Panel shall preside and the Panel may hire independent counsel. The Respondent may hire his or her own counsel at the Respondent's expense.
- B. Confidentiality. The hearing is closed to the public, unless the Respondent asks that it be open to the public.
- C. Rules of procedure and evidence. The Panel is not bound by technical rules of evidence and may admit evidence that the Panel considers to be reliable, material, and relevant. The Chair makes evidentiary rulings, which may be overruled by a majority of the Panel present at the hearing. The decision of the Panel cannot be based solely on hearsay evidence.
- D. Burden of proof. Burden of proof that an ethical violation occurred is clear and convincing evidence. This standard indicates that the alleged ethical violation is highly probable or reasonably certain. Evidence is "clear" if it is certain, unambiguous, and plain to the understanding; and it is "convincing" if it is reasonable and persuasive.

6. Findings.

- A. If the Panel finds an ethical violation did not occur, it will dismiss the charges. This dismissal is confidential. Notice of dismissal is sent to the Complainant and the Reporter.
- B. If the Panel finds an ethical violation occurred, it will introduce for the Senate's consideration a Senate resolution containing the charges, the evidence presented, the Panel's findings, and its recommendations for disciplinary action.

7. Confidentiality and maintenance of records.

- A. Confidentiality. Except for the Senate resolution described in subdivision (6)(B) of this Procedure:
 - i. Members of the Panel, the office of the Senate Secretary's Office and the Office of Legislative Council shall keep confidential any information received and any

records produced or acquired in accordance with this Procedure.

- ii. All records produced or acquired in accordance with this Procedure are not subject to the Public Records Act.

- B. Maintenance of records. The Office of Secretary of the Senate shall maintain all records associated with handling any ethical report under this Procedure.

Senate Disclosure Form

1. Income: State the source, but not amount, of all personal taxable income that generates more than \$10,000.00 annually. If you are self-employed, indicate the nature of that employment. (Use a separate sheet of paper if necessary.)

2. Corporate Ownership: Identify any corporation in which you have a controlling interest. (Use a separate sheet of paper if necessary.)

3. Boards, Commissions & Associations: List any board, commission or association with which you are affiliated. For any such entity in which you are an officer, place a check on the line on the right. (Use a separate sheet of paper if necessary.)

Signature

Date

Adjournment

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

Called to Order

The Senate was called to order by the President.

Bill Amended; Third Reading Ordered

S. 184.

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

An act relating to establishing a State Ethics Commission.

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

* * * Former Legislators; Lobbying Restriction * * *

Sec. 1. 2 V.S.A. § 266 is amended to read:

§ 266. PROHIBITED CONDUCT

* * *

(b) A legislator, for one year after leaving office, shall not be a lobbyist in this State.

(c) As used in this section, "candidate's committee," "contribution," and "legislative leadership political committee" shall have the same meanings as in 17 V.S.A. § ~~2904~~ chapter 61 (campaign finance).

* * * Former Executive Officers; Postemployment Restrictions * * *

Sec. 2. 3 V.S.A. § 267 is added to read:

§ 267. EXECUTIVE OFFICERS; POSTEMPLOYMENT RESTRICTIONS

(a) Prior participation while in State employ.

(1) An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which:

(A) the State is a party or has a direct and substantial interest; and

(B) the Executive officer had participated personally and substantively while in State employ.

(2) The prohibition set forth in subdivision (1) of this subsection applies to any matter the Executive officer directly handled, supervised, or managed or gave substantial input, advice, or comment or benefited from, either through discussing, attending meetings on, or reviewing materials prepared regarding the matter.

(b) Prior official responsibility. An Executive officer, for one year after leaving office, shall not, for pecuniary gain, be an advocate for any private entity before any public body or the General Assembly or its committees regarding any particular matter in which the officer had exercised any official responsibility.

(c) Public body enforcement. A public body shall disqualify a former Executive officer from his or her appearance or participation in a particular matter if the officer's appearance or participation is prohibited under this section.

(d) Definitions. As used in this section:

(1) "Executive officer" means:

(A) the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(2) "Private entity" means any person, corporation, partnership, joint venture, or association, whether organized for profit or not for profit, except one specifically chartered by the State of Vermont or that relies upon taxes for at least 50 percent of its revenues.

(3) "Public body" means any agency, department, division, or office and any board or commission of any such entity, or any independent board or commission, in the Executive Branch of the State.

* * * State Office and Legislative Candidates; Disclosure Form * * *

Sec. 3. 17 V.S.A. § 2414 is added to read:

§ 2414. CANDIDATES FOR STATE AND LEGISLATIVE OFFICE;
DISCLOSURE FORM

(a) Each candidate for State office, State Senator, or State Representative shall file with the officer with whom consent of candidate forms are filed, along with his or her consent, a disclosure form prepared by the Secretary of State that contains the following information in regard to the candidate's previous calendar year:

(1) Each source, but not amount, of personal income totaling \$10,000.00 or more, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address, and if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients;

(B) aggregated investment income, described generally as “investments;” and

(C) a lease or contract with the State held or entered into by the candidate or a company in which the candidate holds a controlling interest.

(2) Any board, commission, association, or other entity on which the candidate serves and a description of that position.

(3) Any company in which the candidate holds a controlling interest.

(b)(1) A senatorial district clerk or representative district clerk who receives a disclosure form under this section shall forward a copy of the disclosure to the Secretary of State within three business days of receiving it.

(2) The Secretary shall post a copy of any disclosure forms he or she receives under this section on his or her official State website.

(c) A candidate who fails to file a disclosure form as required by this section shall not have his or her name printed on the primary ballot, if applicable, or the general election ballot, except if the candidate wins the primary as a write-in candidate, he or she shall have one week from the date of the primary to file the disclosure form in order to be placed on the general election ballot.

Sec. 4. [Deleted.]

* * * Campaign Finance Investigations; Reports to Ethics Commission * * *

Sec. 5. 17 V.S.A. § 2904 is amended to read:

§ 2904. CIVIL INVESTIGATION

(a)(1) The Attorney General or a State’s Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

* * *

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule ~~or regulation~~ made pursuant to this chapter.

* * *

Sec. 6. 17 V.S.A. § 2904a is added to read:

§ 2904a. REPORTS TO STATE ETHICS COMMISSION

Upon his or her receipt of a complaint made in regard to a violation of this chapter or of any rule made pursuant to this chapter, or upon his or her investigation of such an alleged violation without receiving a complaint, the Attorney General or a State's Attorney shall:

(1) Forward a copy of the complaint or a description of the investigation to the State Ethics Commission established in 3 V.S.A. chapter 31. The Attorney General or State's Attorney shall provide this information to the Commission within 10 days of his or her receipt of the complaint or the start of the investigation.

(2) Report to the Commission regarding his or her decision as to whether to bring an enforcement action as a result of that complaint or investigation. The Attorney General or State's Attorney shall make this report within 10 days of that decision.

Sec. 7. 3 V.S.A. Part 1, chapter 31 is added to read:

CHAPTER 31. GOVERNMENTAL ETHICS

Subchapter 1. General Provisions

§ 1201. DEFINITIONS

As used in this chapter:

(1) "Candidate" and "candidate's committee" shall have the same meanings as in 17 V.S.A. § 2901.

(2) "Commission" means the State Ethics Commission established under subchapter 3 of this chapter.

(3) "Executive officer" means:

(A) a State officer; or

(B) under the Office of the Governor, an agency secretary or deputy or a department commissioner or deputy.

(4) “Lobbyist” shall have the same meaning as in 2 V.S.A. § 261.

(5) “Political committee” and “political party” shall have the same meanings as in 17 V.S.A. § 2901.

(6) “State officer” means the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, or Attorney General.

§ 1202. STATE CODE OF ETHICS

(a) The Department of Human Resources shall create and maintain a State Code of Ethics in accordance with section 315 of this title.

(b) In consultation with the Commissioner of Human Resources, each State officer may supplement the State Code of Ethics for the specific needs of his or her office.

Subchapter 2. Disclosures

§ 1211. EXECUTIVE OFFICERS; BIENNIAL DISCLOSURE

(a) Biennially, each Executive officer shall file with the State Ethics Commission a disclosure form that contains the following information in regard to the officer’s previous calendar year:

(1) Each source, but not amount, of personal income totaling \$10,000.00 or more, including any of the sources meeting that total described as follows:

(A) employment, including the employer or business name and address, and if self-employed, a description of the nature of the self-employment without needing to disclose any individual clients;

(B) aggregated investment income, described generally as “investments;” and

(C) a lease or contract with the State held or entered into by the officer or a company in which the officer holds a controlling interest.

(2) Any board, commission, association, or other entity on which the officer serves and a description of that position.

(3) Any company in which the officer holds a controlling interest.

(b) An officer shall file his or her disclosure on or before January 15 of the odd-numbered year or, if he or she is appointed after January 15, within 10 days after that appointment.

§ 1212. COMMISSION MEMBERS; BIENNIAL DISCLOSURE

(a) Biennially, each member of the State Ethics Commission shall file with the Executive Director of the Commission a disclosure form that contains the information that Executive officers are required to disclose under section 1211 of this subchapter.

(b) A member shall file his or her disclosure on or before January 15 of the first year of his or her appointment or, if the member is appointed after January 15, within 10 days after that appointment, and shall file subsequent disclosures biennially thereafter.

§ 1213. DISCLOSURES; GENERALLY

(a) The Executive Director of the Commission shall prepare on behalf of the Commission any disclosure form required to be filed with it, and shall make those forms available on the Commission's website.

(b) The Executive Director shall post a copy of any disclosure form the Commission receives on the Commission's website.

Subchapter 3. State Ethics Commission

§ 1221. STATE ETHICS COMMISSION

(a) Creation. There is created within the Executive Branch an independent commission named the State Ethics Commission to accept, review, make referrals regarding, and track complaints of alleged violations of the State Code of Ethics, of governmental conduct regulated by law, and of the State's campaign finance law set forth in 17 V.S.A. chapter 61; to provide ethics training; and to issue advisory opinions regarding ethical conduct.

(b) Membership.

(1) The Commission shall be composed of the following five members:

(A) a chair of the Commission, who shall be appointed by the Chief Justice of the Supreme Court;

(B) one member appointed by the Vermont affiliate of the American Civil Liberties Union;

(C) one member appointed by the League of Women Voters of Vermont;

(D) one member appointed by the Vermont Bar Association; and

(E) one member appointed by the Executive Director of the Human Rights Commission.

(2) A member shall not:

(A) hold any office in the Legislative, Executive, or Judicial Branch of State government or otherwise be employed by the State;

(B) hold or enter into any lease or contract with the State, or have a controlling interest in a company that holds or enters into a lease or contract with the State;

(C) be a lobbyist;

(D) be a candidate; or

(E) hold any office in a candidate's committee, a political committee, or a political party.

(3) A member may be removed for cause by the remaining members of the Commission in accordance with the Vermont Administrative Procedure Act.

(4)(A) A member shall serve a term of three years and until a successor is appointed. A term shall begin on January 1 of the year of appointment and run through December 31 of the last year of the term. Terms of members shall be staggered so that not all terms expire at the same time.

(B) A vacancy created before the expiration of a term shall be filled in the same manner as the original appointment for the unexpired portion of the term.

(C) A member shall not serve more than two terms. A member appointed to fill a vacancy created before the expiration of a term shall not be deemed to have served a term for the purpose of this subdivision (C).

(c) Executive Director.

(1) The Commission shall be staffed by an Executive Director, who shall be appointed by and serve at the pleasure of the Commission and who shall be a part-time exempt State employee.

(2) The Executive Director shall provide administrative support as requested by the Commission, in addition to any other duties required by this chapter.

(d) Confidentiality. The Commission and the Executive Director shall maintain the confidentiality required by this chapter.

(e) Meetings. Meetings of the Commission may be called by the Chair and shall be called upon the request of any other two Commission members.

(f) Reimbursement. Each member of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

§ 1222. COMMISSION MEMBER DUTIES AND PROHIBITED CONDUCT

(a) Conflicts of interest.

(1) Prohibition; recusal.

(A) A Commission member shall not participate in any Commission matter in which he or she has a conflict of interest and shall recuse him- or herself from participation in that matter.

(B) The failure of a Commission member to recuse him- or herself as described in subdivision (A) of this subdivision (1) may be grounds for the Commission to discipline or remove that member.

(2) Disclosure of conflict of interest.

(A) A Commission member who has reason to believe he or she has a conflict of interest in a Commission matter shall disclose that he or she has that belief and disclose the nature of the conflict of interest. Alternatively, a Commission member may request that another Commission member recuse him- or herself from a Commission matter due to a conflict of interest.

(B) Once there has been a disclosure of a member's conflict of interest, members of the Commission shall be afforded the opportunity to ask questions or make comments about the situation to address the conflict.

(3) Postrecusal procedure. A Commission member who has recused him- or herself from participating on a Commission matter shall not sit or deliberate with the Commission on that matter or otherwise act as a Commission member on that matter, but may participate in that matter as a member of the public.

(4) Definition. As used in this subsection, "conflict of interest" means an interest of a member that is in conflict with the proper discharge of his or her official duties due to a significant personal or financial interest of the member, a person within the member's immediate family, or the member's business associate. "Conflict of interest" does not include any interest that is not greater than that of any other persons generally affected by the outcome of a matter.

(b) Gifts. A Commission member shall not accept a gift given by virtue of his or her membership on the Commission.

§ 1223. PROCEDURE FOR HANDLING COMPLAINTS

(a) Accepting complaints. On behalf of the Commission, the Executive Director shall accept complaints from any source regarding alleged violations of the State Code of Ethics, of governmental conduct regulated by law, or of the State's campaign finance law set forth in 17 V.S.A. chapter 61.

(b) Preliminary review by Executive Director. The Executive Director shall conduct a preliminary review of complaints made to the Commission in order to take action as set forth in this subsection.

(1) State Code of Ethics.

(A) If the complaint alleges a violation of the State Code of Ethics, the Executive Director shall refer the complaint to the Commissioner of Human Resources.

(B) The Commissioner shall report back to the Executive Director regarding the final disposition of a complaint referred under this subdivision (A) within 10 days of that final disposition.

(2) Governmental conduct regulated by law. If the Executive Director finds that a State officer or employee may have committed a violation of governmental conduct regulated by law, that a former legislator may have violated 2 V.S.A. § 266(b), or that a former Executive officer may have violated 3 V.S.A. § 267, the Executive Director shall submit the complaint to the Commission for its review.

(3) Campaign finance.

(A) If the complaint alleges a violation of campaign finance law, the Executive Director shall refer the complaint to the Attorney General or to the State's Attorney of jurisdiction, as appropriate.

(B) The Attorney General or State's Attorney shall report back to the Executive Director regarding his or her decision as to whether to bring an enforcement action as a result of a complaint referred under this subdivision (A) as set forth in 17 V.S.A. § 2904a.

(4) Legislative and Judicial Branches.

(A) If the complaint is in regard to conduct committed by a State Senator, the Executive Director shall refer the complaint to the Senate Ethics Panel.

(B) If the complaint is in regard to conduct committed by a State Representative, the Executive Director shall refer the complaint to the House Ethics Panel.

(C) If the complaint is in regard to conduct committed by a judicial officer, the Executive Director shall refer the complaint to the Judicial Conduct Board.

(D) If any of the complaints described in subdivisions (A)-(C) of this subdivision (4) also allege that a crime has been committed, the Executive Director shall also refer the complaint to the Attorney General and the State's Attorney of jurisdiction.

(5) Closures. The Executive Director shall close any complaint that he or she does not submit or refer as set forth in subdivisions (1)-(4) of this subsection.

(c) Commission reviews and referrals.

(1) For any complaint regarding an alleged violation of governmental conduct regulated by law that the Executive Director submits to it under subdivision (b)(2) of this section, the Commission shall meet to review the complaint. This meeting shall not be open to the public and is exempt from the requirements of the Open Meeting Law.

(2)(A) If, after its review, the Commission finds that there may have been a violation of governmental conduct regulated by law, it shall refer the complaint to the Attorney General and the State's Attorney of jurisdiction.

(B) If, after its review, the Commission finds that there has not been a violation of governmental conduct regulated by law, it shall close the complaint.

(d) Confidentiality. Except for complaints regarding alleged campaign finance law violations referred under subdivision (b)(3) of this section, complaints and related documents in the custody of the Commission shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1224. COMMISSION ETHICS TRAINING

At least annually, in collaboration with the Department of Human Resources, the Commission shall make available to legislators, State officers, and State employees training on issues related to governmental ethics.

§ 1225. EXECUTIVE DIRECTOR ADVISORY OPINIONS

(a)(1) The Executive Director may issue to an Executive officer or other State employee, upon his or her request, an advisory opinion regarding any provision of this chapter or any issue related to governmental ethics.

(2) The Executive Director may consult with members of the Commission in preparing an advisory opinion.

(b) An advisory opinion issued under this section shall be exempt from public inspection and copying under the Public Records Act and kept confidential.

§ 1226. COMMISSION REPORTS

Annually, on or before January 15, the Commission shall report to the General Assembly regarding the following issues:

(1) Complaints. The number and a summary of the complaints made to it, separating the complaints by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This summary of complaints shall not include any personal identifying information.

(2) Advisory opinions. The number and a summary of the advisory opinions the Executive Director issued, separating the opinions by topic. This summary of advisory opinions shall not include any personal identifying information.

(3) Recommendations. Any recommendations for legislative action to address governmental ethics or provisions of campaign finance law.

* * * Implementation * * *

Sec. 8. APPLICABILITY OF EMPLOYMENT RESTRICTIONS

The provisions of Secs. 1 and 2 of this act that restrict employment shall not apply to any employment in effect on the effective date of those sections.

Sec. 9. DEPARTMENT OF HUMAN RESOURCES; STATE CODE OF ETHICS CREATION

The Department of Human Resources shall create the State Code of Ethics described in 3 V.S.A. § 1202 in Sec. 7 of this act on or before January 1, 2017.

Sec. 10. IMPLEMENTATION OF THE STATE ETHICS COMMISSION

(a) The State Ethics Commission, created in Sec. 7 of this act, is established on January 1, 2017.

(b) Members of the Commission shall be appointed on or before October 15, 2016 in order to prepare as they deem necessary for the establishment of the Commission, including the hiring of the Commission's Executive Director. Terms of members shall officially begin on January 1, 2017.

(c)(1) In order to stagger the terms of the members of the State Ethics Commission as described in 3 V.S.A. § 1221(b)(4)(A), in Sec. 7 of this act, the initial terms of those members shall be as follows:

(A) the Chief Justice of the Supreme Court shall appoint the Chair for a three-year term;

(B) the Vermont affiliate of the American Civil Liberties Union shall appoint a member for a two-year term;

(C) the League of Women Voters of Vermont shall appoint a member for a one-year term;

(D) the Vermont Bar Association shall appoint a member for a three-year term; and

(E) the Executive Director of the Human Rights Commission shall appoint a member for a two-year term.

(2) After the expiration of the initial terms set forth in subdivision (1) of this subsection, Commission member terms shall be as set forth in 3 V.S.A. § 1221(b)(4)(A) in Sec. 7 of this act.

Sec. 11. CREATION OF STAFF POSITION FOR STATE ETHICS COMMISSION

(a) One (1) part-time exempt Executive Director position is created in the State Ethics Commission set forth in Sec. 7 of this act by using an existing position in the position pool.

(b) The amount of \$1.00 is appropriated to fund the position described in subsection (a) of this section.

Sec. 12. 3 V.S.A. § 260 is amended to read:

§ 260. LOCATION OF OFFICES

* * *

(c) The principal office of each of the following boards and divisions shall be located in Montpelier: Aeronautics Board, Division for Historic Preservation, Board of Libraries, and Division of Recreation, and State Ethics Commission.

* * *

Sec. 13. BUILDINGS AND GENERAL SERVICES; SPACE ALLOCATION

The Commissioner of Buildings and General Services shall allocate space for the State Ethics Commission established in Sec. 7 of this act in accordance with 3 V.S.A. § 260 set forth in Sec. 12 of this act. This space shall be allocated on or before October 15, 2016.

* * * Municipal Conflicts of Interest * * *

Sec. 14. GENERAL ASSEMBLY RECOMMENDATION; ISSUES RELATING TO ETHICS AND CONFLICTS OF INTEREST IN MUNICIPALITIES

(a) The General Assembly recommends that municipalities use existing statutory authority to address municipal issues relating to ethics and conflicts of interest. Provisions of law addressing those issues include the following:

(1) 24 V.S.A. § 1202, regarding the ability of a local board to use the Municipal Administrative Procedure Act set forth in 24 V.S.A. chapter 36, which includes compliance with 12 V.S.A. § 61(a), regarding disqualifications for interest for persons acting in a judicial capacity;

(2) 24 V.S.A. § 1984, regarding the ability of the voters of a town, city, or incorporated village to adopt a conflict of interest policy for their elected and appointed officials;

(3) 24 V.S.A. § 2291(20), regarding the ability of a town, city, or incorporated village to establish a conflict of interest policy to apply to all elected or appointed officials in the municipality; and

(4) 24 V.S.A. § 4461(a), regarding the requirement that an appropriate municipal panel adopt rules of ethics with respect to conflicts of interest as part of its development review procedure.

(b) On or before January 1, 2017, the Vermont League of Cities and Towns shall report to the General Assembly on the number of towns that are using the statutory authority described in subsection (a) of this section, and which of those authorities are used.

* * * Effective Dates * * *

Sec. 15. EFFECTIVE DATES

This act shall take effect as follows:

(1) The following sections shall take effect on July 1, 2016:

(A) Sec. 1, 2 V.S.A. § 266 (former legislators; lobbying; prohibited employment); and

(B) Sec. 2, 3 V.S.A. § 267 (former Executive officers; prohibited employment).

(2) The following sections shall take effect on January 1, 2017:

(A) Sec. 6, 17 V.S.A. § 2904a (Attorney General or State's Attorney; campaign finance; reports to State Ethics Commission); and

(B) Sec. 7, 3 V.S.A. Part 1, chapter 31 (governmental ethics).

(3) Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form) shall take effect on January 1, 2018.

(4) This section and all other sections shall take effect on passage.

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

First: By adding a new section to be numbered Sec. 13a to read as follows:

Sec. 13a. STATE ETHICS COMMISSION FUNDING SOURCE;
SURCHARGE; REPEAL

(a) Surcharge.

(1) In fiscal year 2017 and thereafter, a surcharge of up to 2.3%, but no greater than the cost of the activities of the State Ethics Commission set forth

in Sec. 7 of this act, on the per position portion of the charges authorized in 3 V.S.A. § 2283(b)(2) shall be assessed to all Executive Branch agencies, departments, and offices and shall be paid by all assessed entities solely with State funds.

(2) The amount collected shall be accounted for within the Human Resource Services Internal Service Fund and used solely for the purposes of funding the activities of the State Ethics Commission set forth in Sec. 7 of this act.

(b) Repeal. This section shall be repealed on June 30, 2018.

Second: In Sec. 11 (creation of staff position for State Ethics Commission), by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) [Deleted.]

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, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, Senator Collamore, Benning, Bray, Pollina and White moved to amend the recommendation of amendment of the Committee on Government Operations by adding a new section to be numbered Sec. 10a to read as follows:

Sec. 10a. STATE ETHICS COMMISSION; RECOMMENDATIONS REGARDING CONTRIBUTIONS FROM STATE CONTRACTORS

(a) On or before September 1, 2017, the State Ethics Commission shall recommend to the General Assembly whether the State should prohibit campaign contributions to candidates for State office and to State officers from persons who contract with the State or who bid on such a contract.

(b) If the Commission determines that the General Assembly should enact such a prohibition, the Commission's recommendation shall include the following information:

(1) Whether there should be a minimum contract amount that would trigger the prohibition.

(2) The duration of the prohibition.

(3) Whether the prohibition should apply both to persons who bid for a contract and persons who are awarded a contract. If the Commission recommends that persons who bid for a contract should be included in the

prohibition, the Commission shall also recommend whether to include prequalified vendors in the prohibition and, if so, the manner in which the prohibition would apply.

(4) If a contractor or prospective contractor is a business entity, whether any principals of the business—such as an individual who has a controlling interest in it—should be included in the prohibition, and whether any family members of an individual who is a contractor, prospective contractor, or principal should be included in the prohibition.

(5) Any other information the Commission considers relevant.

Which was agreed to.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended?, Senator Benning moved to amend the recommendation of amendment of the Committee on Government Operations as amended, as follows:

First: In Sec. 3, 17 V.S.A. § 2414 (candidates for State and legislative office; disclosure form), in subdivision (a)(1), after the following: “but not amount, of personal” by striking out the following: “income totaling \$10,000.00 or more” and inserting in lieu thereof the following: taxable income totaling more than \$10,000.00

Second: In Sec. 7, 3 V.S.A. Part 1, chapter 31 (governmental ethics), in 3 V.S.A. § 1211 (Executive officers; biennial disclosure), in subdivision (a)(1), after the following: “but not amount, of personal” by striking out the following: “income totaling \$10,000.00 or more” and inserting in lieu thereof the following: taxable income totaling more than \$10,000.00

Which was agreed to.

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 on a roll call, Yeas 28, Nays 0.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Balint, Baruth, Benning, Bray, Campion, Collamore, Cummings, Degree, Doyle, Flory, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Riehle, Rodgers, Sears, Sirotkin, Starr, Westman, White, Zuckerman.

Those Senators who voted in the negative were: None.

Those Senators absent and not voting were: Campbell, McAllister (Suspended).

Message from the House No. 53

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 a House bill of the following title:

H. 882. An act relating to approval of amendments to the charter of the City of Burlington.

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

The House has considered a bill originating in the Senate of the following title:

S. 176. An act relating to disclosure of compliance with accessibility standards in the sale of residential construction.

And has passed the same in concurrence.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Wednesday, April 20, 2016.