

# House Calendar

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Thursday, May 10, 2018

128th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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**ACTION CALENDAR**

**Action Postponed Until May 10, 2018**

**Senate proposal of amendment to House proposal of amendment to  
Senate proposal of amendment**

**H. 908**

An act relating to the Administrative Procedure Act

**(Pending Question: Shall the House concur in the Senate Proposal of Amendment to the House Proposal of Amendment to the Senate Proposal of Amendment?)**

The Senate concurs in the House proposal of amendment with the following proposal of amendment thereto:

In Sec. 2, 3 V.S.A. chapter 25, in § 838 (filing of proposed rules), in subsection (b) (economic impact analysis; rules affecting small businesses and school districts), in subdivision (2) (small businesses) in the first sentence, after “the agency shall include” by inserting , when appropriate,

And, after the first sentence, by inserting a new sentence before subdivision (A) to read: When an agency determines that such an evaluation is not appropriate, the economic impact statement shall briefly explain the reasons for this determination.

(For text see House Journal May 4, 2018 )

**NEW BUSINESS**

**Third Reading**

**S. 261**

An act relating to mitigating trauma and toxic stress during childhood by strengthening child and family resilience

**Senate Proposal of Amendment**

**H. 707**

An act relating to the prevention of sexual harassment

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

Sec. 1. 21 V.S.A. § 495h is amended to read:

§ 495h. SEXUAL HARASSMENT

(a)(1) All employers, employment agencies, and labor organizations have an obligation to ensure a workplace free of sexual harassment.

(2) All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment.

\* \* \*

~~(c)(1) Employers shall provide individual copies of their written policies to current employees no later than November 1, 1993, and to new employees upon their being hired. Employers who have provided individual written notice to all employees within the 12 months prior to October 1, 1993, shall be exempt from having to provide an additional notice during the 1993 calendar year.~~

(2) If an employer makes changes to its policy against sexual harassment, it shall provide to all employees a written copy of the updated policy.

\* \* \*

~~(f)(1) Employers and labor organizations are encouraged to conduct an education and training program within one year after September 30, 1993 for all current employees and members, and for all new employees and members thereafter within one year of commencement of employment, that includes at a minimum all the information outlined in this section within one year after commencement of employment.~~

(2) Employers and labor organizations are encouraged to conduct an annual education and training program for all employees and members that includes at a minimum all the information outlined in this section.

~~(3) Employers are encouraged to conduct additional training for current supervisory and managerial employees and members within one year of September 30, 1993, and for new supervisory and managerial employees and members within one year of after commencement of employment or membership, which should include at a minimum the information outlined in subsection (b) of this section and, the specific responsibilities of supervisory and managerial employees, and the methods actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.~~

(4) Employers, labor organizations, and appropriate State agencies are encouraged to cooperate in making this training available.

(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that

does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(h)(1) An agreement to settle a claim of sexual harassment shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer.

(2) An agreement to settle a sexual harassment claim shall expressly state that:

(A) it does not prohibit, prevent, or otherwise restrict the individual who made the claim from doing any of the following:

(i) lodging a complaint of sexual harassment committed by any person with the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(ii) testifying, assisting, or participating in any manner with an investigation related to a claim of sexual harassment conducted by the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(iii) complying with a valid request for discovery in relation to civil litigation or testifying in a hearing or trial related to a claim of sexual harassment that is conducted by a court, pursuant to an arbitration agreement, or before another appropriate tribunal; or

(iv) exercising any right the individual may have pursuant to State or federal labor relations laws to engage in concerted activities with other employees for the purposes of collective bargaining or mutual aid and protection; and

(B) it does not waive any rights or claims that may arise after the date the settlement agreement is executed.

(3) Any provision of an agreement to settle a sexual harassment claim

that violates subdivision (1) or (2) of this subsection shall be void and unenforceable with respect to the individual who made the claim.

(4) Nothing in subdivision (2) of this subsection shall be construed to prevent an agreement to settle a sexual harassment claim from waiving or releasing the claimant's right to seek or obtain any remedies relating to sexual harassment of the claimant by another party to the agreement that occurred before the date on which the agreement is executed.

(i)(1)(A)(i) For the purpose of assessing compliance with the provisions of this section, the Attorney General or designee, or, if the employer is the State, the Human Rights Commission or designee, may, with 48 hours' notice, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any person who is authorized by the employer to receive or investigate complaints of sexual harassment, and examine an employer's records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section.

(ii) An employer may agree to waive or shorten the 48-hour notice period.

(iii) As used in this subsection (i), the term "records" includes de-identified data regarding the number of complaints of sexual harassment received and the resolution of each complaint.

(B) The employer shall at reasonable times and without unduly disrupting business operations make any persons who are authorized by the employer to receive or investigate complaints of sexual harassment and any records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section available to the Attorney General or designee or, if the employer is the State, the Human Rights Commission or designee.

(2) Following an inspection and examination pursuant to subdivision (1) of this subsection (i), the Attorney General or the Human Rights Commission shall notify the employer of the results of the inspection and examination, including any issues or deficiencies identified, provide resources regarding practices and procedures for the prevention of sexual harassment that the employer may wish to adopt or utilize, and identify any technical assistance that the Attorney General or the Human Rights Commission may be able to provide to help the employer address any identified issues or deficiencies. If the Attorney General or the Human Rights Commission determines that it is necessary to ensure the employer's workplace is free from sexual harassment, the employer may be required, for a period of up to three years, to provide an annual education and training program that satisfies the provisions of

subdivision (4) of this subsection to all employees or to conduct an annual, anonymous working-climate survey, or both.

(3)(A) The Attorney General shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 2460(a)(4).

(B) The Human Rights Commission shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 4555.

(4) If required by the Attorney General or Human Rights Commission pursuant to subdivision (2) of this subsection, an employer shall conduct:

(A) an annual education and training program for all employees that includes at a minimum all the information outlined in this section; and

(B) an annual education and training program for supervisory and managerial employees that includes at a minimum all the information outlined in this section, the specific responsibilities of supervisory and managerial employees, and the actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(j) The Attorney General shall adopt rules as necessary to implement the provisions of this section.

Sec. 2. 21 V.S.A. § 495b is amended to read:

#### § 495b. PENALTIES AND ENFORCEMENT

(a)(1) The Attorney General or a State's Attorney may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though an unlawful employment practice were an unfair act in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified therein. The Superior Courts are authorized to impose the same civil penalties and investigation costs and to order other relief to the State of Vermont or an aggrieved employee for violations of this subchapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.



(2) Any charge or formal complaint filed by the Attorney General or a State's Attorney against a person for unlawful discrimination or sexual harassment in violation of the provisions of this chapter shall include a statement setting forth the prohibition against retaliation pursuant to subdivision 495(a)(8) of this title.

\* \* \*

Sec. 3. 9 V.S.A. § 4552 is amended to read:

§ 4552. DUTIES; JURISDICTION

\* \* \*

(b)(1) The Commission shall have jurisdiction to investigate and enforce complaints of unlawful discrimination in violation of chapter 139 of this title, discrimination in public accommodations and rental and sale of real estate. The Commission shall also have jurisdiction when the party complained against is a State agency in matters for which the Attorney General would otherwise have jurisdiction under subsection (c) of this section.

(2) In any case relating to unlawful discrimination or sexual harassment in violation of 21 V.S.A. § 495 et seq. that the Commission has jurisdiction over pursuant to this subsection, it shall include a statement setting forth the prohibition against retaliation pursuant to 21 V.S.A. § 495(a)(8) with any formal complaint that is sent to a respondent.

(c) All complaints of unlawful discrimination in violation of 21 V.S.A. §§ 495 et seq. and 710, the Fair Employment Practices Act and the provisions for workers' compensation discrimination, respectively, and of 21 V.S.A. § 471 et seq. shall be referred to the Attorney General's office, for investigation and enforcement.

Sec. 4. ATTORNEY GENERAL; HUMAN RIGHTS COMMISSION;  
ENHANCED REPORTING OF DISCRIMINATION AND SEXUAL  
HARASSMENT

(a) On or before December 15, 2018, the Attorney General and the Human Rights Commission shall develop and implement enhanced mechanisms for employees and members of the public to submit complaints of discrimination and sexual harassment in employment or in the course of a working relationship.

(b) The methods shall include, at a minimum, an easy-to-use portal on the Attorney General's or Human Rights Commission's website and a telephone hotline. Each method shall provide a clear statement that information submitted may be referred to the Office of the Attorney General, a State's Attorney, the Vermont Human Rights Commission, the Equal Employment

Opportunity Commission, or another State or federal agency that has jurisdiction over the complaint.

Sec. 5. PUBLIC EDUCATION AND OUTREACH; VERMONT  
COMMISSION ON WOMEN

(a) On or before December 15, 2018, the Vermont Commission on Women, in consultation with the Attorney General and the Human Rights Commission, shall develop a public education and outreach program that is designed to make Vermont employees, employers, businesses, and members of the public aware of:

(1) methods for reporting employment and work-related discrimination and sexual harassment;

(2) where to find information regarding:

(A) the laws related to employment and work-related discrimination and sexual harassment; and

(B) best practices for preventing employment and work-related discrimination and sexual harassment; and

(3) methods for preventing and addressing sexual harassment in the workplace.

(b) The sum of \$125,000.00 is appropriated to the Vermont Commission on Women from the General Fund in fiscal year 2018 to carry forward to fiscal year 2019 for the purpose of creating and implementing the public education and outreach program.

(c) The program may include:

(1) public service announcements;

(2) print and electronic advertisements;

(3) web-based and electronic training materials;

(4) printed informational and training materials;

(5) model educational programs and curricula; and

(6) in-person seminars and workshops.

Sec. 6. REPORT REGARDING ENHANCED REPORTING MECHANISMS

On or before January 15, 2020, the Attorney General, in consultation with the Human Rights Commission and the Vermont Commission on Women, shall submit to the House Committee on General, Housing, and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs a report regarding the implementation of the enhanced reporting

mechanisms for instances of employment and work-related discrimination and sexual harassment. The report shall include:

(1) a detailed description of how any existing reporting mechanisms were enhanced and any new reporting mechanisms that were implemented;

(2) a summary of changes, if any, in the annual number of complaints of employment and work-related discrimination and sexual harassment received and the number of complaints resulting in an investigation, settlement, or State court action during calendar years 2018 and 2019 in comparison to calendar years 2016 and 2017;

(3) the number of employees and other persons that reported employment or work-related discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint in comparison to the number that did not, and the reasons that employees and other persons gave for not reporting the discrimination or sexual harassment to their employer, supervisor, or the person for whom they were working prior to making a complaint; and

(4) any suggestion for legislative action to enhance further the reporting mechanisms or to reduce the amount of employment and work-related discrimination and sexual harassment.

Sec. 7. 21 V.S.A. § 495n is added to read:

§ 495n. SEXUAL HARASSMENT COMPLAINTS; NOTICE TO  
ATTORNEY GENERAL AND HUMAN RIGHTS COMMISSION

(a) A person that files a claim of sexual harassment pursuant to section 495b of this subchapter in which neither the Attorney General nor the Human Rights Commission is a party shall provide notice of the action to the Attorney General and the Human Rights Commission within 14 days after filing the complaint. The notice may be submitted electronically and shall include a copy of the filed complaint.

(b)(1) Upon receiving notice of a complaint in which the State is a party, the Human Rights Commission may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

(2) Upon receiving notice of a complaint in which the State is not a party, the Attorney General may elect to:

(A) intervene in the action to seek remedies pursuant to section 495b

of this subchapter; or

(B) without becoming a party to the action, file a statement with the court addressing questions of law related to the provisions of this subchapter.

Sec. 8. COMMISSIONER OF LABOR; POSTER

On or before September 15, 2018, the Commissioner of Labor shall update the model policy and model poster created pursuant to 21 V.S.A. § 495h(d) to reflect the provisions of this act.

Sec. 9. [Deleted.]

Sec. 10. PRIOR HARASSMENT CLAIMS; IDENTIFICATION; RELEASE FROM NONDISCLOSURE AGREEMENT; REPORT

(a) On or before January 15, 2019, the Office of Legislative Council shall submit a written report to the Senate Committee on Economic Development, Housing and General Affairs and the House Committee on General, Housing, and Military Affairs that examines mechanisms to:

(1) provide the Attorney General and the Human Rights Commission with notice of agreements to settle sexual harassment claims that contain a provision that prohibits or restricts the individual who made the claim from disclosing information related to the claim of sexual harassment; and

(2) render provisions of agreements to settle sexual harassment claims that prohibit or restrict the individual who made the claim from disclosing information related to the claim of sexual harassment void and unenforceable if, in relation to a separate claim, the alleged harasser is later adjudicated by a court or tribunal of competent jurisdiction to have engaged in sexual harassment or retaliation in relation to a claim of sexual harassment.

(b) In particular, the report shall:

(1) identify potential mechanism to accomplish the potential changes described in subdivisions (a)(1) and (2) of this section;

(2) review and examine laws and pending legislation in other states that are related to subdivisions (a)(1) and (2) of this section;

(3) identify and examine potential legal issues, advantages, disadvantages, and obstacles to the mechanisms identified; and

(4) identify and examine any alternative mechanisms that would accomplish substantially similar policy outcomes to the potential changes described in subdivisions (a)(1) and (2) of this section.

(c) The Office of Legislative Council shall consult with the Attorney General's Office and the Human Rights Commission when preparing this

report.

(d) As used in this section, “information related to the claim of sexual harassment” does not include the specific terms of the related settlement agreement or the amount of any monetary settlement.

Sec. 11. EFFECTIVE DATES

(a) This section and, in Sec. 5, subsection (b) shall take effect on passage. The remaining provisions of Sec. 5 shall take effect on July 1, 2018.

(b) The remaining sections of this act shall take effect on July 1, 2018.

(For text see House Journal March 13, 2018 )

**Action Under Rule 52**

**J.R.S. 59**

Joint resolution supporting the Gettysburg Battlefield Preservation Association’s effort to preserve the Camp Letterman hospital site

**(For text see House Journal May 9, 2018)**

**NOTICE CALENDAR**

**Favorable with Amendment**

**S. 257**

An act relating to miscellaneous changes to education law

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

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

\* \* \* Out-of-State Independent Schools \* \* \*

Sec. 1. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR  
PAY TUITION

(a) Each school district shall maintain one or more approved high schools in which high school education is provided for its resident students unless:

(1) the electorate authorizes the school board to close an existing high school and to provide for the high school education of its students by paying tuition to a public high school, an approved independent high school, or an independent school meeting education quality standards, to be selected by the

parents or guardians of the student, ~~within or outside the State~~; or

\* \* \*

Sec. 2. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

(a) A school district shall not pay the tuition of a student except to:

(1) a public school;

(2) an approved independent school, in Vermont;

(3) an independent school in Vermont meeting education quality standards;

(4) a tutorial program approved by the State Board;

(5) an approved education program, ~~or~~;

(6) an independent school in another state ~~or country~~ that is approved under the laws of that state or country, nor shall payment; provided, however, that the state is contiguous to Vermont;

(7) a public or independent school in the Province of Quebec approved under the laws of Canada; or

(8) a school to which a student on an individualized education plan has been referred or placed by the student's individualized education plan team or local education agency.

(b) Payment of tuition on behalf of a person shall not be denied on account of age.

(c) Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the State Board and its decision shall be final.

Sec. 3. TRANSITION

Notwithstanding any provision to the contrary in Sec. 2 of this act, a school district may pay tuition on behalf of a student to a school located in another country or to an approved independent school that is located in a state that is not contiguous to Vermont if, during the 2017-2018 school year, the student attended that school; provided, however, that tuition shall be paid for not more than four years after enactment of this act.

\* \* \* Elections \* \* \*

Sec. 4. ELECTIONS; UNIFIED UNION SCHOOL DISTRICT

(a) Notwithstanding any provision of law to the contrary, the election of a director on the board of a unified union school district who is to serve on the board after expiration of the term for an initial director shall be held at the unified union school district's annual meeting unless otherwise provided in the district's articles of agreement.

(b) Notwithstanding any provision of law to the contrary, if a vacancy occurs on the board of a unified union school district and the vacancy is in a seat that is allocated to a specific town, the clerk of the unified union district shall immediately notify the selectboard of the town. Within 30 days after the receipt of that notice, the unified union school district board, in consultation with the selectboard, shall appoint a person who is otherwise eligible to serve as a member of the unified union school district board to fill the vacancy until an election is held at an annual or special meeting, unless otherwise provided in accordance with the unified union school district's articles of agreement.

(c) Notwithstanding any provision of law to the contrary, the clerk, treasurer, and moderator of a unified union school district elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of up to three years or until their successors are elected and qualified, except that if the voters at an annual meeting so vote, moderators elected at an annual meeting shall assume office upon election and shall serve for a term of up to three years or until their successors are elected and qualified.

(d) This section is repealed on July 1, 2020.

Sec. 5. 16 V.S.A. § 706k is amended to read:

§ 706k. ELECTION OF DISTRICT OFFICERS

(a)(1) A school director representing a member district who is to serve on the union school district board after the expiration of the terms provided for school directors in the final report shall be elected by that member district at an annual or special meeting. Such The election shall be by Australian ballot in those member districts that so elect their town school district directors. School directors elected at an annual meeting shall assume office upon election and shall serve a term of three years or until their successors are elected and qualified.

(2) Union district officers, except the clerk, treasurer, and moderator, elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of one year or until their successors are elected and qualified. The clerk, treasurer, and moderator elected at an annual meeting shall enter upon their duties on July 1 following their election and shall serve a term of up to three years or until their successors are elected and

qualified, except that if the voters at an annual meeting so vote, moderators elected at an annual meeting shall assume office upon election and shall serve for a term of one year up to three years or until their successors are elected and qualified. ~~School directors elected at an annual meeting shall assume office upon election and shall serve a term of three years or until their successors are elected and qualified.~~

(3) The clerk of the union district shall, within ten days after the election or appointment of any officer or director, give notice of the results to the Secretary of State.

\* \* \*

\* \* \* School Radon Mitigation \* \* \*

#### Sec. 6. SCHOOL RADON MITIGATION; FUNDING OPPORTUNITIES

The Secretaries of Education and of Administration and the Commissioner of Health shall explore funding opportunities for testing and mitigating elevated radon concentrations in schools and contingency plans for the loss of related federal funding. On or before December 1, 2018, the Secretaries and the Commissioner shall jointly submit a written report to the House Committees on Corrections and Institutions and on Education and to the Senate Committees on Education and on Institutions with viable options for testing all schools for radon and for funding the mitigation of elevated radon concentrations in schools.

#### Sec. 7. PILOT; RADON TESTING IN SCHOOLS

The Commissioner of Health shall establish a pilot program to test schools in five supervisory unions for elevated concentrations of radon during the 2018–2019 school year with the goal of testing 30 schools. Schools that have been tested for radon within the previous five years need not be retested. The Agency of Education, in collaboration with the Department of Health, shall seek supervisory unions to volunteer for the pilot program.

\* \* \* Technical Correction \* \* \*

Sec. 8. 16 V.S.A. § 4015 is amended to read:

#### § 4015. SMALL SCHOOL SUPPORT

(a) In this section:

\* \* \*

(2) “Enrollment” means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student. Students enrolled in prekindergarten programs shall not be counted.



\* \* \*

\* \* \* Prekindergarten Education \* \* \*

Sec. 9. 16 V.S.A. § 829 is amended to read:

§ 829. PREKINDERGARTEN EDUCATION

(a) Definitions. As used in this section:

(1) “Prekindergarten child” means a child who, as of the date established by the district of residence for kindergarten eligibility, is:

(A) three or four years of age or is five years of age but is not yet eligible to be enrolled in kindergarten; or

(B) five years of age but is not yet enrolled in kindergarten if the child is on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973 and the child’s individualized education program team or evaluation and planning team recommends that the child receive prekindergarten education services.

(2) “Prekindergarten education” means services designed to provide to prekindergarten children developmentally appropriate early development and learning experiences based on Vermont’s early learning standards.

(3) “Prequalified private provider” means a private provider of prekindergarten education that is qualified pursuant to subsection (c) of this section.

(4)(A) “Prequalified public provider” means a provider of prekindergarten education that is a school district that is qualified pursuant to subsection (c) of this section.

(B) “Prequalified public provider” does not mean a school district that contracts with a prequalified private provider for the provision of prekindergarten education services.

(b) Access to publicly funded prekindergarten education.

(1) ~~No~~ Not fewer than ten hours per week of publicly funded prekindergarten education shall be available for 35 weeks annually to each prekindergarten child whom a parent or guardian wishes to enroll in an available, prequalified program operated by a public school or a private provider.

(2) If a parent or guardian chooses to enroll a prekindergarten child in an available, prequalified program, then, pursuant to the parent or guardian’s choice, the school district of residence shall:

(A) pay tuition pursuant to subsections (d) and (h) of this section

upon the request of the parent or guardian to:

(i) a prequalified private provider; or

(ii) a prequalified public school provider that operates a prekindergarten program ~~that has been prequalified pursuant to subsection (c) of this section~~ located outside the district; or

(B) if the school district of residence is a prequalified public provider, enroll the child in the prekindergarten education program that it operates.

(3) If requested by the parent or guardian of a prekindergarten child, the school district of residence shall pay tuition to a ~~prequalified program operated by a private provider or a public school in another district~~ private provider or a prequalified public provider that operates a prekindergarten program located outside the district even if the district of residence is a prequalified public provider that operates a prekindergarten education program.

(4) ~~If the supply of prequalified private and public providers is insufficient to meet the demand for publicly funded prekindergarten education in any region of the State, nothing~~ Nothing in this section shall be construed to require the State or a district to begin or expand a prekindergarten education program to satisfy that a demand; but rather, in collaboration with the Agencies of Education and of Human Services, the local Building Bright Futures Council shall meet with school districts and private providers in the region to develop a regional plan to expand capacity for prekindergarten education.

(c) Prequalification. Pursuant to rules ~~jointly developed and overseen by the Secretaries~~ Secretary of Education ~~and of Human Services~~ and adopted by the State Board pursuant to 3 V.S.A. chapter 25, the ~~Agencies jointly~~ Agency of Education may determine that a private or public provider of prekindergarten education is qualified for purposes of this section and include the provider in a publicly accessible database of prequalified providers. At a minimum, the rules shall define the process by which a provider applies for and maintains prequalification status, and shall identify the minimum quality standards for prequalification, and shall include the following requirement. In order to be eligible for tuition payments:

(1) ~~A program of prekindergarten education, whether provided by a school district or a private provider, shall have received~~ private provider shall meet minimum program quality by:

(A) Having:

(i) National Association for the Education of Young Children (NAEYC) accreditation; or

~~(B)(ii)~~ at least four stars in the Department for Children and Families' STARS system ~~with a plan to get to at least two points in each of the five arenas; or~~

~~(C)(iii)~~ three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families ~~and the Secretary of Education~~, to achieve four or more stars with at least two points in each of the five arenas in no more than three years, and the provider has met intermediate milestones.

(B) For a:

(i) private provider that is regulated as a center-based child care program, employing or contracting for the services of at least one licensed professional educator with an endorsement in early childhood education or in early childhood special education under chapter 51 of this title who is present at the private provider's program site during the hours that are publicly funded; or

(ii) private provider that is regulated as a family child care home that is not licensed and endorsed in early childhood education or early childhood special education, employing or contracting for the services of at least one licensed professional educator with an endorsement in early childhood education or in early childhood special education under chapter 51 of this title for at least three hours per week during each of the 35 weeks per year in which prekindergarten education is paid for with publicly funded tuition to provide regular, active supervision and training of the private provider's staff.

(2) A licensed public provider shall employ or contract meet minimum program quality by:

(A) employing or contracting for the services of at least one teacher who is licensed and endorsed licensed professional educator with an endorsement in early childhood education or in early childhood special education under chapter 51 of this title to provide direct instruction during the hours that are publicly funded; and

(B)(i) until the date upon which the State Board of Education implements safety and quality rules under subdivision (e)(12) of this section, meeting safety and quality rules adopted by the Department for Children and Families; and

(ii) on and after the date upon which the State Board of Education implements safety and quality rules under subdivision (e)(12) of this section, meeting safety and quality rules adopted by the State Board of Education.

~~(3) A registered home provider that is not licensed and endorsed in early~~

~~childhood education or early childhood special education shall receive regular, active supervision and training from a teacher who is licensed and endorsed in early childhood education or in early childhood special education under chapter 51 of this title.~~

(d) Tuition, budgets, and average daily membership.

(1) On behalf of a resident prekindergarten child, a district shall pay tuition for prekindergarten education for ten hours per week for 35 weeks annually to a prequalified private provider or to a ~~public school~~ prequalified public provider that is outside the district ~~that is prequalified pursuant to subsection (c) of this section;~~ provided, however, that the district shall pay tuition for weeks that are within the district's academic year. Tuition paid under this section shall be at a statewide rate, which may be adjusted regionally, that is established annually through a process jointly developed and implemented by the ~~Agencies~~ Agency of Education and of Human Services. A district shall pay tuition upon:

(A) receiving notice from the child's parent or guardian that the child is or will be admitted to the prekindergarten education program operated by the prequalified private provider or the other district; and

(B) concurrent enrollment of the prekindergarten child in the district of residence for purposes of budgeting and determining average daily membership.

(2) In addition to any direct costs of operating a prekindergarten education program, a district of residence shall include anticipated tuition payments and any administrative, quality assurance, quality improvement, transition planning, or other prekindergarten-related costs in its annual budget presented to the voters.

(3) Pursuant to subdivision 4001(1)(C) of this title, the district of residence may include within its average daily membership any prekindergarten child for whom it has provided prekindergarten education or on whose behalf it has paid tuition pursuant to this section.

(4) A prequalified private provider may receive additional payment directly from the parent or guardian only for prekindergarten education in excess of the hours paid for by the district pursuant to this section or for child care services, or both. The prequalified private provider is not bound by the statewide rate established in this subsection when determining the rates it will charge the parent or guardian for these excess hours. A prequalified private provider shall not impose additional fees for the publicly funded hours.

(e) Rules. The Secretary of Education ~~and the Commissioner for Children and Families~~ shall jointly develop ~~and agree to~~ rules and present them to the

State Board for adoption under 3 V.S.A. chapter 25 as follows:

(1) To permit private providers that are not prequalified pursuant to subsection (c) of this section to create new or continue existing partnerships with school districts through which the school district provides supports that enable the provider to fulfill the requirements of subdivision (c)~~(2) or (3)~~ (1)(B), and through which the district may or may not make in-kind payments as a component of the statewide tuition established under this section.

~~(2) To authorize a district to begin or expand a school-based prekindergarten education program only upon prior approval obtained through a process jointly overseen by the Secretaries of Education and of Human Services, which shall be based upon analysis of the number of prekindergarten children residing in the district and the availability of enrollment opportunities with prequalified private providers in the region. Where the data are not clear or there are other complex considerations, the Secretaries may choose to conduct a community needs assessment. [Repealed.]~~

(3) To require that the school district provides opportunities for effective parental participation in the prekindergarten education program.

(4) To establish a process by which:

(A) a parent or guardian notifies the district that the prekindergarten child is or will be admitted to a prekindergarten education program not operated by the district and concurrently enrolls the child in the district pursuant to subdivision (d)(1) of this section;

(B) a district:

(i) pays tuition pursuant to a schedule that does not inhibit the ability of a parent or guardian to enroll a prekindergarten child in a prekindergarten education program or the ability of a prequalified private provider to maintain financial stability; and

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; agreements entered into on or after August 1, 2018 shall be in a form prescribed by the Secretary of Education; and

(C) a provider that has received tuition payments under this section on behalf of a prekindergarten child notifies a district that the child is no longer enrolled.

(5) To establish a process to calculate an annual statewide tuition rate that is based upon the actual cost of delivering ten hours per week of prekindergarten education that meets all ~~established~~ required quality standards and to allow for regional adjustments to the rate.

(6) [Repealed.]

(7) To require a district to include identifiable costs for prekindergarten programs and essential early education services in its annual budgets and reports to the community.

(8) To require a district to report to the Agency of Education annual expenditures made in support of prekindergarten education, with distinct figures provided for expenditures made from the General Fund, from the Education Fund, and from all other sources, which shall be specified.

(9) To provide an administrative process for:

(A) a parent, guardian, or provider to challenge an action of a school district or the State when the complainant believes that the district or State is in violation of State statute or rules regarding prekindergarten education; and

(B) a school district to challenge an action of a provider or the State when the district believes that the provider or the State is in violation of State statute or rules regarding prekindergarten education.

(10) To establish a system by which the Agency of Education ~~and Department for Children and Families~~ shall jointly monitor and evaluate prekindergarten education programs to promote optimal results for children that support the relevant population-level outcomes set forth in 3 V.S.A. § 2311 and to collect data that will inform future decisions. The Agency ~~and Department~~ shall be required to report annually to the General Assembly in January. At a minimum, the system shall monitor and evaluate:

(A) programmatic details, including the number of children served, the number of private and public programs operated, and the public financial investment made to ensure access to quality prekindergarten education;

(B) the quality of public and private prekindergarten education programs and efforts to ensure continuous quality improvements through mentoring, training, technical assistance, and otherwise; and

(C) the results for children, including school readiness and proficiency in numeracy and literacy.

(11) To establish a process for documenting the progress of children enrolled in prekindergarten education programs and to require public and private providers to use the process to:

(A) help individualize instruction and improve program practice; and

(B) collect and report child progress data to the Secretary of Education on an annual basis.

(12) To establish safety and quality requirements for prequalified public

providers.

(f) Other provisions of law. Section 836 of this title shall not apply to this section.

(g) Limitations. Nothing in this section shall be construed to permit or require payment of public funds to a private provider of prekindergarten education in violation of Chapter I, Article 3 of the Vermont Constitution or in violation of the Establishment Clause of the U.S. Constitution.

(h) Geographic limitations.

(1) Notwithstanding the requirement that a district pay tuition to any prequalified public or private provider in the State, a school board may choose to limit the geographic boundaries within which the district shall pay tuition by paying tuition solely to those prequalified providers in which parents and guardians choose to enroll resident prekindergarten children that are located within the district's "prekindergarten region" as determined in subdivision (2) of this subsection.

(2) For purposes of this subsection, upon application from the school board, a district's prekindergarten region shall be determined ~~jointly~~ by the ~~Agencies~~ Agency of Education and ~~of Human Services~~ in consultation with the school board, private providers of prekindergarten education, parents and guardians of prekindergarten children, and other interested parties pursuant to a process adopted by rule under subsection (e) of this section. A prekindergarten region:

(A) shall not be smaller than the geographic boundaries of the school district;

(B) shall be based in part upon the estimated number of prekindergarten children residing in the district and in surrounding districts, the availability of prequalified private and public providers of prekindergarten education, commuting patterns, and other region-specific criteria; and

(C) shall be designed to support existing partnerships between the school district and private providers of prekindergarten education.

(3) If a school board chooses to pay tuition to providers solely within its prekindergarten region, and if a resident prekindergarten child is unable to access publicly funded prekindergarten education within that region, then the child's parent or guardian may request and in its discretion the district may pay tuition at the statewide rate for a prekindergarten education program operated by a prequalified provider located outside the prekindergarten region.

(4) Except for the narrow exception permitting a school board to limit geographic boundaries under subdivision (1) of this subsection, all other

provisions of this section and related rules shall continue to apply.

Sec. 10. 16 V.S.A. § 4010 is amended to read:

§ 4010. DETERMINATION OF WEIGHTED MEMBERSHIP

(a) On or before the first day of December during each school year, the Secretary shall determine the average daily membership of each school district for the current school year. The determination shall list separately:

- (1) resident prekindergarten children;
- (2) resident students being provided elementary ~~or kindergarten~~ education, excluding prekindergarten children; and
- (3) resident students being provided secondary education.

\* \* \*

(c) The Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of this section and the following weights for each class:

- (1) ~~Prekindergarten~~ except as otherwise provided in this subsection, prekindergarten—0.46;
- (2) for a resident prekindergarten child who is enrolled in a prekindergarten program with a duration of 20 hours or more per week for 35 weeks annually—0.70;
- (3) ~~Elementary or~~ elementary, excluding prekindergarten—1.0; and
- (4) ~~Secondary~~ secondary—1.13

\* \* \*

Sec. 11. 33 V.S.A. § 3502 is amended to read:

§ 3502. CHILD CARE FACILITIES; SCHOOL AGE CARE IN PUBLIC SCHOOLS; 21ST CENTURY FUND

(a) Unless exempted under subsection (b) of this section, a person shall not operate a child care facility without a license, or operate a family child care home without registration from the Department.

(b) The following persons are exempted from the provisions of subsection (a) of this section:

\* \* \*

(5) an after-school program that serves students in one or more grades from kindergarten through secondary school, that receives funding through the 21st Century Community Learning Centers program, and that is overseen by



the Agency of Education, unless the after-school program asks to participate in the child care subsidy program; and

(6) a public provider of prekindergarten education, as defined under 16 V.S.A. § 829(a)(4), unless the public provider participates in the child care subsidy program.

\* \* \*

Sec. 12. 16 V.S.A. § 11 is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

(a) As used in this title, unless the context otherwise clearly requires:

\* \* \*

(31) “Early childhood education,” “early education,” or “prekindergarten education” means services designed to provide developmentally appropriate early development and learning experiences based on Vermont’s early learning standards to children a child who are three to four years of age and to five-year-old children who are not eligible for or enrolled in kindergarten is:

(A) three or four years of age or is five years of age but is not yet eligible to be enrolled in kindergarten; or

(B) five years of age but is not yet enrolled in kindergarten if the child is on an individualized education program or a plan under Section 504 of the Rehabilitation Act of 1973 and the child’s individualized education program team or evaluation and planning team recommends that the child receive prekindergarten education services.

\* \* \*

Sec. 13. PREKINDERGARTEN ADVISORY COMMITTEE; REPORT

(a) Creation. There is created the Prekindergarten Advisory Committee to make recommendations on how to improve the funding and delivery models for prekindergarten education in Vermont.

(b) Membership. The Committee shall be composed of the following five members:

(1) two current members of the House of Representatives, not from the same political party, who shall be appointed by the Speaker of the House;

(2) two current members of the Senate, not from the same political party, who shall be appointed by the Committee on Committees; and

(3) one member appointed by the Governor, which member shall serve as the Committee’s Chair.

(c) Powers and duties. The Committee shall study the funding and delivery of prekindergarten education in Vermont, including the following issues:

(1) whether the current delivery and funding models are working effectively to provide prekindergarten educational services, and if not, the issues with the current models and proposals to enhance the quality and effectiveness of these models;

(2) whether the statutory changes in Secs. 9–12 of this act adequately address concerns with the current delivery and funding models for prekindergarten educational services;

(3) whether to extend the publicly funded entitlement to prekindergarten education beyond the 10 hours per week for 35 weeks a year that is currently required by requiring public elementary schools to offer prekindergarten education either directly or by contract;

(4) whether to extend kindergarten education to include children who are four years of age;

(5) how to simplify regulatory oversight and administration of prekindergarten education;

(6) how to ensure that funding for prekindergarten education is equitable and does not create undesirable outcomes for prekindergarten students, their parents or guardians, or providers of prekindergarten educational services or child care services; and

(7) whether prekindergarten regions established under 16 V.S.A. § 829 serve the purpose for which they were designed and allow reasonable and equitable access to prekindergarten education, and whether the authority to create prekindergarten regions should continue.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(e) Report. On or before December 15, 2018, the Committee shall submit a written report to the House and Senate Committees on Education, the House Committee on Human Services, and the Senate Committee on Health and Welfare with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Chair shall call the first meeting of the Committee to occur on or before July 15, 2018.

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

(3) The Committee shall cease to exist on December 16, 2018.

(g) Compensation, reimbursement, and appropriations.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than six meetings. The sum of \$5,256.00 is appropriated to the General Assembly from the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to the members of the Committee who are members of the General Assembly.

(2) If the other member of the Committee is not an employee of the State of Vermont and is not otherwise compensated or reimbursed for his or her attendance, he or she shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings. The sum of \$732.00 is appropriated to the Governor's office from the General Fund in fiscal year 2019 for per diem compensation and reimbursement of expenses for the member of the Committee appointed by the Governor.

\* \* \* Educator Licensing Requirements \* \* \*

#### Sec. 14. EDUCATOR LICENSING REQUIREMENTS

The Vermont Standards Board for Professional Educators shall consider whether the educator licensing requirements are appropriate or should be updated. As part of its review, the Board shall consider whether educator licensing should be required for schools that have adopted a school-based teacher quality and performance measurement program approved by the New England Association of Schools and Colleges and whether other examination options, other than the Praxis examination, should be available for educator licensure, such as examinations offered by the Smarter Balanced Assessment Consortium. On or before December 1, 2018, the Board shall report its findings and recommendations to the House and Senate Committees on Education.

\* \* \* Ethnic and Social Equity Standards Advisory

Working Group \* \* \*

#### Sec. 15. ETHNIC AND SOCIAL EQUITY STANDARDS ADVISORY

##### WORKING GROUP

(a) Findings.

(1) In 1999, the Vermont Advisory Committee to the U.S. Commission on Civil Rights published a report titled Racial Harassment in Vermont Public Schools and described the state of racism in public schools. The Committee

held various hearings and received reports from stakeholders and concluded that “racial harassment” appeared “pervasive in and around the State’s public schools,” and observed that “the elimination of this harassment” was “not a priority among school administrators, school boards, elected officials, and State agencies charged with civil rights enforcement.”

(2) In 2003, the Commission released a follow-up report concluding that, although some positive efforts had been made since the original report was published, the problem persisted. One of the many problems highlighted was the “curriculum issues in the State’s public schools. In some instances, teachers employ curriculum materials and lesson plans that promote racial stereotypes.” One of the conclusions was that there was a need for a bias-free curriculum.

(3) On December 2017, the Act 54 report on Racial Disparities in State Systems, issued by the Attorney General and Human Rights Commission Task Force, was released. According to the report, education is one of the five State systems in which racial disparities persist and need to be addressed. The Attorney General and Human Rights Commission held three stakeholder meetings and found “a surprising amount of coalescence around the most important issues” and “the primary over-arching theme was that we will be able to reduce racial disparities by changing the underlying culture of our state with regard to race.” One of the main suggestions for accomplishing this was to “teach children from an integrated curriculum that fairly represents both the contributions of People of Color (as well as indigenous people, women, people with disabilities, etc.), while fairly and accurately representing our history of oppression of these groups.” The other suggestions were to educate State employees about implicit bias, white privilege, white fragility, and white supremacy, and increase the representation of people of color in the State and school labor forces by focusing on recruitment, hiring, and retention, as well as promotion of people of color into positions of authority and responsibility on boards and commissions.

(4) The harassment of lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, and nonbinary communities; other students of color; and students with disabilities and the lack of understanding of people in power about the magnitude of the systemic impacts of harassment and bias damage the whole community.

(b) Definitions. As used in this act:

(1) “Ethnic groups” means nondominant racial and ethnic groups in the United States, including people who are indigenous and people of African, Asian, Pacific Island, Chicano, Latinx, or Middle Eastern descent.

(2) “Ethnic studies” means the instruction of students in prekindergarten

through grade 12 in the historical contributions and perspectives of ethnic groups and social groups.

(3) “Social groups” means females, people with disabilities, immigrants, refugees, and individuals who are lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual, or nonbinary.

(c) Creation and composition. The Ethnic and Social Equity Standards Advisory Working Group is established. The Working Group shall comprise the following 17 members:

(1) eight members who are members of, and represent the interests of, ethnic groups and social groups;

(2) a Vermont-based, college-level faculty expert in ethnic studies;

(3) the Secretary of Education or designee;

(4) the Executive Director of the Vermont-National Education Association or designee;

(5) an Assistant Attorney General in the Office of the Vermont Attorney General with experience working with the Agency of Education on racial and social justice issues in schools;

(6) the Executive Director of the Vermont School Boards Association or designee;

(7) a representative for the Vermont Principals’ Association with expertise in the development of school curriculum;

(8) a representative for the Vermont Curriculum Leaders Association;

(9) the Executive Director of the Vermont Superintendents Association or designee; and

(10) the Executive Director of the Vermont Independent Schools’ Association or designee.

(d) Appointment and operation.

(1) The Vermont Coalition for Ethnic and Social Equity in Schools (Coalition) shall appoint the eight members who represent ethnic groups and social groups and the member identified under subdivision (c)(2) of this section. Appointments of members to fill vacancies to these positions shall be made by the Coalition.

(2) As a group, the Working Group shall represent the breadth of geographic areas within the State and shall have experience in the areas of ethnic standards or studies, social justice, inclusivity, and advocacy for the groups they represent.

(3)(A) The Secretary of Education or designee shall call the first meeting of the Working Group to occur on or before September 1, 2018.

(B) The Working Group shall select a chair from among its members at the first meeting.

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

(D) The Working Group shall cease to exist on July 1, 2021.

(e) Compensation and reimbursement. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than ten meetings per year. These payments shall be made from monies appropriated to the Agency of Education.

(f) Appropriation. The sum of \$13,420.00 is appropriated to the Agency of Education from the General Fund for fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to the members of the Ethnic and Social Equity Standards Advisory Working Group. The Agency shall include in its budget request to the General Assembly for fiscal years 2020 and 2021 the amount of \$13,420.00 for the per diem compensation and expense reimbursements authorized by this section to be paid to members of the Working Group.

(g) Duties of the Working Group.

(1) The Working Group shall review statewide curriculum standards adopted by the State Board of Education and, on or before June 30, 2020, recommend to the State Board updates and additional standards to recognize fully the history, contribution, and perspectives of ethnic groups and social groups. These recommended additional standards shall be designed to:

(A) increase cultural competency of students in prekindergarten through grade 12;

(B) increase attention to the history, contribution, and perspectives of ethnic groups and social groups;

(C) promote critical thinking regarding the history, contribution, and perspectives of ethnic groups and social groups;

(D) commit the school to eradicating any racial bias in its curriculum;

(E) provide, across its curriculum, content and methods that enable students to explore safely questions of identity, race equality, and racism; and

(F) ensure the basic curriculum and extracurricular programs are

welcoming to all students and take into account parental concerns about religion or culture.

(2) The Working Group may review all existing State statutes regarding school policies and recommend to the General Assembly proposed statutory changes with the following goals:

(A) Ensuring that the school curriculum:

(i) promotes critical thinking regarding the history, contribution, and perspectives of ethnic groups and social groups;

(ii) includes content and related instructional materials and methods that enable students to explore safely questions of identity and membership in ethnic groups and social groups, race equality, and racism; and

(iii) facilitates a welcoming environment for all students while taking into account parental concerns about bias or exclusion of ethnic groups or social groups.

(B) Ensuring engagement opportunities that provide families a welcoming means of raising any concern about their child's experience as it bears on race or ethnic or social group identity at school.

(3) The Working Group shall include in its report to the General Assembly under subdivisions (h)(2) and (3) of this section any statute, State Board rule, or school district policy that it has identified as needing review or amendment in order to:

(A) promote an overarching focus on preparing all students to participate effectively in an increasingly racially, culturally, and socially diverse Vermont and in global communities;

(B) ensure every student is in a safe, secure, and welcoming learning and social environment in which bias, whether implicit or explicit, toward others based on their membership in ethnic or social groups is acknowledged and addressed appropriately;

(C) challenge racist, sexist, gender, or ability-based bias or bias based on socioeconomic status when it occurs, using principles aligned with restorative practice;

(D) specify prohibited conduct as it relates to racism, sexism, ableism, and other social biases and refers to the process through which alleged misconduct will be addressed, including disciplinary action as appropriate;

(E) establish disciplinary responses to racial or ethnic and social group incidents that include the utilization of restorative practices where

appropriate; and

(F) ensure that the school provides all its personnel training in how best to address bias incidents.

(h) Reports.

(1) The Working Group shall, on or before March 1, 2019, submit a report to the General Assembly that includes:

(A) the membership of the Working Group and its meeting schedule;

(B) its plan to accomplish the work described in subdivision (g)(1) of this section, including the timeline for reviewing all statewide curriculum standards and for its recommendation to the State Board of additional standards to recognize fully the history, contribution, and perspectives of ethnic groups and social groups; and

(C) its plan to accomplish the work described in subdivisions (g)(2) and (3) of this section, including the timeline for reviewing all existing State statutes regarding school policies and drafting proposed legislation.

(2) The Working Group shall, on or before December 15, 2019, submit a report to the General Assembly, including:

(A) the membership of the Working Group and its meeting schedule;

(B) recommended statutory changes under subdivisions (g)(2) and (3) of this section; and

(C) recommendations for training and appropriations to support implementation of the recommended statutory changes.

(3) The Working Group shall, on or before July 1, 2021, submit a report to the General Assembly, including:

(A) any further recommended statutory changes under subdivision (g)(2) of this section; and

(B) recommendations for training and appropriations to support implementation of the recommended changes.

(i) Duties of the State Board of Education. The Board of Education shall, on or before June 30, 2021, consider adopting ethnic and social equity studies standards into existing statewide curriculum standards for students in prekindergarten through grade 12. The State Board shall consider the report submitted by the Working Group under subdivision (g)(1) of this section when determining the standards to adopt.

Sec. 16. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD; GENERAL POWERS AND DUTIES



The State Board shall evaluate education policy proposals, including timely evaluation of policies presented by the Governor and Secretary; engage local school board members and the broader education community; and establish and advance education policy for the State of Vermont. In addition to other specified duties, the Board shall:

\* \* \*

(17) Report annually on the condition of education statewide and on a school-by-school supervisory union and school district basis. The report shall include information on attainment of standards for student performance adopted under subdivision (9) of this section, number and types of complaints of harassment, hazing, or bullying made pursuant to chapter 9, subchapter 5 of this title and responses to the complaints, financial resources and expenditures, and community social indicators. The report shall be organized and presented in a way that is easily understandable by the general public and that enables each school, school district, and supervisory union to determine its strengths and weaknesses. To the extent consistent with State and federal privacy laws and regulations, data on student performance and hazing, harassment, or bullying incidents shall be disaggregated by student groups, including ethnic and racial groups, poverty status, disability status, English language learner status, and gender. The Secretary shall use the information in the report to determine whether students in each school, school district, and supervisory union are provided educational opportunities substantially equal to those provided in other schools, school districts, and supervisory unions pursuant to subsection 165(b) of this title.

\* \* \*

\* \* \* Expanded Learning Opportunities \* \* \*

Sec. 17. 16 V.S.A. chapter 100 is added to read:

CHAPTER 100. EXPANDED LEARNING OPPORTUNITIES

§ 2911. DEFINITIONS

As used in this title:

(1) “Expanded Learning Opportunity (ELO)” means a structured program designed to serve prekindergarten through secondary school-aged children and youths outside the school day and year on a regular basis, including before and after school and during the summer, by providing opportunities for personal, emotional, and academic growth for children and youths.

(2) “ELO Committee” means the Expanded Learning Opportunities Committee created by section 2912 of this chapter.

(3) “ELO Special Fund” means the Vermont Expanded Learning Opportunities Special Fund, under section 2913 of this chapter.

§ 2912. EXPANDED LEARNING OPPORTUNITIES COMMITTEE;

REPORT

(a) Creation; membership. There is created the Expanded Learning Opportunities Committee, to be composed of the following 12 members:

(1) the Secretary of Education or designee;

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

(3) the Commissioner of Labor or designee;

(4) the Director of Vermont Afterschool, Inc. or designee;

(5) one current member of the House of Representatives, who shall be appointed by the Speaker of the House;

(6) one current member of the Senate, who shall be appointed by the Committee on Committees;

(7) one member representing private foundations or Vermont’s philanthropic community, one member representing the business community, and one member representing the education community, appointed by the Prekindergarten-16 Council; and

(8) three members representing ELO programs that have been in operation since at least July 1, 2017, with one member to be appointed each by the Governor, the Speaker of the House, and the Committee on Committees.

(b) Duties. The Committee shall:

(1) recommend to the Agency of Education grants to be awarded from the ELO Special Fund; and

(2) work with the philanthropic and business communities in Vermont to pursue and accept grants or other funding from any public or private source for the ELO Special Fund.

(c) Terms. ELO Committee members shall serve, commencing on January 1, three-year terms or until the member’s earlier resignation or removal, except for legislative members, who shall be appointed to two-year terms that mirror their legislative terms. A nonlegislative ELO Committee member may be appointed prior to January 1, 2019, in which case the initial term of that member shall extend to January 1, 2022. A legislative ELO Committee member may be appointed after the beginning of the legislator’s legislative term and prior to January 1, 2019, in which case the initial term of that member shall extend to the end of the legislator’s next two-year legislative

term. The respective appointing authority shall fill a vacancy for the remainder of any unexpired term. An appointed member shall not serve more than three full consecutive terms. A legislator's service on the ELO Committee shall terminate on the date that the legislator no longer serves as a member of the General Assembly.

(d) Officers; subcommittees; rules. The ELO Committee shall elect a chair from among its members. It may elect other officers, establish subcommittees, and adopt procedural rules as it determines necessary and appropriate to perform its work.

(e) Quorum; voting; meetings.

(1) A majority of all members shall constitute a quorum.

(2) Action is taken by the ELO Committee if authorized by a majority of the members present and voting at any regular or special meeting at which a quorum is present.

(3) The ELO Committee may permit any or all members to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of electronic communication by which all members participating may simultaneously or sequentially communicate with each other during the meeting. A member participating in a meeting by this means is deemed to be present in person at the meeting.

(4) On or before September 1, 2018, two legislative members shall convene the first meeting of the ELO Committee.

(f) Administrative support. The Office of Legislative Council shall provide administrative support to the ELO Committee.

(g) Compensation, reimbursement, and appropriations.

(1) For attendance at meetings during adjournment of the General Assembly, legislative members of the ELO Committee shall be entitled to compensation and reimbursement for expenses pursuant to 2 V.S.A. § 406 for not more than 12 meetings per year. The sum of \$2,628.00 is appropriated to the General Assembly from the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to the members of the Committee who are members of the General Assembly.

(2) Other members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than 12 meetings per year. The sum of \$8,784.00 is appropriated to the Agency of Education from

the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee. The Agency shall include in its budget request to the General Assembly for each subsequent fiscal year the amount of \$8,784.00 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee.

(h) Report. Notwithstanding 2 V.S.A. § 20(d), the ELO Committee shall report to the House and Senate Committees on Education and on Appropriations on or before January 15 annually regarding the ELO Committee’s activities, including:

(1) its recommendations to improve access to expanded learning opportunities for children and youths from families with low income where expanded learning opportunities are not readily available;

(2) its recommendations to build workforce readiness skills in the fields of science, technology, engineering, and mathematics; and

(3) the extent to which transportation is a barrier to expanded learning opportunities.

(i) Sunset. This section is repealed on July 1, 2023.

§ 2913: VERMONT EXPANDED LEARNING OPPORTUNITIES SPECIAL FUND

(a) There is established the Vermont Expanded Learning Opportunities Special Fund comprising grants, donations, and contributions from any private or public source. Monies in the ELO Special Fund shall be available to the Agency of Education for the purpose of increasing access to ELOs throughout Vermont. The Commissioner of Finance and Management may draw warrants for disbursements from the Fund in anticipation of receipts. The Fund shall be administered pursuant to 32 V.S.A. chapter 7, subchapter 5, except that interest earned and any remaining balance at the end of the fiscal year shall be retained and carried forward in the Fund.

(b) The Agency of Education shall report annually in its budget presentation to the House and Senate Committees on Education and on Appropriations on the number and amount of ELO grants disbursed and the geographic locations of the recipients.

Sec. 18. 16 V.S.A. § 2906 is amended to read:

§ 2906. VERMONT EXPANDED LEARNING OPPORTUNITIES SPECIAL FUND ESTABLISHED

(a) As used in this section, “Expanded Learning Opportunity” means a structured program designed to serve prekindergarten through secondary

~~school-age children and youth outside the school day and year on a regular basis, including before and after school and during the summer, by providing opportunities for personal, emotional, and academic growth for children and youth.~~

~~(b) There is established a Vermont Expanded Learning Opportunities Special Fund comprising grants, donations, and contributions from any private or public source. Monies in the Fund shall be available to the Agency for the purpose of increasing access to expanded learning opportunities throughout Vermont. The Commissioner of Finance and Management may draw warrants for disbursements from this Fund in anticipation of receipts. The Fund shall be administered pursuant to 32 V.S.A. chapter 7, subchapter 5, except that interest earned and any remaining balance at the end of the fiscal year shall be retained and carried forward in the Fund. [Repealed.]~~

\* \* \* Postsecondary Educational Institutions; Closing \* \* \*

Sec. 19. 16 V.S.A. § 175 is amended to read:

§ 175. POSTSECONDARY EDUCATIONAL INSTITUTIONS; CLOSING

(a) When an institution of higher education, whether or not chartered in this State, proposes to discontinue the regular course of instruction, either permanently or for a temporary period other than a customary vacation period, the institution shall:

(1) promptly inform the State Board;

(2) prepare the academic record of each current and former student in a form satisfactory to the State Board and including interpretive information required by the Board; and

(3) deliver the records to a person designated by the State Board to act as permanent repository for the institution's records, together with the reasonable cost of entering and maintaining the records.

\* \* \*

(d) When an institution of higher education is unable or unwilling to comply substantially with the record preparation and delivery requirements of subsection (a) of this section, the State Board shall bring an action in Superior Court to compel compliance with this section, and may in a proper case obtain temporary custody of the records.

(e) When an institution of higher education is unable or unwilling to comply with the requirements of subsection (a) of this section, the State Board may expend State funds necessary to ensure the proper storage and availability of the institution's records. The Attorney General shall then seek recovery under this subsection, in the name of the State, of all of the State's incurred

costs and expenses, including attorney's fees, arising from the failure to comply. Claims under this subsection shall be a lien on all the property of a defaulting institution, until all claims under this subsection are satisfied. The lien shall take effect from the date of filing notice thereof in the records of the town or towns where property of the defaulting institution is located.

\* \* \*

~~(g)(1) The Association of Vermont Independent Colleges (AVIC) shall maintain a memorandum of understanding with each of its member colleges under which each member college agrees to:~~

~~(1) upon the request of AVIC, properly administer the student records of a member college that fails to comply with the requirements of subsection (a) of this section; and~~

~~(2) contribute on an equitable basis and in a manner determined in the sole discretion of AVIC to the costs of another AVIC member or other entity selected by AVIC maintaining the records of a member college that fails to comply with the requirements of subsection (a) of this section. If an institution of higher education is placed on probation for financial reasons by its accrediting agency, the institution shall, not later than two days after learning that it has been placed on probation, inform the State Board of Education of its status, and not later than 90 days after being place on probation, shall submit a student record plan to the State Board for approval.~~

~~(2) The student record plan shall include an agreement with an institution of higher education or other entity to act as a repository for the institution's records with funds set aside, if necessary, for the permanent maintenance of the student records.~~

~~(3) If the State Board does not approve the plan, the State may take action under subsections (d) and (e) of this section.~~

\* \* \* Statewide Negotiation of Health Care Benefits  
for School Employees \* \* \*

Sec. 20. STUDY COMMITTEE ON STATEWIDE NEGOTIATION OF  
HEALTH CARE BENEFITS FOR SCHOOL EMPLOYEES

(a) The Study Committee on Statewide Negotiation of Health Care Benefits for School Employee (Committee) is created to determine how to transition to a single, statewide health benefit plan for all school employees of supervisory unions and school districts.

(b)(1) The Committee shall comprise the following six members:

(A) three current members of the House of Representatives, not all

from the same political party, who shall be appointed by the Speaker of the House of Representatives; and

(B) three current members of the Senate, not all from the same political party, who shall be appointed by the Committee on Committees.

(2) If a member of the Committee ceases to serve as a member of the General Assembly, a replacement appointee who is a member of the General Assembly shall be appointed in the same manner as the initial appointment.

(c) The Committee shall propose draft legislation that addresses the following matters concerning the transition to a single, statewide health benefit plan for all school employees of supervisory unions and school districts:

(1) the structure and composition of parties to a statewide negotiation;

(2) a timeline for negotiations and impasse procedures;

(3) a process for statewide ratification of the agreement resulting from the statewide negotiation; and

(4) how income sensitization will be decided as part of the negotiations.

(d) The Committee's draft legislation shall include a requirement that any fact-finding required for impasse resolution shall give weight to:

(1) the financial capacity of the school district;

(2) the interest and welfare of the public and the financial ability of the school board to pay for increased costs of public services, including the cost of labor;

(3) comparisons of the wages, hours, and conditions of employment of the employees involved in the dispute with the wages, hours, and conditions of employment of State and municipal employees who are not employed by supervisory unions or school districts;

(4) the overall compensation currently received by the employees, including direct wages, fringe benefits, and continuity conditions and stability of employment, and all other benefits received; and

(5) the rate of growth of the economy of the State of Vermont for the year of negotiation as well as during the prior three-year period.

(e)(1) The Committee shall consult with the Secretary of Education and the Vermont Education Health Initiative as necessary.

(2) The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council.

(f) On or before December 15, 2018, the Committee shall provide its proposed legislation to the House Committees on Education, on General,

Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Education, on Economic Development, Housing and General Affairs, and on Finance.

(g) The Speaker of the House shall call the first meeting of the Committee to occur on or before July 1, 2018. The Committee shall select a chair from among its members at the first meeting. A majority of the membership shall constitute a quorum. The Committee shall cease to exist on December 16, 2018.

(h) For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than ten meetings. The sum of \$13,140.00 is appropriated to the General Assembly from the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to the members of the Committee who are members of the General Assembly.

(i) As used in this section, “supervisory union” and “school district” shall have the same meanings as set forth in 16 V.S.A. § 11.

\* \* \* Mitigating Trauma and Toxic Stress During Childhood \* \* \*

Sec. 21. 16 V.S.A. § 2902 is amended to read:

§ 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL  
SUPPORT TEAM

\* \* \*

(b) The tiered system of supports shall:

- (1) be aligned as appropriate with the general education curriculum;
- (2) be designed to enhance the ability of the general education system to meet the needs of all students;
- (3) be designed to provide necessary supports promptly, regardless of an individual student’s eligibility for categorical programs;
- (4) seek to identify and respond to students in need of support for at-risk behaviors and to students in need of specialized, individualized behavior supports; ~~and~~
- (5) provide all students with a continuum of evidence-based and research-based behavior practices, including trauma-sensitive programming, that teach and encourage prosocial skills and behaviors schoolwide;
- (6) promote collaboration with families, community supports, and the



system of health and human services; and

(7) provide professional development as needed to support all staff in implementing the system.

(c) The educational support team for each public school in the district shall be composed of staff from a variety of teaching and support positions and shall:

(1) Determine which enrolled students require additional assistance to be successful in school or to complete secondary school based on indicators set forth in guidelines developed by the Secretary, such as academic progress, attendance, behavior, or poverty. The educational support team shall pay particular attention to students during times of academic or personal transition and to those students who have been exposed to trauma.

\* \* \*

Sec. 22. 16 V.S.A. § 2904 is amended to read:

#### § 2904. REPORTS

Annually, each superintendent shall report to the Secretary in a form prescribed by the Secretary, on the status of the ~~educational support systems~~ multi-tiered system of supports in each school ~~in the supervisory union~~. The report shall describe the services and supports that are a part of the ~~education support system~~ multi-tiered system of supports, how they are funded, and how building the capacity of the ~~educational support system~~ multi-tiered system of supports has been addressed in the ~~school action plans~~, school's continuous improvement plan and professional development and shall be in addition to the report required of the ~~educational support multi-tiered system of supports~~ team in subdivision 2902(c)(6) of this chapter. The superintendent's report shall include a description and justification of how funds received due to Medicaid reimbursement under section 2959a of this title were used.

#### Sec. 23. ALIGNMENT OF DESIGNATED AND SPECIALIZED SERVICE AGENCIES WITH SUPERVISORY UNIONS

The Agencies of Education and of Human Services shall discuss areas of geographical overlap to better coordinate the provision of their respective services. The Agencies shall jointly present the results of their efforts to the House and Senate Committees on Education on or before January 15, 2019.

#### Sec. 24. SCHOOL NURSES; HEALTH-RELATED BARRIERS TO LEARNING

On or before September 1, 2018, the Agency of Human Services' Director of Prevention and Health Improvement shall coordinate with the Vermont

State School Nurse Consultant and with the Agency of Education systematically to support local education agencies, school administrators, and school nurses in ensuring that all students' health appraisal forms are completed on an annual basis to enable school nurses to identify students' health-related barriers to learning.

\* \* \* Effective Dates \* \* \*

Sec. 25. EFFECTIVE DATES

(a) Sec. 8 shall take effect on July 1, 2019.

(b) This section and the remaining sections shall take effect on passage, and Secs. 4(c) and 5 shall apply to the subsequent election of district officers of a unified union school district or a union school district.

**(Committee vote: 10-0-1 )**

**(For text see Senate Journal March 23, 2018 )**

**Rep. Pugh of South Burlington**, for the Committee on Human Services, recommends the bill ought to pass when amended as recommended by the Committee on Education and when further amended as follows:

First: In Sec. 9, amending 16 V.S.A. § 829, in subsection (c), by striking out subdivision (1)(A) in its entirety, and inserting in lieu thereof the following:

(A) Having:

(i) National Association for the Education of Young Children (NAEYC) accreditation; or

~~(B)(ii) at least four stars in the Department for Children and Families' STARS system with a plan to get to at least two points in each of the five arenas; or~~

~~(C) three stars in the STARS system if the provider has developed a plan, approved by the Commissioner for Children and Families and the Secretary of Education, to achieve four or more stars with at least two points in each of the five arenas in no more than three years, and the provider has met intermediate milestones.~~

Second: In Sec. 9, amending 16 V.S.A. § 829, in subsection (c), by striking out subdivision (2)(B) in its entirety, and inserting in lieu thereof the following:

(B) meeting health, safety, and quality rules adopted by the State Board of Education.

Third: In Sec. 9, amending 16 V.S.A. § 829, in subsection (e), by striking

out subdivision (4)(B)(ii) in its entirety, and inserting in lieu thereof the following:

(ii) enters into an agreement with any provider to which it will pay tuition regarding quality assurance, transition, and any other matters; agreements entered into for the 2019-2020 school year and future school years shall be in a form prescribed by the Secretary of Education; and

Fourth: In Sec. 9, amending 16 V.S.A. § 829, in subsection (e), by striking out subdivision (12) in its entirety, and inserting in lieu thereof the following:

(12) To establish health, safety, and quality requirements for prequalified public providers that are consistent with the Child Care Licensing Regulations adopted by the Agency of Human Services.

Fifth: In Sec. 10, amending 16 V.S.A. § 4010, by striking out subsection (c) in its entirety, and inserting in lieu thereof the following:

(c) The Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of this section and the following weights for each class:

(1) Prekindergarten except as otherwise provided in this subsection, prekindergarten—0.46;

(2) for a resident child enrolled in a prekindergarten program offered by a prequalified public provider, as defined in section 829(a) of this title, that is the district of residence with a duration of 20 hours or more per week for 35 weeks annually—0.70;

(3) Elementary or elementary, excluding prekindergarten—1.0; and

(4) Secondary secondary—1.13

Sixth: By striking out Sec. 13 in its entirety and inserting in lieu thereof the following:

#### Sec. 13. PREKINDERGARTEN TRANSITION

Until such time as the State Board of Education implements rules that establish health, safety, and quality requirements for prequalified public providers under Sec. 9 of this act, prequalified public providers shall be subject to the health, safety, and quality rules adopted by the Agency of Human Services and the oversight by the Agency of Human Services in its enforcement of these rules.

Seventh: By striking out Sec. 25 and in its entirety and by inserting in lieu thereof the following:

#### Sec. 25. EFFECTIVE DATES

(a) Secs. 8 (Technical Correction) shall take effect July 1, 2019. Secs. 9, 11, and 12 (Prekindergarten Education) shall take effect on July 1, 2019 for the 2019-2020 school year and future school years.

(b) Sec. 10, which increases the weighting from 0.46 to 0.70 for a resident child enrolled in a public prekindergarten program with a duration of 20 hours or more per week for 35 weeks annually, shall take effect July 1, 2020 in order to provide sufficient time to determine how to better ensure equity and access to publicly funded hours across the private and public prekindergarten delivery systems.

(c) This section and the remaining sections shall take effect on passage, and Secs. 4(c) and 5 shall apply to the subsequent election of district officers of a unified union school district or a union school district.

**( Committee Vote: 6-4-1)**

**Rep. Juskiewicz of Cambridge**, for the Committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Education and when further amended as follows:

First: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Creation; membership. There is created the Expanded Learning Opportunities Committee, to be composed of the following 10 members:

(1) the Secretary of Education or designee;

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

(3) the Commissioner of Labor or designee;

(4) the Director of Vermont Afterschool, Inc. or designee;

(5) one member representing private foundations or Vermont's philanthropic community, one member representing the business community, and one member representing the education community, appointed by the Prekindergarten-16 Council; and

(6) three members representing ELO programs that have been in operation since on or before July 1, 2017, with one member to be appointed each by the Governor, the Speaker of the House, and the Committee on Committees.

Second: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Terms. ELO Committee members shall serve, commencing on January 1, three-year terms or until the member's earlier resignation or removal. An ELO Committee member may be appointed prior to January 1, 2019, in which case the initial term of that member shall extend to January 1, 2022. The respective appointing authority shall fill a vacancy for the remainder of any unexpired term. An appointed member shall not serve more than three full consecutive terms.

Third: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subdivision (e)(4) in its entirety and inserting in lieu thereof the following:

(4) On or before September 1, 2018, the Secretary of Education or designee shall convene the first meeting of the ELO Committee.

Fourth: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subsection (f) in its entirety and inserting in lieu thereof the following:

(f) Administrative support. The Agency of Education shall provide administrative support to the ELO Committee.

Fifth: In Sec. 17, adding 16 V.S.A. chapter 100, in § 2912, Expanded Learning Opportunities Committee, by striking out subsection (g) in its entirety and inserting in lieu thereof the following:

(g) Compensation, reimbursement, and appropriations. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings per year. The sum of \$4,392.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2019 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee. The Agency shall include in its budget request to the General Assembly for each subsequent fiscal year the amount of \$4,392.00 for the per diem compensation and expense reimbursements authorized by this section to be paid to these members of the Committee.

Sixth: In Sec. 20, Study Committee on Statewide Negotiation of Health Care Benefits for School Employees, by striking out subsection (h) in its entirety and relettering subsection (i) to be subsection (h).

**( Committee Vote: 7-1-3)**

**Amendment to be offered by Rep. Connor of Fairfield to the recommendation of amendment of the Committee on Education to S. 257**

By striking out Sec. 3 in its entirety and inserting in lieu thereof the following:

Sec. 3. TRANSITION

Notwithstanding any provision to the contrary in Sec. 2 of this act, a school district may pay tuition on behalf of a student to a school located in another country or to an approved independent school located in a state that is not contiguous to Vermont if the student attended that school during the 2017-2018 school year or is enrolled at that school as of July 1, 2018 for the 2018-2019 school year; provided, however, that tuition shall be paid for not more than four years after enactment of this act.

**Amendment to be offered by Reps. Strong of Albany and Hebert of Vernon to the recommendation of amendment of the Committee on Education to S. 257**

By adding a new section, with reader assistance, to be Sec. 25, to read:

\* \* \* Bullying \* \* \*

Sec. 25. 16 V.S.A. § 570c is amended to read:

§ 570c. BULLYING

(a) The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

- (1) a statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited;
- (2) a procedure that directs students, staff, parents, and guardians how to report violations and file complaints;
- (3) a procedure for investigating reports of violations and complaints;
- (4) a description of the circumstances under which bullying may be reported to a law enforcement agency;
- (5) consequences and appropriate remedial action for students who commit bullying;
- (6) a description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying; and
- (7) annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student

from bringing a complaint to any adult in the building.

(b)(1) If a parent or guardian of a student believes that the student has been bullied and that the school has not taken appropriate action to protect the student from further instances of bullying, then the parent or guardian may seek to have the school district pay tuition for the student to attend another school in accordance with section 828 of this title.

(2) A parent or guardian seeking this remedy shall submit a document to the board of the school district that:

(A) explains the reasons that the parent or guardian believes that the student has been bullied:

(B) explains the reasons that the parent or guardian believes that the school has not taken appropriate action to protect the student from further instances of bullying; and

(C) requests that the school district pay tuition for the student to attend another school in accordance with section 828 of this title.

(3) The school board shall meet with the parent or guardian and representatives of the school within 15 days after it receives the document submitted under subdivision (2) of this subsection.

(4) The school board shall issue notice of its decision in writing to the parent or guardian and representatives of the school within two days after the meeting with the parent or guardian and representatives of the school. The notice shall include the rationale for the decision.

(5) If the parent or guardian is dissatisfied with the decision, the parent or guardian may appeal the decision to the Secretary of Education by notifying the Secretary in writing, within ten days after receipt of the notice of decision, of the reasons for the parent's or guardian's appeal.

(6) The Secretary shall meet with the parent or guardian and representatives of the school board within 15 days after it receives the appeal submitted under subdivision (5) of this subsection.

(7) The Secretary shall issue notice of his or her decision in writing to the parent or guardian and representatives of the school district within two days after the meeting with the parent or guardian and representatives of the school district. The notice shall include the rationale for the decision. The Secretary's decision shall be final.

(8) Tuition paid by a school district under this subsection (b) shall be paid in accordance with sections 823 and 824 of this title.

and by renumbering the remaining section to be numerically correct.

**Amendment to be offered by Rep. Pugh of South Burlington to the recommendation of amendment of the Committee on Education to S. 257**

by striking out the fourth instance of amendment in its entirety and inserting in lieu thereof the following:

Fourth: In Sec. 9, amending 16 V.S.A. § 829, in subsection (e), by striking out subdivision (12) in its entirety, and inserting in lieu thereof the following:

(12) To establish health, safety, and quality requirements for prequalified public providers that are consistent with the Child Care Licensing Regulations adopted by the Agency of Human Services and are monitored annually by the Agency of Education.

**Amendment to be offered by Reps. Toll of Danville and Juskiewicz of Cambridge to the recommendation of amendment of the Committee on Education to S. 257**

By striking out Sec. 14 in its entirety and inserting in lieu thereof the following:

Sec. 14. EDUCATOR LICENSURE REQUIREMENTS

(a) The Vermont Standards Board for Professional Educators shall consider whether the educator licensure and endorsement requirements are appropriate or should be updated. As part of its review, the Board shall consider whether the use by a school of a school-based teacher quality and performance measurement program approved by the New England Association of Schools and Colleges, or examinations offered by the Smarter Balanced Assessment Consortium, should be used as criteria to qualify for licensure and endorsement. On or before December 1, 2018, the Board shall report its findings and recommendations to the House and Senate Committees on Education.

(b) As part of its review under subsection (a) of this section, the Vermont Standards Board for Professional Educators shall consider whether the educator licensure and endorsement requirements for teachers in career technical education centers are appropriate or should be updated. After the House and Senate Committees on Education have concluded their consideration of the report of the Vermont Standards Board for Professional Educators under subsection (a) of this section, the Vermont Standards Board for Professional Educators and the State Board of Education shall either update their educator licensure and endorsement rules for teachers in career technical education centers or issue a report to the House and Senate Committees on Education that they do not intend to update these rules. Until the date upon which these updated rules are implemented or the report is issued, teachers employed by career technical centers who were hired before April 1, 2018 and



who do not have the licensure or endorsement that is required under applicable rules shall be exempt from these rules and any requirement to pursue licensure or endorsement under these rules.

(c) Notwithstanding subsection (b) of this section and any provision of law to the contrary, an employee in an approved area career technical center located in an approved independent school who was hired before April 1, 2018 and who did not have the licensure or endorsement that is required under applicable rules governing career technical centers shall be permanently exempt from these rules. An employee hired on or after April 1, 2018 shall be subject to these rules, and an employee hired before April 1, 2018 who complied with these rules shall maintain his or her licensure and endorsements as required by these rules.

## **Senate Proposal of Amendment**

### **H. 196**

An act relating to paid family leave

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

Sec. 1. 21 V.S.A. § 471 is amended to read:

#### § 471. DEFINITIONS

As used in this subchapter:

(1) “Employer” means an individual, organization ~~or~~, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State ~~which for the purposes of parental leave that employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

\* \* \*

(3) “Family leave” means a leave of absence from employment by an employee who works for an employer ~~which~~ that employs ~~15~~ 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

(A) the serious illness of the employee; ~~or~~

(B) the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, parent, spouse<sub>2</sub>, or parent of the employee’s spouse;

~~(4)~~ “Parental leave” means a leave of absence from employment by an employee who works for an employer which employs 10 or more individuals who are employed for an average of at least 30 hours per week during the year for one of the following reasons:

(C) the employee’s pregnancy;

~~(A)~~(D) the birth of the employee’s child; or

~~(B)~~(E) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.

~~(5)~~(4) “Serious illness” means an accident, disease, or physical or mental condition that:

\* \* \*

(5) “Commissioner” means the Commissioner of Labor.

Sec. 2. 21 V.S.A. § 472 is amended to read:

§ 472. FAMILY LEAVE

(a) During any 12-month period, an employee shall be entitled to take unpaid leave for a period not to exceed 12 weeks for the following reasons:

~~(1)~~ for parental leave, during the employee’s pregnancy and;

(2) following the birth of ~~an~~ the employee’s child ~~or~~;

(3) within a year following the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption ~~or foster care~~;

~~(2)~~(4) for family leave, for the serious illness of the employee; or

(5) the serious illness of the employee’s child, stepchild or ward of the employee who lives with the employee, foster child, parent, spouse, or parent of the employee’s spouse.

(b) During the leave, at the employee’s option, the employee may use accrued sick leave ~~or~~ vacation leave ~~or~~ any other accrued paid leave, ~~not to exceed six weeks~~ Parental and Family Leave Insurance benefits pursuant to subchapter 13 of this chapter, or short-term disability insurance or other insurance benefits. Utilization Use of accrued paid leave, Parental and Family Leave Insurance benefits, or insurance benefits shall not extend the leave provided ~~herein~~ by this section.

\* \* \*

(d) The employer shall post and maintain in a conspicuous place in and about each of ~~his or her~~ its places of business printed notices of the provisions of this subchapter on forms provided by the Commissioner of Labor.

(e)(1) An employee shall give his or her employer reasonable written notice of intent to take family leave under this subchapter. Notice shall include the date the leave is expected to commence and the estimated duration of the leave.

(2) In the case of the adoption or birth of a child, an employer shall not require that notice be given more than six weeks prior to the anticipated commencement of the leave.

(3) In the case of an unanticipated serious illness or premature birth, the employee shall give the employer notice of the commencement of the leave as soon as practicable.

(4) In the case of serious illness of the employee or a member of the employee's family, an employer may require certification from a physician to verify the condition and the amount and necessity for the leave requested.

(5) An employee may return from leave earlier than estimated upon approval of the employer.

(6) An employee shall provide reasonable notice to the employer of his or her need to extend the leave to the extent provided by this chapter.

\* \* \*

(h) Except for serious illness of the employee, an employee who does not return to employment with the employer who provided the family leave shall return to the employer the value of any compensation paid to or on behalf of the employee during the leave, except payments of Parental and Family Leave Insurance benefits and payments for accrued sick leave or vacation leave. An employer may elect to waive the rights provided pursuant to this subsection.

Sec. 3. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Parental and Family Leave Insurance

§ 571. DEFINITIONS

As used in this subchapter:

(1) "Employee" means an individual who receives payments with respect to services performed for an employer from which the employer is required to withhold Vermont income tax pursuant to 32 V.S.A. chapter 151, subchapter 4.

(2) "Employer" means an individual, organization, governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air or express company doing business in or operating within this State.

(3) “Family leave” means a leave of absence from employment by an employee for the serious illness of the employee’s child, stepchild or ward who lives with the employee, foster child, parent, spouse, or parent of the employee’s spouse.

(4) “Parental and bonding leave” means a leave of absence from employment by an employee for:

(A) the birth of the employee’s child; or

(B) the initial placement of a child 16 years of age or younger with the employee for the purpose of adoption or foster care.

(5) “Qualified employee” means an individual who has earned at least \$10,710.00 in wages in Vermont during the last 12 months.

(6) “Serious illness” means an accident, disease, or physical or mental condition that:

(A) poses imminent danger of death;

(B) requires inpatient care in a hospital; or

(C) requires continuing in-home care under the direction of a physician.

(7) “Wages” means payments from an employer to an employee that are subject to income tax withholding pursuant to 32 V.S.A. chapter 151, subchapter 4.

§ 572. PARENTAL AND FAMILY LEAVE INSURANCE; SPECIAL FUND; ADMINISTRATION

(a)(1) The Parental and Family Leave Insurance Program is established for the provision of Parental and Family Leave Insurance benefits to eligible employees pursuant to this section.

(2)(A) The Commissioner of Taxes shall administer the collection of contributions, the determination of monetary eligibility for benefits, and the issuance of benefits checks for the program.

(B) The Commissioner of Labor shall administer the receipt and processing of benefits applications, the determination of eligibility for benefits, the collection of overpaid benefits, and all other aspects of the program that are not administered by the Commissioner of Taxes.

(b) The Parental and Family Leave Insurance Special Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5. The Fund may be expended by the Commissioners of Labor and of Taxes for the administration of the Parental and Family Leave Insurance Program and payment of Parental and

Family Leave Insurance benefits provided pursuant to this section. All interest earned on Fund balances shall be credited to the Fund.

(c)(1)(A) The Fund shall consist of contributions equal to 0.136 percent of each employee's covered wages, which an employer shall deduct and withhold from each of its employee's wages.

(B) In lieu of deducting and withholding the full amount of the contribution pursuant to subdivision (A) of this subdivision (1), an employer may elect to pay all or a portion of the contributions due from the employee's covered wages.

(C) As used in this subsection, the term "covered wages" does not include the amount of wages paid to an employee after he or she has received wages equal to \$150,000.00. Beginning on January 1, 2020, and on each subsequent January 1, the amount of wages included in the term "covered wages" shall be increased by the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous September 1. The amount of wages included in the term "covered wages" shall not be decreased.

(2)(A) Notwithstanding subdivision (1)(A) of this subsection (c), the General Assembly shall annually establish the rate of contribution for the next fiscal year. The rate shall equal the amount necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least nine months of the projected benefit payments for the next fiscal year, and to administer the Parental and Family Leave Insurance Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(B) On or before February 1 of each year, the Commissioner of Labor, in consultation with the Commissioner of Taxes, shall report to the General Assembly the rate of contribution necessary to provide Parental and Family Leave Insurance benefits pursuant to this subchapter, to maintain a reserve equal to at least nine months of the projected benefit payments for the next fiscal year, and to administer the Program during the next fiscal year, adjusted by any balance in the Fund from the prior fiscal year.

(d) The Commissioner of Taxes shall require the withholding of the contributions required pursuant to subsection (c) of this section from wages paid by any employer, as if the contributions were an additional Vermont income tax subject to the withholding requirements of 32 V.S.A. § 5841(a). The administrative and enforcement provisions of 32 V.S.A. chapter 151, subchapter 4 shall apply to the withholding requirement under this section as if the contributions withheld were a Vermont income tax.

§ 573. BENEFITS

(a) Except as otherwise provided pursuant to section 572 of this subchapter, a qualified employee awarded Parental and Family Leave Insurance benefits under this section shall receive 70 percent of his or her average weekly wage or an amount equal to a 40-hour workweek paid at a rate double that of the livable wage, as determined by the Joint Fiscal Office pursuant to 2 V.S.A. § 505, whichever is less.

(b) A qualified employee shall be permitted to receive a total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for family leave or parental and bonding leave, or both, which shall include:

(1) not more than 12 weeks of parental and bonding leave, provided that if both parents are qualified employees they shall be permitted to receive a combined total of not more than 12 weeks of Parental and Family Leave Insurance benefits in a 12-month period for parental and bonding leave; and

(2) not more than six weeks of Parental and Family Leave Insurance benefits in a 12-month period for family leave.

§ 574. APPLICATION FOR BENEFITS; PAYMENT; TAX WITHHOLDING

(a) A qualified employee shall file an application for Parental and Family Leave Insurance benefits with the Commissioner of Labor under this section on a form provided by the Commissioner. The Commissioner shall determine whether the qualified employee is eligible to receive Parental and Family Leave Insurance benefits based on the following criteria:

(1) The purposes for which the claim is made are adequately documented pursuant to rules adopted by the Commissioner.

(2) The Commissioner of Taxes certifies that the individual is a qualified employee.

(3) The qualified employee satisfies the eligibility requirements for the requested leave and has specified the duration of the leave.

(4) The benefits are being requested in relation to a family leave or a parental and bonding leave.

(b)(1) The Commissioner of Labor shall make a determination of each claim not later than five business days after the date the claim is filed, and Parental and Family Leave Insurance benefits shall be paid from the Fund created pursuant to this section. The Commissioner may extend the time in which to make a determination of a claim by not more than five business days if necessary to obtain documents or information that are needed to make the

determination.

(2) The first benefit payment shall be sent to a qualified employee within 14 days after his or her claim is approved, and subsequent payments shall be sent biweekly.

(3) The provisions of section 1367 of this title shall apply to Parental and Family Leave Insurance benefits.

(c)(1) An individual filing a claim for benefits pursuant to this section shall, at the time of filing, be advised that Parental and Family Leave Insurance benefits may be subject to income tax and that the individual's benefits may be subject to withholding.

(2) The Commissioner of Labor shall follow all procedures specified by 26 U.S.C. chapter 24 and 32 V.S.A. chapter 151, subchapter 4 pertaining to the withholding of income tax.

#### § 575. REINSTATEMENT; SENIORITY AND BENEFITS PROTECTED

(a) The employer of an employee who receives Parental and Family Leave Insurance benefits under this subchapter shall reinstate the employee at the conclusion of his or her family leave or parental and bonding leave, provided the employee is not out of work for a continuous period in excess of 12 weeks. The employee shall be reinstated in the first available suitable position given the position he or she held at the time his or her leave began.

(b) Upon reinstatement, the employee shall regain seniority and any unused accrued paid leave he or she was entitled to prior to the family leave or parental and bonding leave, less any accrued paid leave used during the family leave or parental and bonding leave.

(c)(1) Nothing in this section shall be construed to diminish an employee's rights pursuant to subsection 472(f) of this chapter.

(2) The provisions of this section shall not apply if:

(A) the employee had been given notice, or had given notice, prior to the beginning of his or her leave;

(B) the employee's position would have terminated of its own terms prior to any reinstatement he or she would otherwise be entitled to under this section; or

(C) the employee fails to inform the employer of:

(i) his or her interest in being reinstated at the conclusion of the leave; and

(ii) the date on which his or her leave is anticipated to conclude.

(D) More than two years have elapsed since the conclusion of the employee's leave.

(d)(1) An employee aggrieved by an employer's failure to comply with the provisions of this section may bring an action in the Civil Division of the Superior Court in the county where the employment is located for compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, and other appropriate relief.

(2) A copy of the complaint shall be filed with the Commissioner of Labor.

(3) The court shall award reasonable attorney's fees to the employee if he or she prevails.

#### § 576. APPEALS

(a)(1) An employer or individual aggrieved by a decision of the Commissioner of Labor under section 574 or 581 of this subchapter may file with the Commissioner a petition for reconsideration within 30 days after receipt of the decision. The petition shall set forth in detail the grounds upon which it is claimed that the decision is erroneous and may include materials supporting that claim.

(2) If an employer petitions the Commissioner to reconsider a decision pursuant to section 574 or 581 of this subchapter, the Commissioner shall promptly notify the individual of the petition by ordinary, certified, or electronic mail and provide him or her with an opportunity to file an answer to the employer's petition.

(3) The Commissioner shall promptly notify the employer or individual, or both, of his or her decision by ordinary, certified, or electronic mail.

(b)(1) An employer or individual aggrieved by the Commissioner's decision on reconsideration may file an appeal with a departmental administrative law judge within 30 days after receiving the Commissioner's decision. The appeal shall set forth in detail the grounds upon which it is claimed that the decision is erroneous.

(2) The administrative law judge shall, upon not less than five business days' notice, hold a hearing on the appeal as provided pursuant to rules adopted by the Commissioner. After the hearing, all parties to the appeal shall be promptly notified by ordinary, certified, or electronic mail of the findings of fact, conclusions, and decision of the administrative law judge.

(c) Any party may appeal the administrative law judge's decision to the Supreme Court within 30 days after receiving the decision.



(d) The provisions of section 1353 of this title shall apply to all determinations, redeterminations, findings of fact, conclusions of law, decisions, orders, or judgments entered or made pursuant to this section.

§ 577. FALSE STATEMENT OR REPRESENTATION; PENALTY

A person who willfully makes a false statement or representation for the purpose of obtaining any benefit or payment or to avoid payment of any required contributions under the provisions of this subchapter, either for himself or herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00 and shall forfeit all or a portion of any right to benefits under the provisions of this subchapter, as determined to be appropriate by the Commissioner of Labor or of Taxes, as appropriate, after a determination by the Commissioner that the person has willfully made a false statement or representation of a material fact.

§ 578. RULEMAKING

(a) The Commissioner of Taxes shall adopt rules as necessary to implement the provisions of this subchapter related to the collection of contributions pursuant to section 572 of this subchapter and the determination of monetary eligibility for benefits.

(b) The Commissioner of Labor shall adopt rules as necessary to implement all other provisions of this subchapter.

§ 579. CONFIDENTIALITY OF INFORMATION

(a) Information obtained from an employer or individual in the administration of this subchapter and determinations of an individual's right to receive benefits that reveal an employer's or individual's identity in any manner shall be kept confidential and shall be exempt from public inspection and copying under the Public Records Act. Such information shall not be admissible as evidence in any action or proceeding other than one brought pursuant to the provisions of this subchapter.

(b) Notwithstanding subsection (a) of this section:

(1) an individual or his or her duly authorized agent may be provided with information to the extent necessary for the proper presentation of his or her claim for benefits or to inform him or her of his or her existing or prospective rights to benefits; and

(2) an employer may be provided with information that the Commissioner of Labor or of Taxes determines is necessary to enable the employer to discharge fully its obligations and protect its rights under this subchapter.

§ 580. DISQUALIFICATIONS

A qualified employee shall be disqualified for benefits for any week in which he or she has received:

(1) compensation for temporary partial disability or temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(2) unemployment compensation benefits under the law of any state.

§ 581. OVERPAYMENT OF BENEFITS; COLLECTION

(a)(1) Any individual who by nondisclosure or misrepresentation of a material fact, by him or her, or by another person, has received Parental and Family Leave Insurance benefits when he or she failed to fulfill a requirement for the receipt of benefits pursuant to this chapter or while he or she was disqualified from receiving benefits pursuant to section 580 of this chapter shall be liable to repay to the Commissioner of Labor the amount received.

(2) Upon determining that an individual has received benefits under this chapter that he or she was not entitled to, the Commissioner of Labor shall provide the individual with notice of the determination. The notice shall include a statement that the individual is liable to repay to the Commissioner the amount of overpaid benefits and shall identify the basis of the overpayment and the time period in which the benefits were paid.

(3) The determination shall be made within not more than three years after the date of the overpayment.

(b)(1) An individual liable under this section shall repay the overpaid amount to the Commissioner for deposit in the Fund.

(2) If the Commissioner finds that the individual intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, in addition to the repayment under subdivision (1) of this subsection, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits, which shall also be deposited in the Fund.

(3) The Commissioner may collect the amounts due under this section in civil action in the Superior Court.

(c) If an individual is liable to repay any amount pursuant to this section, the Commissioner may withhold, in whole or in part, any future benefits payable to the individual pursuant to this chapter and credit the withheld benefits against the amount due from the individual until it is repaid in full, less any penalties assessed under subdivision (b)(2) of this section.

(d) In addition to the remedy provided pursuant to this section, an

individual who intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits may be subject to the penalties provided pursuant to section 577 of this title.

#### Sec. 4. ADOPTION OF RULES

(a) On or before April 1, 2019, the Commissioner of Taxes shall adopt rules necessary to implement the provisions of 21 V.S.A. chapter 5, subchapter 13 related to the collection of contributions and the determination of monetary eligibility, which shall include:

- (1) procedures for the collection of contributions;
- (2) procedures for the issuance of benefits payments; and
- (3) reporting and record-keeping requirements for employers.

(b) On or before April 1, 2019, the Commissioner of Labor shall adopt rules necessary to implement all other provisions of 21 V.S.A. chapter 5, subchapter 13, which shall include:

- (1) procedures for receiving and processing applications for benefits;
- (2) acceptable documentation for demonstrating eligibility for benefits;
- (3) forms and requirements for providing certification from a health care provider of the need for family leave that are modeled on the federal rules governing certification of a serious health condition under the Family and Medical Leave Act;
- (4) forms and procedures for obtaining authorization for an individual's health care provider to disclose to the Commissioner information necessary to make a determination of the individual's eligibility for benefits; and
- (5) procedures for appealing a decision pursuant to 21 V.S.A. § 574 that are modeled, to the extent possible, on the appeals process provided for determinations of benefits in relation to unemployment insurance.

#### Sec. 5. EDUCATION AND OUTREACH

On or before June 1, 2019, the Commissioner of Labor shall develop and make available on the Department of Labor's website information and materials to educate and inform employers and employees about the Parental and Family Leave Insurance Program established pursuant to 21 V.S.A. chapter 5, subchapter 13.

#### Sec. 6. ESTABLISHMENT OF PARENTAL AND FAMILY LEAVE INSURANCE PROGRAM; EXPENDITURES FROM SPECIAL FUND

Beginning on July 1, 2018, the Commissioner of Finance and Management

may, pursuant to 32 V.S.A. § 588(4)(C), issue warrants for expenditures from the Parental and Family Leave Insurance Special Fund necessary to establish the Parental and Family Leave Insurance Program in anticipation of the receipt on or after July 1, 2019 of contributions submitted pursuant to 21 V.S.A. § 572.

Sec. 7. ADEQUACY OF RESERVES; REPORT

Annually, on or before January 15, 2021, 2022, and 2023, the Commissioners of Labor and of Taxes, in consultation with the Commissioners of Finance and Management and of Financial Regulation, shall submit a written report to the House Committees on Appropriations, on General, Housing, and Military Affairs, and on Ways and Means and the Senate Committees on Appropriations, on Economic Development, Housing and General Affairs, and on Finance regarding the amount and adequacy of the reserves in the Parental and Family Leave Insurance Special Fund and any recommendations for legislative action necessary to ensure that an adequate reserve is maintained in the Fund.

Sec. 8. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

(5) For any week with respect to which the individual is receiving or has received remuneration in the form of:

\* \* \*

(F) Parental and Family Leave Insurance benefits pursuant to chapter 5, subchapter 13 of this title.

\* \* \*

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 5, 6, and 7 shall take effect on July 1, 2018.

(b) Secs. 1, 2, and 8 shall take effect on October 1, 2020.

(c) Contributions shall begin being paid pursuant to 21 V.S.A. § 572 on July 1, 2019, and, beginning on October 1, 2020, employees may begin to receive benefits pursuant to 21 V.S.A. chapter 5, subchapter 13.

(For text see House Journal May 2, 2017 )

## H. 410

An act relating to adding products to Vermont's energy efficiency standards for appliances and equipment

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

\* \* \* Appliance Efficiency \* \* \*

### Sec. 1. PURPOSE

(a) In 9 V.S.A. § 2792, the General Assembly found that efficiency standards for products sold or installed in the State provide benefits to consumers and businesses, including saving money on utility bills, saving energy and thereby reducing the environmental impacts of energy consumption, reducing or delaying the need for new power plants and upgrades to the electric transmission and distribution system, and allowing the energy cost savings to be spent on other goods and services within the State's economy.

(b) The purpose of this act is to obtain the benefits found in 9 V.S.A. § 2792 for the following products to which the State's efficiency standards under 9 V.S.A. chapter 74 do not currently apply: air compressors, commercial dishwashers, commercial fryers, commercial hot-food holding cabinets, commercial steam cookers, computers and computer monitors, faucets, high color rendering index fluorescent lamps, portable air conditioners, portable electric spas, residential ventilating fans, showerheads, spray sprinkler bodies, uninterruptible power supplies, urinals, and water coolers.

Sec. 2. 9 V.S.A. § 2793 is amended to read:

### § 2793. DEFINITIONS

As used in this chapter:

\* \* \*

(16) With respect to air compressors, the following definitions apply:

(A) "Air compressor" means a compressor that is designed to compress air that has an inlet open to the atmosphere or other source of air and that consists of the bare compressor, also known as the compression element; one or more drivers; mechanical equipment to drive the compression element; and any ancillary equipment.

(B) "Compressor" means a machine or apparatus that converts different types of energy into the potential energy of gas pressure for displacement and compression of gaseous media to any higher-pressure values

above atmospheric pressure and has a pressure ratio at full-load operating pressure greater than 1.3.

(17) “Commercial dishwasher” means a machine designed to clean and sanitize plates, pots, pans, glasses, cups, bowls, utensils, and trays by applying sprays of detergent solution, with or without blasting media granules, and a sanitizing rinse. The phrase “commercial dishwasher” does not include dishwashers intended for consumer use as defined in 10 C.F.R. § 430.2.

(18) “Commercial fryer” means an appliance, including a cooking vessel, in which oil is placed to such a depth that the cooking food is supported by displacement of the cooking fluid rather than by the bottom of the vessel. Heat is delivered to the cooking fluid by means of an immersed electric element of band-wrapped vessel or by heat transfer from gas burners either through the walls of the fryer or through tubes passing through the cooking fluid.

(19) “Commercial hot-food holding cabinet” means a heated, fully enclosed compartment with one or more solid or transparent doors designed to maintain the temperature of hot food that has been cooked using a separate appliance. The phrase “commercial hot-food holding cabinet” does not include heated glass merchandizing cabinets, drawer warmers, or cook-and-hold appliances.

(20) “Commercial steam cooker” means a device with one or more food-steaming compartments in which the energy in the steam is transferred to the food by direct contact. A commercial steam cooker may also be known as a compartment steamer.

(21) “ENERGY STAR Program” means the federal program initiated by the U.S. Environmental Protection Agency pursuant to 42 U.S.C. § 7403(g) that includes certification of energy-saving products, buildings, and tools, and includes other resources for saving energy.

(22) With respect to faucets and showerheads, the following definitions apply:

(A) “Faucet” means a lavatory faucet, kitchen faucet, metering faucet, public lavatory faucet, or replacement aerator for a lavatory, public lavatory, or kitchen faucet. As used in this subdivision (24)(A):

(i) “Metering faucet” means a fitting that, when turned on, will gradually shut itself off over a period of several seconds.

(ii) “Public lavatory faucet” means a fitting intended to be installed in nonresidential bathrooms that are exposed to walk-in traffic.

(iii) “Replacement aerator” means an aerator sold as a

replacement, separate from the faucet to which it is intended to be attached.

(B) “Showerhead” means an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position. The term includes a body spray and handheld shower. As used in this subdivision (22)(B):

(i) “Body spray” means a shower device for spraying water onto a bather other than from the overhead position.

(ii) “Handheld shower” means a showerhead that can be held or fixed in place for the purpose of spraying water onto a bather and that is connected to a flexible hose.

(23) “High color rendering index (CRI) fluorescent lamp” means a fluorescent lamp with a color rendering index of 87 or greater that is not a compact fluorescent lamp.

(24) “Luminaire” means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(25) With respect to portable air conditioners, the following definitions apply:

(A) “Portable air conditioner” means a portable encased assembly, other than a packaged terminal air conditioner, room air conditioner, or dehumidifier, that includes a source of refrigeration; delivers cooled, conditioned air to an enclosed space; and is powered by single-phase electric current. The assembly may include additional means for air circulation and heating and may be a single-duct or a dual-duct portable air conditioner.

(B) “Single-duct portable air conditioner” means a portable air conditioner that draws all of the condenser inlet air from the conditioned space without the means of a duct and discharges the condenser outlet air outside the conditioned space through a single duct attached to an adjustable window bracket.

(C) “Dual-duct portable air conditioner” means a portable air conditioner that draws some or all of the condenser inlet air from outside the conditioned space through a duct attached to an adjustable window bracket, may draw additional condenser inlet air from the conditioned space, and discharges the condenser outlet air outside the conditioned space by means of a separate duct attached to an adjustable window bracket.

(26) “Portable electric spa” means a factory-built electric spa or hot tub, which may or may not include any combination of integral controls, water

heating, or water circulating equipment.

(27) “Residential ventilating fan” means a ceiling, wall-mounted, or remotely mounted in-line fan designed to be used in a bathroom or utility room whose purpose is to move air from inside the building to the outdoors.

(28) With respect to spray sprinkler bodies, the following definitions apply:

(A) “Pressure regulator” means a device that maintains constant operating pressure immediately downstream from the device, given higher pressure upstream.

(B) “Spray sprinkler body” means the exterior case or shell of a sprinkler incorporating a means of connection to the piping system designed to convey water to a nozzle or orifice.

(29) “T12 fluorescent lamp” means a tubular fluorescent lamp to which one of the following applies:

(A) The lamp has a nominal rating of 34 watts, is 48 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1006-1). Such a lamp is often referred to as an “F34T12 lamp” or an “F40T12/ES lamp.”

(B) The lamp has a nominal rating of 40 watts, is 48 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1010-1). Such a lamp is often referred to as an “F40T12 lamp.”

(C) The lamp has a nominal rating of 60 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-3006-1). Such a lamp is often referred to as an “F96T12/ES lamp.”

(D) The lamp has a nominal rating of 75 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-3007-1). Such a lamp is often referred to as an “F96T12 lamp.”

(E) The lamp has a nominal rating of 95 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1017-1). Such a lamp is often referred to as an “F96T12HO/ES lamp.”

(F) The lamp has a nominal rating of 110 watts, is 96 inches in length and one and one-half inches in diameter, and conforms to ANSI standard C78.81-2003 (Data Sheet 7881-ANSI-1019-1). Such a lamp is often referred to as an “F96T12HO lamp.”



(30) “Uninterruptible power supply” means a battery charger consisting of a combination of convertors, switches, and energy storage devices, such as batteries, constituting a power system that maintains continuity of load power in case of input power failure.

(31) With respect to urinals, the following definitions apply:

(A) “Plumbing fixture” means an exchangeable device that connects to a plumbing system to deliver and drain away water and waste.

(B) “Trough-type urinal” means a urinal designed for simultaneous use by two or more persons.

(C) “Urinal” means a plumbing fixture that receives only liquid body waste and conveys the waste through a trap into a drainage system.

(32) With respect to water coolers, the following definitions apply:

(A) “Cold-only unit” means a water cooler that dispenses cold water only.

(B) “Cool and cold unit” means a water cooler that dispenses both cold and room-temperature water.

(C) “Hot and cold unit” means a water cooler that dispenses both hot and cold water. A hot and cold unit also may dispense room-temperature water.

(D) “On demand” means that a water cooler heats water as it is requested, which typically takes a few minutes to deliver.

(E) “Storage-type” means that a water cooler stores thermally conditioned water in a tank and the conditioned water is available instantaneously. Storage-type water coolers include point-of-use, dry storage compartment, and bottled water coolers.

(F) “Water cooler” means a freestanding device that consumes energy to cool or heat potable water, or both.

Sec. 3. 9 V.S.A. § 2794 is amended to read:

§ 2794. SCOPE

(a) The provisions of this chapter apply to the following types of new products sold, offered for sale, or installed in the State:

- (1) Medium voltage dry-type distribution transformers.
- (2) Metal halide lamp fixtures.
- (3) Residential furnaces and residential boilers.
- (4) Single-voltage external AC to DC power supplies.

- (5) State-regulated incandescent reflector lamps.
- (6) General service lamps.
- (7) Air compressors.
- (8) Commercial dishwashers.
- (9) Commercial fryers.
- (10) Commercial hot-food holding cabinets.
- (11) Commercial steam cookers.
- (12) Computers and computer monitors.
- (13) Faucets.
- (14) High CRI fluorescent lamps.
- (15) Portable air conditioners.
- (16) Portable electric spas.
- (17) Residential ventilating fans.
- (18) Showerheads.
- (19) Spray sprinkler bodies.
- (20) Uninterruptible power supplies.
- (21) Urinals.
- (22) Water coolers.
- (23) Each other product for which the Commissioner is required to adopt an efficiency or water conservation standard by rule pursuant to section 2795 of this title.

~~(8)~~(24) Any other product that may be designated by the Commissioner in accordance with section 2797 of this title.

(b) The provisions of this chapter do not apply to:

- (1) New products manufactured in the State and sold outside the State and the equipment used in manufacturing those products.
- (2) New products manufactured outside the State and sold at wholesale inside the State for final retail sale and installation outside the State.
- (3) Products installed in mobile manufactured homes at the time of construction.
- (4) Products designed expressly for installation and use in recreational vehicles.

Sec. 4. 9 V.S.A. § 2795 is amended to read:

§ 2795. EFFICIENCY AND WATER CONSERVATION STANDARDS

(a) The Commissioner shall adopt rules in accordance with the provisions of 3 V.S.A. chapter 25 establishing minimum efficiency standards for the types of new products set forth in section 2794 of this title. The rules shall provide for the following minimum efficiency standards for products sold or installed in this State:

\* \* \*

(4)(A) Single-voltage external AC to DC power supplies shall meet the energy efficiency requirements of the following table:

\* \* \*

(C) For purposes of this subdivision (4), the efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the test methodology specified by the ~~U.S. Environmental Protection Agency's Energy Star~~ ENERGY STAR Program, "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC-DC and AC-AC Power Supplies (August 11, 2004)."

\* \* \*

(6) In the rules, the Commissioner shall adopt minimum efficiency and water conservation standards for each product that is subject to a standard under 10 C.F.R. §§ 430 and 431 as those provisions existed on January 19, 2017. The minimum standard and the testing protocol for each product shall be the same as adopted in those sections of the Code of Federal Regulations, except that for faucets, showerheads, and urinals, the minimum standard and testing protocol shall be as otherwise set forth in this section.

(7) In the rules, the Commissioner shall adopt a minimum efficacy standard for general service lamps of 45 lumens per watt, when tested in accordance with 10 C.F.R. § 430.23(gg) as that provision existed on January 19, 2017.

(8) In this subdivision (8), "final rule" means the document setting forth a final action by the U.S. Department of Energy (DOE) with respect to a final rule for "Energy Conservation Standards for Air Compressors," docket no. EERE-2013-BT-STD-0040, approved by DOE on December 5, 2016. Air compressors that meet the 12 criteria to be codified under 10 C.F.R. § 431.345(a) and set forth on pages 350 to 351 of the final rule shall meet the requirements contained in Table 1 on page 352 of the final rule using the instructions to be codified under 10 C.F.R. § 431.345(b) and set forth on page 353 of the final rule. Compliance with these requirements shall be measured

in accordance with 10 C.F.R. Part 431, Subpart T, Appendix A, entitled “Uniform Test Method for Certain Air Compressors,” as in effect on July 3, 2017.

(9) Commercial dishwashers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Commercial Dishwashers,” Version 2.0, shall meet the qualification criteria of that specification.

(10) Commercial fryers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Commercial Fryers,” Version 2.0, shall meet the qualification criteria of that specification.

(11) Commercial hot-food holding cabinets shall have a maximum idle energy rate of 40 watts per cubic foot of interior volume, as determined by the “idle energy rate-dry test” in ASTM F2140-11, “Standard Test Method for Performance of Hot-Food Holding Cabinets,” ASTM International (2011). Interior volume shall be measured as prescribed in the “ENERGY STAR Program Requirements Product Specification for Commercial Hot-Food Holding Cabinets,” Version 2.0.

(12) Commercial steam cookers shall meet the requirements of the “ENERGY STAR Program Requirements Product Specification for Commercial Steam Cookers,” Version 1.2.

(13) Computers and computer monitors shall meet the requirements of 20 California Code of Regulations (C.C.R.) § 1605.3(v) and compliance with these requirements shall be measured in accordance with test methods prescribed in 20 C.C.R. § 1604(v).

(A) For the purposes of this subdivision (13), terms used in the referenced portions of the C.C.R. shall be as defined in 20 C.C.R. § 1602.

(B) The rules shall define “computer” and “computer monitor” to have the same meaning as set forth in 20 C.C.R. § 1602(v).

(C) The referenced portions of the C.C.R. shall be those adopted on or before the effective date of this section. However, the Commissioner shall have authority to amend the rules so that the definitions of “computer” and “computer monitor” and the minimum efficiency standards for computers and computer monitors conform to subsequently adopted modifications to the referenced sections of the C.C.R.

(14) Faucets, except for metering faucets, and showerheads shall meet the standards set forth in this subdivision (14) when tested in accordance with 10 C.F.R. Part 430, Subpart B, Appendix S, entitled “Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads,” as in effect on January 3, 2017.

(A) Lavatory faucets and replacement aerators shall not exceed a maximum flow rate of 1.5 gallons per minute (gpm) at 60 pounds per square inch (psi).

(B) Residential kitchen faucets and replacement aerators shall not exceed a maximum flow rate of 1.8 gpm at 60 psi, with optional temporary flow of 2.2 gpm, provided they default to a maximum flow rate of 1.8 gpm at 60 psi after each use.

(C) Public lavatory faucets and replacement aerators shall not exceed a maximum flow rate of 0.5 gpm at 60 psi.

(D) Showerheads shall not exceed a maximum flow rate of 2.0 gpm at 80 psi.

(15) High CRI fluorescent lamps shall meet the minimum efficacy requirements contained in 10 C.F.R. § 430.32(n)(4) as that subdivision existed on January 3, 2017. Compliance with requirements shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix R, entitled “Uniform Test Method for Measuring Average Lamp Efficacy (LE), Color Rendering Index (CRI), and Correlated Color Temperature (CCT) of Electric Lamps,” as that appendix existed on January 3, 2017.

(16) Urinals, other than trough-type urinals and urinals designed and marketed exclusively for use at prisons or mental health facilities, shall have a maximum flush volume of 0.5 gallons per flush when tested in accordance with 10 C.F.R. Part 430, Subpart B, Appendix T, entitled “Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals,” as in effect on January 3, 2017 and shall pass the waste extraction test for water closets set forth in Sec. 7.10 of the American Society of Mechanical Engineers (ASME) standard A112.19.2-2013/CSA B.45.1, as that standard exists on the effective date of this section.

(17) Portable air conditioners shall have a Combined Energy Efficiency Ratio (CEER), that is greater than or equal to:  $1.04 \times [\text{SACC}/(3.7177 \times \text{SACC}^{0.6384})]$ .

(A) In this subdivision (17), “SACC” means seasonally adjusted cooling capacity expressed in British thermal units per hour.

(B) The CEER shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix CC, entitled “Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners,” as in effect on January 3, 2017.

(18) Portable electric spas shall meet the requirements of the American National Standard for Portable Electric Spa Energy Efficiency, ANSI/APSP/ICC-14 2014, as that standard exists on the effective date of this

section.

(19) Residential ventilating fans shall meet the qualification criteria of the “ENERGY STAR Program Requirements Product Specification for Residential Ventilating Fans,” Version 3.2.

(20) Spray sprinkler bodies shall include an integral pressure regulator and shall meet the water efficiency and performance criteria and other requirements of the Environmental Protection Agency’s “WaterSense Specification for Spray Sprinkler Bodies,” Version 1.0. However, this subdivision (20) shall not apply to spray sprinkler bodies that are specifically excluded from the scope of that specification.

(21) In this subdivision (21), “final rule” means the document setting forth a final action by DOE with respect to a final rule for “Energy Conservation Standards for Uninterruptible Power Supplies,” docket no. EERE-2016-BT-STD-0022, approved by DOE on December 28, 2016. Uninterruptible power supplies that use a National Electrical Manufacturer Association (NEMA) 1-15P or 5-15P input plug and have an alternating current (AC) output shall have an average load-adjusted efficiency that meets or exceed the values shown to be codified under 10 C.F.R. § 430.32(z)(3) and set forth on pages 193–194 of the final rule. Compliance with these requirements shall be measured in accordance with 10 C.F.R. Part 430, Subpart B, Appendix Y, entitled “Uniform Test Method for Measuring the Energy Consumption of Battery Chargers,” as in effect on January 11, 2017.

(22) Water coolers included in the scope of the “ENERGY STAR Program Requirements Product Specification for Water Coolers,” Version 2.0, shall have “on mode with no water draw” energy consumption less than or equal to the following values, measured in accordance with the test requirements of that specification:

(A) 0.16 kilowatt-hours (kWh) per day for cold-only units and cook and cold units;

(B) 0.87 kWh per day for storage type hot and cold units; and

(C) 0.18 kWh per day for on-demand hot and cold units.

(b) When a minimum efficiency standard as described in subsection (a) of this section sets forth requirements that change over time, the rules shall provide for compliance with the changed requirements as they come into effect.

(c) When a subdivision within subdivisions (a)(8) through (a)(22) of this section requires compliance with an efficiency standard or testing protocol contained in a document issued by an agency of the United States, another state, or a nationally or internationally recognized organization, the rules of the

Commissioner may incorporate the specified standard or protocol by reference pursuant to 3 V.S.A. § 838 rather than setting forth its language.

(d) With respect to computers and computer monitors subject to subdivision (a)(13) of this section, the Commissioner shall have authority to adopt official interpretations of the applicable efficiency standards published by the staff of the California Energy Commission (CEC). The rules shall state the process for such adoption and the manner in which the Commissioner will make the adopted interpretations publicly available.

Sec. 5. 9 V.S.A. § 2796 is amended to read:

§ 2796. IMPLEMENTATION

\* \* \*

~~(d) One year after the date upon which the sale or offering for sale of certain products becomes subject to the requirements of subsection (a) or (b) of this section, no new products may be installed for compensation in the State unless the efficiency of a new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.~~

(1) On or after July 1, 2019, no new luminaire that is designed and marketed to operate with T12 fluorescent lamps may be sold or offered for sale in the State. This prohibition shall not apply to a luminaire that the seller purchased on or before June 30, 2019.

(2) On or after July 1, 2020, no new air compressor, commercial dishwasher, commercial fryer, commercial hot-food holding cabinet, commercial steam cooker, computer or computer monitor, high CRI fluorescent lamp, portable electric spa, residential ventilating fan, spray sprinkler body, uninterruptible power supply, or water cooler may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.

(3) On or after July 1, 2021, no new faucet, showerhead, or urinal may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title.

(4) This subdivision governs the date after which no new portable air conditioner may be sold or offered for sale, lease, or rent in the State unless the efficiency of the new product meets or exceeds the efficiency standards set forth in the rules adopted pursuant to section 2795 of this title (the compliance date).

(A) The compliance date shall be on or after February 1, 2022,

unless subdivision (B) of this subdivision (3) applies.

(B) If, prior to January 1, 2019, the U.S. Department of Energy (DOE) has published a final rule in the Federal Register establishing efficiency standards for portable air conditioners and the rule has not been repealed, voided, or retracted, the compliance date shall be on or after the date as of which portable air conditioners are required to comply with the DOE rule.

(5) The prohibitions set forth in subdivisions (2) through (4) of this subsection shall not apply to a product that the seller or lessor purchased:

(A) in the case of a product listed in subdivision (2) of this subsection, on or before June 30, 2020;

(B) in the case of a faucet, showerhead, or urinal, on or before June 30, 2021; and

(C) in the case of a portable air conditioner, before the first date on which compliance is required under subdivision (4).

\* \* \*

(f)(1) When federal preemption under 42 U.S.C. § 6297 applies to a standard adopted pursuant to this chapter for a product, the standard shall become enforceable on the occurrence of the earliest of the following:

(A) The federal energy or water conservation standard for the product under 42 U.S.C. chapter 77 is withdrawn, repealed, or otherwise voided. However, this subdivision (A) shall not apply to any federal energy or water conservation standard set aside by a court of competent jurisdiction upon the petition of a person who will be adversely affected, as provided in 42 U.S.C. § 6306(b).

(B) A waiver of federal preemption is issued pursuant to 42 U.S.C. § 6297.

(2) The federal standard for general service lamps shall be considered to be withdrawn, repealed, or otherwise voided within the meaning of this subsection if it does not come into effect on January 20, 2020 pursuant to the actions published at 82 Fed. Reg. 7276 and 7333 (January 19, 2017).

(3) When a standard adopted pursuant to this chapter becomes enforceable under this subsection, a person shall not sell or offer for sale in the State a new product subject to the standard unless the efficiency or water conservation of the new product meets or exceeds the requirements set forth in the standard.

## Sec. 6. RULEMAKING

On or before May 1, 2019, the Commissioner of Public Service shall file



with the Secretary of State proposed rules to implement Secs. 2 through 4 of this act.

Sec. 7. 26 V.S.A. § 2173 is amended to read:

§ 2173. RULES ADOPTED BY THE BOARD

(a) ~~The plumber's examining board~~ Plumber's Examining Board may, pursuant to the provisions of ~~3 V.S.A. chapter 25 (Administrative Procedure Act)~~ Administrative Procedure Act, make and revise such plumbing rules as necessary for protection of the public health, except that no rule of the ~~board~~ Board may require the installation or maintenance of a water heater at a minimum temperature. To the extent that a rule of the ~~board~~ Board conflicts with this subsection, that rule shall be invalid and unenforceable. The rules shall be in effect in every city, village, and town having a public water system or public sewerage system and apply to all premises connected to the systems and all public buildings containing plumbing or water treatment and heating specialties whether they are connected to a public water or sewerage system. The local board of health and the ~~commissioner of public safety~~ Commissioner of Public Safety shall each have authority to enforce these rules. The rules shall be limited to minimum performance standards reasonably necessary for the protection of the public against accepted health hazards and shall be consistent with any minimum efficiency standards for plumbing fixtures adopted under 9 V.S.A. chapter 74. The ~~board~~ Board may, if it finds it practicable to do so, adopt the provisions of a nationally recognized plumbing code and as needed shall adopt a Vermont-specific amendment to the adopted code to ensure that it is consistent with any minimum efficiency standards for plumbing fixtures adopted under 9 V.S.A. chapter 74.

\* \* \*

\* \* \* Energy Planning \* \* \*

Sec. 8. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

(a) The Department of Public Service, in conjunction with other State agencies designated by the Governor, shall prepare a State Comprehensive Energy Plan covering at least a 20-year period. The Plan shall seek to implement the State energy policy set forth in section 202a of this title and shall be consistent with the relevant goals of 24 V.S.A. § 4302. The Plan shall include:

(1) a comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont;

(2) recommendations for State implementation actions, regulation, legislation, and other public and private action to carry out the Comprehensive Energy Plan, including recommendations for State agency energy plans under 3 V.S.A. § 2291 and transportation planning under Title 19; and

(3) recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance pursuant to 24 V.S.A. § 4352.

\* \* \*

(e) The Commissioner of Public Service (Commissioner) shall file an annual report on progress in meeting the goals of the Plan. The report shall address each of the following sectors of energy consumption in the State: electricity, nonelectric fuels for thermal purposes, and transportation. In preparing the report, the Commissioner shall consult with the Secretaries of Administration, of Agriculture, Food and Markets, of Natural Resources, and of Transportation and the Commissioner of Buildings and General Services.

(1) The Commissioner shall file the report on or before January 15 of each year, commencing in 2019. The provisions of 2 V.S.A. § 20(d) shall not apply to this report.

(2) The Commissioner shall file the report with the House Committees on Energy and Technology and on Natural Resources, Fish, and Wildlife and with the Senate Committees on Finance and on Natural Resources and Energy.

(3) For each sector, the report shall provide:

(A) In millions of British thermal units (MMBTUs) for the most recent calendar year for which data are available, the total amount of energy consumed, the amount of renewable energy consumed, and the percentage of renewable energy consumed. For the electricity sector, the report shall also state the amounts in megawatt hours (MWH) and the Vermont and New England summer and winter peak electric demand, including the hour and day of peak demand.

(B) Projections of the energy reductions and shift to renewable energy expected to occur under existing policies, technologies, and markets. The most recent available data shall be used to inform these projections and shall be provided as a supplement to the data described in subdivision (A) of this subdivision (3).

(C) Recommendations of policies to further the renewable energy goals set forth in statute and the Plan, along with an evaluation of the relative cost-effectiveness of different policy approaches.

(4) The report shall include a supplemental analysis setting forth how

progress toward the goals of the Plan is supported by complementary work in avoiding or reducing energy consumption through efficiency and demand reduction. In this subdivision (4), “demand reduction” includes dispatchable measures, such as controlling appliances that consume energy, and nondispatchable measures, such as weatherization.

(5) The report shall include recommendations on methods to enhance the process for planning, tracking, and reporting progress toward meeting statutory energy goals and the goals of the Plan. Such recommendations may include the consolidation of one or more periodic reports filed by the Department or other State agencies relating to renewable energy, with proposals for amending the statutes relevant to those reports.

(6) The report shall include a summary of the following information for each sector:

(A) major changes in relevant markets, technologies, and costs;

(B) average Vermont prices compared to the other New England states, based on the most recent available data; and

(C) significant Vermont and federal incentive programs that are relevant to one or more of the sectors.

Sec. 9. 30 V.S.A. § 218c is amended to read:

§ 218c. LEAST-COST INTEGRATED PLANNING

\* \* \*

(b) Each regulated electric or gas company shall prepare and implement a least-cost integrated plan for the provision of energy services to its Vermont customers. At least every third year on a schedule directed by the Public Utility Commission, each such company shall submit a proposed plan to the Department of Public Service and the Public Utility Commission. The Commission, after notice and opportunity for hearing, may approve a company’s least-cost integrated plan if it determines that the company’s plan complies with the requirements of subdivision (a)(1) of this section and of sections 8004 and 8005 of this title and is consistent with the goals of the Comprehensive Energy Plan issued under section 202b of this title.

\* \* \*

Sec. 10. 19 V.S.A. § 10b is amended to read:

§ 10b. STATEMENT OF POLICY; GENERAL

(a) The Agency shall be the responsible agency of the State for the development of transportation policy. It shall develop a mission statement to reflect:

(1) that State transportation policy shall be to encompass, coordinate, and integrate all modes of transportation and to consider “complete streets” principles, which are principles of safety and accommodation of all transportation system users, regardless of age, ability, or modal preference; and

(2) the need for transportation projects that will improve the State’s economic infrastructure, as well as the use of resources in efficient, coordinated, integrated, cost-effective, and environmentally sound ways, and that will be consistent with the recommendations of the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b.

(b) The Agency shall coordinate planning and education efforts with those of the Vermont Climate Change Oversight Committee and those of local and regional planning entities:

(1) to ~~assure~~ ensure that the transportation system as a whole is integrated, that access to the transportation system as a whole is integrated, and that statewide, local, and regional conservation and efficiency opportunities and practices are integrated; and

(2) to support ~~employer~~ employer-led or local or regional government-led conservation, efficiency, rideshare, and bicycle programs and other innovative transportation advances, especially employer-based incentives.

(c) In developing the State’s annual Transportation Program, the Agency shall, consistent with the planning goals listed in 24 V.S.A. § 4302 as amended by 1988 Acts and Resolves No. 200 and with appropriate consideration to local, regional, and State agency plans:

(1) Develop or incorporate designs that provide integrated, safe, and efficient transportation and that are consistent with the recommendations of the CEP.

\* \* \*

Sec. 11. 19 V.S.A. § 10i is amended to read:

#### § 10i. TRANSPORTATION PLANNING PROCESS

(a) Long-range systems plan. The ~~agency~~ Agency shall establish and implement a planning process through the adoption of a long-range multi-modal systems plan integrating all modes of transportation. The long-range multi-modal systems plan shall be based upon ~~agency~~ Agency transportation policy developed under section 10b of this title, other policies approved by the ~~legislature, agency~~ General Assembly, Agency goals, mission, and objectives, and demographic and travel forecasts, design standards, performance criteria, and funding availability. The long-range systems plan shall be developed with participation of the public, and local, and regional governmental entities, and

pursuant to the planning goals and processes set forth in 1988 Acts and Resolves No. 200 of the Acts of the 1987 Adj. Sess. (1988). The plan shall be consistent with the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b.

\* \* \*

(c) ~~Transportation program~~ Program. ~~The transportation program~~ Transportation Program shall be developed in a fiscally responsible manner to accomplish the following objectives:

(1) ~~Managing managing~~, maintaining, and improving the ~~state's~~ State's existing transportation infrastructure to provide capacity, safety, and flexibility in the most cost-effective and efficient manner;

(2) ~~Developing developing~~ an integrated transportation system that provides Vermonters with transportation choices;

(3) ~~Strengthening strengthening~~ the economy, protecting the quality of the natural environment, and improving Vermonters' quality of life; and

(4) achieving the recommendations of the CEP.

\* \* \*

Sec. 12. 3 V.S.A. § 2291 is amended to read:

§ 2291. STATE AGENCY ENERGY PLAN

\* \* \*

(c) The Secretary of Administration with the cooperation of the Commissioners of Public Service and of Buildings and General Services shall develop and oversee the implementation of a State Agency Energy Plan for State government. The Plan shall be adopted by June 30, 2005, modified as necessary, and readopted by the Secretary on or before January 15, 2010 and each sixth year subsequent to 2010. The Plan shall be consistent with the Comprehensive Energy Plan (CEP) issued under 30 V.S.A. § 202b. The Plan shall accomplish the following objectives and requirements:

\* \* \*

Sec. 13. REPORTS; ELECTRIC GENERATION CONSTRAINTS

(a) As used in this section, "SHEI" means the Sheffield-Highgate Export Interface.

(b) This section requires two written submissions on constraints relating to electric generation, one from the Public Utility Commission (PUC or Commission) and one from the Department of Public Service (DPS or Department). Each submission shall be made on or before January 15, 2019 to

the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy.

(c) The Commission has pending before it several contested cases raising issues pertaining to electric generation and the SHEI area and a noncontested case proceeding related to the Standard Offer Program under 30 V.S.A. § 8005a in which the Commission may examine issues related to ensuring that standard offer projects are proposed in areas that do not result in additional costs to the electric transmission or distribution system or that provide the greatest benefit to the system. The Commission's written submission under this section shall include all of the following:

(1) For each of those contested cases, a summary of its findings and conclusions on the merits of the issue or issues in the case related to the SHEI area. This subdivision (1) does not require the Commission to provide a summary for a contested case in which it has not issued a final order on the merits.

(2) For the proceeding related to the Standard Offer Program, a summary of its decisions to date of the submission on issues related to siting standard offer projects in areas that do not result in additional costs to the electric transmission or distribution system or that provide the greatest benefit to the system.

(3) As attachments, a copy of each decision summarized.

(d) The Department shall submit a written report to assist the General Assembly, renewable energy developers, and electric utilities to plan for the deployment of renewable electric generation in a manner that is consistent with the goals, requirements, and programs related to renewable energy set forth or established in 30 V.S.A. chapter 89, the statutory goals for greenhouse gas reduction at 10 V.S.A. § 578, and the goals and recommendations of the 2016 Comprehensive Energy Plan.

(1) On each of the following, the report shall include analysis and recommendations that are consistent with those goals, requirements, and programs:

(A) How to manage demands on the State's electric transmission and distribution system that relate to or affect the deployment of renewable electric generation. The Department shall identify and review areas of the State, such as the SHEI area, in which generation that is interconnected to the electric transmission and distribution system faces constraints due to system capacity and conditions, including the relationship of interconnected generation to existing load (the identified constrained areas).

(B) How to encourage the deployment of all types of renewable

electric generation while minimizing curtailment of such generation.

(C) How to facilitate meeting the distributed renewable generation and energy transformation requirements of the Renewable Energy Standard at 30 V.S.A. §§ 8004–8005 in light of the identified constrained areas.

(D) Whether, until resolution of the constraints in the identified constrained areas, to allocate among all electric distribution utilities in the State the incremental costs to utilities caused by siting in those areas renewable electric generation that was or is encouraged by or used to meet a current or former program under 30 V.S.A. chapter 89 or that is designed or proposed to achieve a goal or recommendation of the 2016 Comprehensive Energy Plan and, if so, to propose a method for such allocation.

(E) The role of energy storage in the deployment of renewable electric generation.

(F) Recommended methods to guide where renewable electric generation should be located in the State.

(G) Recommended methods to guide the location in the State of end users that consume significant amounts of electric energy.

(H) Other relevant issues as determined by the Department.

(2) Prior to submitting this report, the Department shall provide an opportunity for written submission of relevant comments and information by the public and shall conduct one or more meetings at which the public may provide comments and information. The Department shall provide prior notice of the opportunity to submit comments and information and of each meeting to each Vermont electric transmission and distribution utility, Renewable Energy Vermont, each holder of a certificate of public good for an electric generation facility within the SHEI area with a capacity greater than 500 kilowatts, each entity appointed to deliver energy efficiency programs and measures under 30 V.S.A. § 209(d), and any other person who requests such notice or whom the Department may determine to notify.

(3) With respect to the recommendations in the report, the Department shall identify those recommendations that require passage of enabling legislation and those recommendations that may be carried out under existing law. The report shall propose a timetable for implementation of the recommendations that may be carried out under existing law.

#### Sec. 14. RENEWABLE ENERGY STANDARD (RES) RULEMAKING

2015 Acts and Resolves No. 56, Sec. 8(d) is amended to read:

(d) On or before July 1, ~~2018~~ 2019, the Board Public Utility Commission shall commence rulemaking to implement Secs. 2, 3, and 7 of this act. The

~~Board~~ Commission shall finally adopt these rules within eight months of commencing rulemaking, unless this period is extended by the Legislative Committee on Administrative Rules under 3 V.S.A. § 843.

\* \* \* Authority to Reserve Parking Spaces for Plug-in  
Electric Vehicles \* \* \*

Sec. 15. 23 V.S.A. § 1104 is amended to read:

§ 1104. STOPPING PROHIBITED

(a) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of an enforcement officer or official traffic-control device, no person may:

\* \* \*

(3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or a passenger:

(A) within 50 feet of the nearest rail of a railroad crossing;

(B) at any place where official signs prohibit parking;

(C) at any place where official signs restrict parking at an electric vehicle charging station and the vehicle violates the restrictions.

\* \* \*

Sec. 16. 23 V.S.A. § 1106 is amended to read:

§ 1106. LIMITATIONS ON USE OF STATE HIGHWAY FACILITIES

(a) As used in this section, “State highway facility” means a State highway rest area, picnic ground, parking area, or park-and-ride facility.

(b) No person shall enter or remain on any State highway facility for the purpose of overnight camping unless the particular facility has been designated for that purpose by the Traffic Committee.

(c)(1) On the basis of an engineering and traffic investigation or findings as to adverse effects on the quiet enjoyment and property values of people living adjacent to a State highway facility, the Traffic Committee may designate the size and types of vehicles allowed to park in a State highway facility or in particular areas of a State highway facility.

(2) In addition, the Secretary may prescribe special restrictions related to parking of plug-in electric vehicles in designated areas of a State highway facility.

(d) Notice of the prohibitions or restrictions under this section shall be



posted at the affected facilities by regulatory signs conforming to the Manual on Uniform Traffic Control Devices.

Sec. 17. 23 V.S.A. § 1008a is amended to read:

§ 1008a. REGULATION OF MOTOR VEHICLES AT STATE AIRPORTS

(a)(1) The Secretary may adopt rules governing the operation, use, and parking of motor vehicles on the grounds of State airports, including the access roads.

(2) In addition, the Secretary may prescribe special restrictions related to parking of plug-in electric vehicles in designated areas on such grounds.

(b) Signs indicating the special regulations rules or restrictions shall be conspicuously posted in and near all areas affected.

\* \* \* Effective Dates \* \* \*

Sec. 18. EFFECTIVE DATES

(a) This section and Secs. 13 (reports; electric generation constraints) and 14 (RES rulemaking) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2018.

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

An act relating to appliance efficiency, energy planning, and electric vehicle parking.

(For text see House Journal January 31, 2018 )

**H. 554**

An act relating to the regulation of dams

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

\* \* \* Regulation of Dams \* \* \*

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

CHAPTER 43. DAMS

§ 1079. PURPOSE

It is the purpose of this chapter to protect public safety and provide for the public good through the inventory, inspection, and evaluation of dams in the State.

§ 1080. DEFINITIONS

As used in this chapter:

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

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

(3) ~~“Person in interest”~~ “Interested person” means, in relation to any dam, a person<sub>2</sub> who has riparian rights affected by that dam<sub>2</sub>; who has a substantial interest in economic or recreational activity affected by the dam<sub>2</sub>; or whose safety would be endangered by a failure of the dam.

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

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

(6)(A) “Dam” means any artificial barrier, including its appurtenant works, that is capable of impounding water, other liquids, or accumulated sediments.

(B) “Dam” includes an artificial barrier that meets all of the following:

(i) previously was capable of impounding water, other liquids, or accumulated sediments;

(ii) was partially breached; and

(iii) has not been properly removed or mitigated.

(C) “Dam” shall not mean:

(i) barriers or structures created by beaver or any other wild animal as that term is defined in section 4001 of this title;

(ii) transportation infrastructure that has no normal water storage capacity and that impounds water only during storm events;

(iii) an artificial barrier at a stormwater management structure that is regulated by the Agency of Natural Resources under chapter 47 of this title;

(iv) an underground or elevated tank to store water otherwise regulated by the Agency of Natural Resources;

(v) an agricultural waste storage facility regulated by the Agency of Agriculture, Food and Markets under 6 V.S.A. chapter 215; or

(vi) any other structure identified by the Department by rule.

(7) “Federal dam” means:

(A) a dam owned by the United States; or

(B) a dam subject to a Federal Energy Regulatory Commission license or exemption.

(8) “Intake structure” means a dam that is constructed and operated for the primary purposes of minimally impounding water for the measurement and withdrawal of streamflow to ensure use of the withdrawn water for snowmaking, potable water, irrigation, or other purposes approved by the Department.

(9) “Nonfederal dam” means a dam that is not a federal dam.

#### § 1081. JURISDICTION OF DEPARTMENT AND PUBLIC UTILITY COMMISSION

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

(b) Transfer of jurisdiction. Jurisdiction over a nonfederal dam is transferred from the Department to the Public Utility Commission ~~whenever the Federal Energy Regulatory Commission grants a license to generate electricity at the dam or whenever~~ when the Public Utility Commission receives an application for a certificate of public good for electricity generation at that dam. Jurisdiction is transferred ~~from the Public Utility Commission to the Department whenever such a federal license when the license or exemption for a federal dam expires or is otherwise lost, whenever such, when~~ when a certificate of public good is revoked or otherwise lost; ~~or whenever when~~ when the Public Utility Commission denies an application for a certificate of public good.

(c) Transfer of records. Upon transfer of jurisdiction as set forth in subsection (b) of this section and upon written request, the State agency having former jurisdiction over a dam shall transfer copies of all records pertaining to the dam to the agency acquiring jurisdiction.

#### § 1082. AUTHORIZATION

(a) No person shall construct, enlarge, raise, lower, remodel, reconstruct, or otherwise alter any nonfederal dam, pond, or impoundment or other structure which that is or will be capable of impounding more than 500,000 cubic feet of water or other liquid after construction or alteration, or remove, breach, or otherwise lessen the capacity of an existing nonfederal dam that is or was

capable of impounding more than 500,000 cubic feet within or along the borders of this ~~state~~ State where land in this ~~state~~ State is proposed to be overflowed, or at the outlet of any body of water within this ~~state~~ State, unless authorized by the ~~state~~ State agency having jurisdiction so to do. However, in the matter of flood control projects where cooperation with the federal government is provided for by the provisions of section 1100 of this title, that section shall control.

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

(c) An intake structure in existence on July 1, 2018 that continues to operate in accordance with a valid Department permit or approval that contains requirements for inspection and maintenance subject to section 1105 of this title shall have a rebuttable presumption of compliance with the requirements of this chapter and rules adopted under this chapter, provided that no presumption of compliance shall apply if one or both of the following occur on or after July 1, 2018:

(1) the owner or operator of the intake takes an action that requires authorization under this section; or

(2) the Department issues an order under section 1095 of this title directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to improve the safety of the dam.

#### § 1083. APPLICATION

(a) Any person who proposes to undertake an action subject to regulation pursuant to section 1082 of this title shall apply in writing to the State agency having jurisdiction. The application shall set forth:

(1) the location<sub>5,2</sub>; the height, length<sub>2</sub>, and other dimensions<sub>5,2</sub>; and any proposed changes to any existing dam;

(2) the approximate area to be overflowed and the approximate number of<sub>5</sub>, or any change in the number of cubic feet of water to be impounded;

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

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

(5) other information that the ~~state~~ State agency having jurisdiction considers necessary to ~~properly~~ review the application.

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

§ 1083a. AGRICULTURAL DAMS

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

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

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

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

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

§ 1084. DEPARTMENT OF FISH AND WILDLIFE; INVESTIGATION

~~The commissioner of fish and wildlife~~ Commissioner of Fish and Wildlife shall investigate the potential effects on fish and wildlife habitats of any proposal subject to section 1082 of this title and shall certify the results to the state State agency having jurisdiction prior to any hearing or meeting relating

to the determination of public good and public safety.

#### § 1085. NOTICE OF APPLICATION

Upon receipt of the application required by section 1082 of this title, the State agency having jurisdiction shall give notice to the legislative body of each municipality in which the dam is ~~allocated~~ located and to all ~~persons~~ interested persons.

(1) The Department shall proceed in accordance with chapter 170 of this title.

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

#### § 1086. DETERMINATION OF PUBLIC GOOD; CERTIFICATES

(a) “Public good” means the greatest benefit of the people of the State. In determining whether the public good is served, the State agency having jurisdiction shall give due consideration to, among other things, ~~to~~ the effect the proposed project will have on:

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

(2) scenic and recreational values;

(3) fish and wildlife;

(4) forests and forest programs;

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

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

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

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

(9) the creation of any public benefits;

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

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

(12) municipal grand lists and revenues;

(13) public safety; and

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

(b) If the State agency having jurisdiction finds that the ~~proposed~~ proposed under section 1082 of this title will serve the public good, and, in case of any waters designated by the Secretary as outstanding resource waters, will preserve or enhance the values and activities sought to be protected by designation, the agency shall issue its order approving the application. The order shall include conditions for ~~minimum stream flow to protect fish and instream aquatic life~~ attainment of water quality standards, as determined by the Agency of Natural Resources, and such other conditions as the agency having jurisdiction considers necessary to protect any element of the public good listed in subsection (a) of this section. Otherwise it shall issue its order disapproving the application.

(c) ~~The Agency~~ State agency having jurisdiction shall provide the applicant and interested ~~parties~~ persons with copies of its order.

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

#### § 1087. REVIEW OF PLANS AND SPECIFICATIONS

~~Upon receipt of an application, the state~~ For any proposal subject to authorization under section 1082, the State agency having jurisdiction shall employ a registered an engineer experienced in the design and investigation of dams to investigate the property, review the plans and specifications, and make additional investigations as ~~it~~ the State agency having jurisdiction considers necessary to ensure that the project adequately provides for the public safety.

The engineer shall report his or her findings to the ~~agency~~ State agency having jurisdiction.

§ 1089. EMPLOYMENT OF ~~HYDRAULIC~~ ENGINEER

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

§ 1090. CONSTRUCTION SUPERVISION

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

§ 1095. UNSAFE DAM; PETITION; HEARING; EMERGENCY

(a) On receipt of a petition signed by ~~not less~~ no fewer than ten ~~persons in interest~~ interested persons or the legislative body of a municipality, the State agency having jurisdiction shall, or upon its own motion it may, institute investigations by an engineer as described in section 1087 of this title regarding the safety of any existing nonfederal dam or portion of a the dam, of any size. The agency may fix a time and place for hearing and shall give notice in the manner it directs to all ~~parties~~ interested persons. The engineer shall present his or her findings and recommendations at the hearing. After the hearing, if the agency finds that the nonfederal dam or portion of the dam as maintained or operated is unsafe or is a menace to people or property above or below the dam, it shall issue an order directing reconstruction, repair, removal, breaching, draining, or other action it considers necessary to ~~make the dam safe~~ improve the safety of the dam sufficiently to protect life and property as required by the State agency having jurisdiction.

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



appeal.

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

§ 1097. ~~SURVEY OF EXISTING DAMS; ORDERS FOR PROTECTION OF SALMON~~

~~The Fish and Wildlife Board shall forthwith make a survey of all dams within the state which impound more than three hundred thousand cubic feet of water and determine if the operation of such dams adversely affects the propagation and preservation of salmon, or materially diminishes the amount of flow in portions of a stream likely to be used for such preservation and propagation of salmon. If the Board determines that the operation of an existing dam does adversely affect the propagation and preservation of salmon or materially diminishes the flow of water over portions of stream likely to be used therefor, it shall order such changes in operation for such length of time or times as are reasonably necessary in its judgment to fully protect such preservation and propagation of salmon. Any order of the board made under this section shall be based upon facts found and stated. Appeal from an order of the board may be taken in the manner prescribed for appeals from the Public Utility Commission as provided in 30 V.S.A. chapter 1. [Repealed.]~~

§ 1098. ~~REMOVAL OF OBSTRUCTIONS; APPROPRIATION~~

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

\* \* \*

§ 1105. INSPECTION OF DAMS

(a) Inspection; schedule. All nonfederal dams in the State shall be inspected according to a schedule adopted by rule by the State agency having jurisdiction over the dam.

(b) Dam inspection. A nonfederal dam in the State shall be inspected under one or both of the following methods:

(1) The State agency having jurisdiction shall over a dam may employ an engineer to make periodic inspections of nonfederal dams in the State to

determine their condition and the extent, if any, to which they pose a ~~potential possible or actual~~ probable threat to life and property, ~~or~~.

(2) The State agency having jurisdiction shall adopt rules pursuant to 3 V.S.A. chapter 25 to require an adequate level of inspection by an independent registered engineer experienced in the design and investigation of dams. The agency shall provide the owner with the findings of the inspection and any recommendations.

(c) Dam safety reports. If a dam inspection report is completed by the State agency having jurisdiction, the agency shall provide the person owning legal title to the dam or the owner of the land on which the dam is located with a copy of the inspection report.

\* \* \*

#### § 1107. HAZARD POTENTIAL CLASSIFICATIONS

(a) The State agency having jurisdiction over a nonfederal dam listed in the Vermont Dam Inventory shall assess the hazard potential classification of the dam based on the potential loss of human life, property damage, and economic loss that would occur in the event of the failure of the dam. There shall be four hazard potential classifications: high, significant, low, and minimal.

(b) The State agency having jurisdiction over a nonfederal dam on the Vermont Dam Inventory may assess or reassess the hazard potential classification of the dam at any time.

#### § 1108. DAM INVENTORY; REGISTRATION

(a) Dam inventory. The Department of Environmental Conservation shall maintain a current inventory of all known dams in the State of Vermont. The Department of Environmental Conservation shall update and publish the Vermont Dam Inventory annually and shall include information collected in the Inventory as part of the Agency of Natural Resources' Natural Resources Atlas.

(b) Dam registration. If a dam is listed on the Vermont Dam Inventory and is under the jurisdiction of the Department, the person owning legal title to a dam or the person owning the land on which the dam is located shall, upon request of the Department, submit information to the Department regarding the dam, including the condition of the dam, whether and when the dam has been inspected, and any other information that the Department may require to ensure public safety. A person who fails to comply with the request of the Department under this section shall be subject to a civil penalty under chapter 201 of this title.

#### § 1109. MARKETABILITY OF TITLE

The failure of the person owning legal title to a dam or the owner of the land on which the dam is located to record a dam registration or a dam inspection report when required under this chapter or rules adopted under this chapter shall not create an encumbrance on record title or an effect on marketability of title for the real estate property or properties on which the dam is located.

#### § 1110. RULEMAKING

The Commissioner of Environmental Conservation shall adopt rules to implement the requirements of this chapter for dams under the jurisdiction of the Department. The rules shall include:

(1) a standard or regulatory threshold under which a dam is exempt from the registration or inspection requirements of this chapter;

(2) standards for:

(A) the siting, design, construction, reconstruction, enlargement, modification, or alteration of a dam;

(B) operation and maintenance of a dam;

(C) inspection, monitoring, record keeping, and reporting;

(D) repair, breach, or removal of a dam;

(E) application for authorization under section 1082 of this title; and

(F) for the development of an emergency action plan for a dam, including guidance on how to develop an emergency action plan, the content of a plan, and when and how an emergency action plan should be updated;

(3) criteria for the hazard potential classification of dams in the State;

(4) a process by which a person owning legal title to a dam or a person owning the land on which the dam is located shall register a dam and record the existence of the dam in the lands records; and

(5) requirements for the person owning legal title to a dam or the person owning the land on which the dam is located to conduct inspections of the dam; and

#### § 1111. NATURAL RESOURCES ATLAS; DAM STATUS

Annually on or before January 1, the Public Utility Commission shall submit to the Department updated inventory information from the previous calendar year for dams under the jurisdiction of the Public Utility Commission.

#### Sec. 2. DAM REGISTRATION PROGRAM REPORT

On or before January 1, 2023, the Department of Environmental Conservation shall submit a report to the House Committees on Natural Resources, Fish, and Wildlife and on Ways and Means and the Senate Committees on Natural Resources and Energy and on Finance. The report shall contain:

(1) an evaluation of the dam registration program under 10 V.S.A. chapter 43;

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

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

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

### Sec. 3. ADOPTION OF RULES

The Secretary of Natural Resources shall adopt the rules required under 10 V.S.A. § 1110 as follows:

(1) the rules required under 10 V.S.A. § 1110(1) (exemptions), § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification), § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted on or before July 1, 2020; and

(2) the rules required under 10 V.S.A. § 1110(2) (dam design standards) shall be adopted on or before July 1, 2022.

\* \* \* Groundwater Source Testing \* \* \*

Sec. 4. 10 V.S.A. § 1982 is added to read:

### § 1982. TESTING OF GROUNDWATER SOURCES

(a) Definition. As used in this section, “groundwater source” means that portion of a potable water supply that draws water from the ground, including a drilled well, shallow well, driven well point, or spring.

(b) Testing prior to new use. Prior to use of a new groundwater source as a potable water supply, the person who owns or controls the groundwater source shall test the groundwater source for the parameters set forth in subsection (c) of this section.

(c) Parameters of testing. A water sample collected under this section shall be analyzed for, at a minimum: arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate and nitrite, fluoride, manganese, and any other parameters required by the Agency by rule. The Agency by rule may

require testing for a parameter by region or specific geographic area of concern.

(d) Submission of test results. Results of the testing required under subsection (b) shall be submitted, in a form provided by the Department of Health, to the Department of Health and, when required by the Secretary pursuant to a permit, to the Secretary.

(e) Rulemaking. The Secretary, after consultation with the Department of Health, the Wastewater and Potable Water Supply Technical Advisory Committee, private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, prior to use of a new groundwater source, the test required under subsection (b) of this section shall be conducted;

(2) who shall be authorized to sample the source for the test required under subsections (b) and (c) of this section, provided that the rule shall include the person who owns or controls the groundwater source and licensed well drillers among those authorized to sample the source;

(3) how a water sample shall be collected in order to comply with the requirements of the analyses to be performed; and

(4) any other requirements necessary to implement this section.

(f) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title or create a defect in title of a property, provided water test results required under this section are forwarded, prior to the conveyance of the property, to the Department of Health and, when required by the Secretary pursuant to a permit, to the Agency.

#### Sec. 5. AGENCY OF NATURAL RESOURCES; GROUNDWATER SOURCE TESTING; RULEMAKING

The Secretary of Natural Resources shall commence rulemaking under 10 V.S.A. § 1982 on or before July 1, 2018. The Secretary shall adopt rules under 10 V.S.A. § 1982 on or before January 1, 2019.

Sec. 6. 18 V.S.A. § 501b is amended to read:

#### § 501b. CERTIFICATION OF LABORATORIES

(a) The ~~commissioner~~ Commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking

Water Act; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The ~~commissioner~~ Commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the ~~commissioner~~ Commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction, or condition of the certificate; or

(C) violated any statute, rule, or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the ~~board~~ Board under section 128 of this title.

\* \* \*

(f) A laboratory certified to conduct testing of groundwater sources or water supplies from for use by a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), including under the requirements of 10 V.S.A. § 1982, shall submit the results of groundwater analyses to the ~~department of health and the agency of natural resources~~ Department of Health in a format required by the ~~department of health~~ Department of Health.

Sec. 7. 10 V.S.A. § 1974 is amended to read:

#### § 1974. EXEMPTIONS

Notwithstanding any other requirements of this chapter, the following projects and actions are exempt:

\* \* \*

(8) From the permit required for operation of failed supply under subdivision 1973(a)(4) of this title for the use or operation of a failed supply that consists of only one groundwater source that provides water to only one single family residence.

\* \* \* Effective Dates \* \* \*

#### Sec. 8. EFFECTIVE DATES

(a) This section and Sec 5 (groundwater testing rulemaking) shall take effect on passage.

(b) Sec. 4 (groundwater source testing) shall take effect on July 1, 2019, except that 10 V.S.A. § 1982(e) shall take effect on passage.

(c) All other sections shall take effect on July 1, 2018.

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

An act relating to the regulation of dams and the testing of groundwater sources.

(For text see House Journal January 7, 2017 )

### **H. 675**

An act relating to conditions of release prior to trial

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

Sec. 1. 13 V.S.A. § 1702 is amended to read:

§ 1702. CRIMINAL THREATENING

(a) A person shall not by words or conduct knowingly:

(1) threaten another person; and

(2) as a result of the threat, place ~~the~~ any other person in reasonable apprehension of death or serious bodily injury to themselves or any person.

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

(c) A person who violates subsection (a) of this section with the intent to prevent another person from reporting to the Department for Children and Families the suspected abuse or neglect of a child shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d)(1) A person shall not by words or conduct knowingly:

(A) threaten to use a firearm or an explosive device to harm another person in a school building, on school property, or in an institution of higher education; and

(B) as a result of the threat, place any person in reasonable apprehension of death or serious bodily injury to themselves or any person.

(2) A person who violates this subsection shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

~~(d)~~(e) As used in this section:

(1) “Serious bodily injury” shall have the same meaning as in section 1021 of this title.

(2) “Threat” and “threaten” shall not include constitutionally protected activity.

(3) “Firearm” shall have the same meaning as in section 4016 of this title.

(4) “School property” shall have the same meaning as in section 4004 of this title.

~~(e)~~(f) Any person charged under subsection (a) or (c) of this section who is under 18 years of age shall be adjudicated as a juvenile delinquent.

~~(f)~~(g) It shall be an affirmative defense to a charge under this section that the person did not have the ability to carry out the threat. The burden shall be on the defendant to prove the affirmative defense by a preponderance of the evidence.

Sec. 2. [Deleted.]

Sec. 3. 16 V.S.A. § 1167 is amended to read:

§ 1167. SCHOOL RESOURCE OFFICER; MEMORANDUM OF UNDERSTANDING

(a) Neither the State Board nor the Agency shall regulate the use of restraint and seclusion on school property by a school resource officer certified pursuant to 20 V.S.A. § 2358.

~~(b) School boards~~ Prior to utilization of a school resource officer in a school, the school board and relevant law enforcement agencies~~are encouraged to agency shall~~ enter into memoranda of understanding relating to:

(1) the possession and use of weapons and devices by a school resource officer on school property; and

(2) the nature and scope of assistance that a school resource officer will provide to the school system.

Sec. 4. RESTORATIVE JUSTICE PRINCIPLES FOR RESPONDING TO SCHOOL DISCIPLINE PROBLEMS

On or before July 1, 2019, the Agency of Education shall issue guidance to all public school boards and boards of approved independent schools that sets out restorative justice principles for responding to school discipline problems. Each public school board and each board of an approved independent school shall consider this guidance and whether to adopt a policy on the use of restorative justice principles for responding to school discipline problems. The



restorative justice principles contained in the Agency guidance shall be designed to:

(1) decrease the use of exclusionary discipline;

(2) ensure that disciplinary measures are applied fairly and do not target students based on race, ethnicity, gender, family income level, sexual orientation, immigration status, or disability status; and

(3) provide students with the opportunity to make academic progress while suspended or expelled.

#### Sec. 5. IMPLEMENTATION OF RESTORATIVE JUSTICE PRINCIPLES; GRANT PROGRAM

(a) The Agency of Education shall establish a grant program to assist public and approved independent schools with the adoption and implementation of restorative justice principles for responding to school discipline problems. The Agency shall determine the eligibility criteria for receiving a grant and determining the grant amount, and shall monitor the use of grant monies.

(b) On or before December 1, 2018, 2019, and 2020, the Secretary of Education shall submit a written report to the House Committees on Education and Judiciary and the Senate Committees on Education and on Judiciary describing the eligibility criteria for receiving a grant and for determining the grant amount, identifying the grant recipients and the amounts they received in grant monies, and the use of grant monies by the recipients.

(c) The sum of \$250,000.00 is appropriated to the Agency of Education from the General Fund in fiscal year 2018 to be carried forward for fiscal year 2019 for the Agency to administer the grant program in accordance with this section.

#### Sec. 6. EFFECTIVE DATES

Sec. 3 shall take effect July 1, 2018 and the remaining sections shall take effect on passage.

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

An act relating to school safety.

(For text see House Journal March 1, 2018 )

#### **H. 739**

An act relating to energy productivity investments under the self-managed energy efficiency program

The Senate proposes to the House to amend the bill by striking all after the

enacting clause and inserting in lieu thereof the following:

Sec. 1. 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

\* \* \*

(j) Self-managed energy efficiency programs.

(1) There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The Commission, by order, shall enact this class of programs.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities. If an electric ratepayer approved to participate in this program class also is a customer of a natural gas utility, the ratepayer shall be exempt from all charges under subdivision (d)(3) of this section or contained within the rates charged by the natural gas utility to the ratepayer that support energy efficiency programs performed by or on behalf of that utility, provided that the ratepayer complies with this subsection.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate classes shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant, or to its predecessor in interest at the served property, under subdivision (d)(3) of this section were a minimum of:

(i) \$1.5 million during calendar year 2008; or

(ii) \$1.5 million during calendar year 2017.

(B) A cost-based fee to be determined by the Commission shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Commission and Department. The Commission shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section and, when determined to be cost-effective under subdivision (L) of this subdivision (4), with the requirements of ISO-New England for the forward capacity market (FCM) program.

(C) An applicant shall demonstrate to the Commission that it has a comprehensive energy management program with annual objectives.

Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant eligible pursuant to subdivision (A)(i) of this subdivision (j)(4) shall commit to an annual average energy efficiency investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of ~~no~~ not less than \$1 million. An applicant eligible pursuant to subdivision (A)(ii) of this subdivision (j)(4) shall commit to an annual average investment in energy efficiency and energy productivity programs and measures during each three-year period that the applicant participates in the program of not less than \$500,000.00. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), ~~the~~ an applicant shall make an additional annual energy efficiency investment in an amount not less than \$55,000.00. As used in this subsection (j), “energy productivity programs and measures” means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

(E) Participation in the self-managed program includes efficiency and productivity programs and measures applicable to electric and other forms of energy. A participant may balance efficiency investments in such programs and measures across all types of energy or fuels without limitations.

(F) A participant shall provide to the Commission and Department annually an accounting of energy investments in energy efficiency and energy productivity programs and measures and the resultant energy savings in the form prescribed by the Commission, which may conduct reasonable audits to ensure the accuracy of the data provided.

(G) The Commission shall report to the General Assembly annually by on or before April 30 concerning the prior calendar year’s class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments, and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the Commission, the applicant shall be able to participate in the class of self-managed energy efficiency programs.

(I) On a determination that, for a given three-year period, a participant in the self-managed efficiency program class did not meet or has not met the commitment required by subdivision (4)(D) of this subsection subdivision (j)(4), the Commission shall terminate the participant’s eligibility

for the self-managed program class.

(i) On such termination, the former participant will be subject fully to the then existing charges applicable to its rate class without exemption under subdivision (3) of this subsection (j), and within 90 days ~~of~~ after such termination shall pay:

(I) the difference between the investment it made pursuant to the self-managed energy efficiency program during the three-year period of noncompliance and the full amount of the charges and rates related to energy efficiency it would have incurred during that period absent exemption under subdivision (3) of this subsection (j); and

(II) the difference between the investment it made pursuant to the program within the current three-year period, if different from the period of noncompliance, and the full amount of the charges and rates related to energy efficiency it would have incurred during the current period absent exemption under subdivision (3) of this subsection (j).

(ii) Payments under subdivision ~~(4)(I)(i)~~ (4)(I) of this ~~subsection (j)~~ subdivision (4)(I) shall be made to the entities to which the full amount of charges and rates would have been paid absent exemption under subdivision (3) of this subsection (j).

(iii) A former participant may not reapply for membership in the self-managed program after termination under this subdivision (4)(I).

(J) A participant in the self-managed program class may request confidentiality of data it reports to the Commission if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the Commission shall disclose the data only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision ~~(4)(J)~~ subdivision (4) will be a public record.

(L) A participant in the self-managed program class ~~may~~ shall work with the Department of Public Service to determine whether it is cost-effective to submit projects to the independent system operator of ISO-New England, including through recognized independent aggregators, for payments under that operator's forward capacity market the FCM program, and shall invest such payments in electric or fuel efficiency.

(i) As used in this subdivision (L), "cost-effective" requires that the estimated payments from the FCM program exceed the incremental cost of savings verification necessary for submission to that program.

(ii) If the Department determines the submission to be cost-effective, then an entity appointed to deliver electric energy efficiency services under subdivision (d)(2) of this section shall submit the project to the FCM program for payment and any resulting payments shall be remitted to the Electric Efficiency Fund for use in accordance with subdivision (e)(1)(A) of this section.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity ~~which that~~ is not the participant ~~but and~~ may ~~not~~ count such funds received as part of the annual commitment to its self-managed energy efficiency program.

\* \* \*

## Sec. 2. ENERGY SAVINGS ACCOUNT PARTNERSHIP PILOT

(a) Definitions. As used in this section:

(1) “ACCD” means the Agency of Commerce and Community Development under 3 V.S.A. chapter 47.

(2) “Commission” means the Public Utility Commission under 30 V.S.A. § 3.

(3) “Customer” means a commercial or industrial electric customer that is located in a service territory in which Efficiency Vermont delivers energy efficiency programs and measures and that does not qualify for SMEEP.

(4) “Customer EEC Funds” means a customer’s EEC payments during the period of the ESA partnership project.

(5) “Department” means the Department of Public Service under 3 V.S.A. § 212 and 30 V.S.A. § 1.

(6) “EEC” means an energy efficiency charge on a customer’s retail electric bill under 30 V.S.A. § 209(d).

(7) “Efficiency Vermont” or “EVT” means the EEU whose appointment under 30 V.S.A § 209(d)(2) includes the delivery of programs and measures to customers of multiple electric distribution utilities.

(8) “Energy efficiency utility” or “EEU” means an entity appointed to deliver energy efficiency and conservation programs and measures under 30 V.S.A. § 209(d)(2).

(9) “Energy productivity measures” means investments that reduce the amount of energy required to produce a unit of product below baseline energy use. Baseline energy use shall be calculated as the average amount of energy required to make one unit of the same product in the two years preceding implementation of the program or measure.

(10) “ESA” means an energy savings account under 30 V.S.A. § 209(d)(3)(B).

(11) “ESA Partnership Pilot” means the three-year pilot program established by this section.

(12) “Regulated fuel” shall have the same meaning as in 30 V.S.A. § 209(e).

(13) “SMEEP” means the self-managed energy efficiency program established under 30 V.S.A. § 209(j).

(14) “Standing committees of jurisdiction” means the House Committee on Energy and Technology and the Senate Committees on Finance and on Natural Resources and Energy.

(15) “Unregulated fuel” shall have the same meaning as in 30 V.S.A. § 209(e).

(b) ESA Partnership Pilot; establishment. On or before July 1, 2019, the Commission by rule or order shall establish a three-year pilot program for customers to self-direct the use of their Customer EEC Funds, working with EVT. The total amount of Customer EEC Funds available in the pilot program each year shall not exceed \$2 million. The pilot program established under this section shall be an expansion of the ESA option under which:

(1) Notwithstanding any contrary provision of 30 V.S.A. § 209(d)(3)(B), the customer shall continue to pay its EEC and be able to receive an amount equal to 100 percent of its ESA account balance to pay for the full cost of projects that are eligible under subdivision (3) of this subsection; for technical assistance and other services from Efficiency Vermont; and for evaluation, measurement, and verification activity conducted by the Department or EVT.

(2) The customer may receive payments in advance of project completion from EVT based on the energy management plan submitted under subsection (d) of this section, estimated project costs, and projected energy savings. However, a customer shall not receive advance payments from EVT that exceed the amount of Customer EEC Funds the customer has already paid.

(3) Notwithstanding any contrary provision of 30 V.S.A. § 209, the Customer EEC Funds may be used for one or more of the following: electric energy efficiency, thermal energy and process-fuel efficiency for unregulated fuels, energy productivity measures, demand management, and energy storage that provides benefits to the customer and its interconnecting utility. In addition, for a customer who is a manufacturer and whose purchases of regulated fuel exceeded 600,000 thousand cubic feet (MCF) in 2017, the Funds may be used for thermal energy and process-fuel efficiency for

regulated fuels, and any regulated fuel savings attributable to investment of Customer EEC Funds through the pilot program shall be counted towards EVT's performance indicators. EVT may allocate the cost of the pilot across regulated and unregulated fuel funding sources in a manner that avoids or reduces the need to adjust savings goals approved by the Commission.

(c) Methodology for evaluation, measurement, and verification. In its rule or order under subsection (b) of this section, the Commission shall establish a methodology for evaluation, measurement, and verification of projects implemented under the pilot that is consistent with the requirements of 30 V.S.A. § 218c and that includes cost-effectiveness screening that values energy savings across the customer's energy portfolio and non-energy benefits such as economic development. As used in this subsection, "economic development" includes job creation, job retention, and capital investment.

(1) This methodology may be considered for future establishment of EEU performance criteria under 30 V.S.A. § 209(d).

(2) EVT and the Department shall evaluate and verify the electricity savings of each project funded under the ESA Partnership Pilot with no less rigor than is required by ISO-New England for its Forward Capacity Market (FCM) program.

(d) Competitive solicitation. A customer shall apply to participate in the ESA Partnership Pilot through a competitive solicitation process conducted jointly by EVT, the Department, and ACCD.

(1) Promptly after the Commission's rule or order under subsection (b) of this section becomes effective, EVT, the Department, and ACCD shall establish criteria for customer selection that are consistent with that rule or order and that take into account energy efficiency and economic development.

(2) On establishment of the selection criteria, EVT, the Department, and ACCD jointly shall issue a request for proposals (RFP) from customers seeking to participate in the ESA Partnership Pilot.

(3) EVT, the Department, and ACCD jointly shall select customers to participate in the ESA Partnership Pilot from among the customers that timely submit proposals in response to the RFP and shall notify the Commission of the selected customers.

(4) If EVT, the Department, and ACCD are unable to resolve an issue arising under this subsection, they shall bring the issue to the Commission for resolution.

(5) Customer selection under this subsection shall be completed before July 1, 2019.

(e) Energy management plans. Working with EVT, each customer selected for the ESA Partnership Pilot shall develop an energy management plan for the three-year period of the pilot with projects to be implemented, energy savings targets, and a timeline for projects and investments. A copy of each plan shall be submitted to the Commission, the Department, and ACCD.

(f) Other EEU services. A customer that participates in the ESA Partnership Pilot shall not be eligible for other EEU services, except for an EEU appointed to deliver natural gas efficiency programs and measures.

(g) Other funding. A customer that participates in the ESA Partnership Pilot may receive funding from an energy program administered by a government or other person that is not the participant, including an EEU appointed to deliver natural gas efficiency services, but shall not count such funds as part of the investment commitment of the ESA Partnership Pilot.

(h) Unused funds. At the end of the ESA Partnership Pilot, any Customer EEC Funds that have not been expended or committed under the pilot shall revert to use for systemwide energy efficiency programs and measures.

(i) Annual reports. On or before each November 1 from 2020 through 2022, the EVT and the selected customers jointly shall submit written progress reports to the Commission, the Department, and the standing committees of jurisdiction that include projects under the ESA Partnership Pilot and their associated energy and cost savings. A customer's projects under the pilot and the associated data and results shall be made public through this report. However, a customer may request that the Commission order customer-specific data to be used in preparing a report under this subsection be kept confidential if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If the Commission issues such an order, the data subject to the order shall be disclosed only in accordance with a protective agreement approved by the Commission and signed by the recipient of the data, unless a court directs otherwise.

(j) Evaluation; recommendation. On completion of the ESA Partnership Pilot, the Commission shall conduct or shall have a third party conduct an independent evaluation of the ESA Partnership Pilot.

(1) The evaluation shall analyze and compare, among pilot participants and companies of similar size outside the pilot: job creation and retention, energy savings, total energy cost reductions, energy productivity measures, amount of capital applied and leveraged, greenhouse gas reductions, and other criteria as defined by the Commission. The evaluation shall also study the effects of the pilot on other ratepayers.

(2) The evaluation shall provide electric system results for the ESA



Pilot Program and compare them to the electric system results that would have been obtained had the Customer EEC Funds been expended pursuant to the electric energy efficiency programs otherwise authorized under 30 V.S.A. § 209(d). In this subdivision (2), “electric system results” means: total electric energy savings, total avoided cost of purchasing power, total avoided costs of transmission and distribution improvements, and resulting FCM program revenues.

(3) After considering the results of that evaluation, the Commission shall submit a written recommendation to the standing committees of jurisdiction on whether to continue the program conducted under this section and, if so, under what recommended conditions and revisions, if any. The Commission shall submit this recommendation to the General Assembly on or before January 15, 2023.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(For text see House Journal March 13, 2018 )

## **H. 901**

An act relating to health information technology and health information exchange

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

### Sec. 1. HEALTH INFORMATION TECHNOLOGY; HEALTH INFORMATION EXCHANGE; PROGRESS REPORTS

(a) On or before May 1, 2018, the Department of Vermont Health Access and the Vermont Information Technology Leaders, Inc. (VITL) shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; and the Green Mountain Care Board a work plan detailing the process by which the Department and VITL shall implement the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 (Act 73 report). The work plan shall be informed by stakeholder and consumer input and by technology options and opportunities. The Plan shall identify potential steps for addressing issues of data ownership and issues of intellectual property. It shall also set forth both a timeline of tasks to be completed and a list of clear objectives to assist the General Assembly in evaluating the success or failure of the parties’ work.

(b) On or before September 1, 2018, the Department of Vermont Health

Access and VITL shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board a contingency plan for health information technology to be used if the Department and VITL are unable to implement the recommendations from the Act 73 report. The contingency plan shall contain the following:

(1) a description of the health information exchange services that would need to be replaced;

(2) a process for determining the manner in which the services would be replaced and the mechanism for acquiring the replacement services, such as a request for proposals;

(3) an assessment of the State's ownership interests in hardware systems, software systems, applications, data, and other physical and intellectual property that would need to be licensed to a future operator of Vermont's health information exchange;

(4) a plan for transitioning operations from VITL to the new operator or operators; and

(5) the impacts of the change on health care providers, health care consumers, State government, and Vermont's health care reform initiatives.

(c) On or before October 15, 2018, the Department of Vermont Health Access shall submit to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board the results of an evaluation, which shall be conducted by an independent entity with expertise in health information technology, of the work plan, the contingency plan, and the Department's and VITL's progress toward implementing the recommendations in the Act 73 report.

(d) On or before May 1, July 1, September 1, and November 1, 2018 and January 1, 2019, the Department of Vermont Health Access and VITL shall provide to the House Committees on Appropriations, on Health Care, and on Ways and Means; the Senate Committees on Appropriations, on Health and Welfare, and on Finance; the Health Reform Oversight Committee; the Joint Information Technology Oversight Committee; and the Green Mountain Care Board written updates on their progress toward implementing the recommendations contained in the Act 73 report.

(e) In addition to the written updates required by subsection (d) of this

section, the Department of Vermont Health Access and VITL shall provide testimony on their progress toward implementing the recommendations contained in the Act 73 report at a meeting of the Health Reform Oversight Committee and at a meeting of the Joint Information Technology Oversight Committee, at least once every two months or more frequently if so requested by a Committee. The testimony at each Committee's first meeting after the General Assembly has adjourned in 2018 shall also include information regarding the work plan required by subsection (a) of this section, and the testimony at each Committee's first meeting after September 1, 2018 shall also include information regarding the contingency plan required by subsection (b) of this section.

Sec. 2. 18 V.S.A. § 9351 is amended to read:

§ 9351. HEALTH INFORMATION TECHNOLOGY PLAN

(a)(1) The Secretary of Administration or designee Department of Vermont Health Access, in consultation with the Department's Health Information Exchange Steering Committee, shall be responsible for the overall coordination of Vermont's statewide Health Information Technology Plan. The Plan shall be revised annually and updated comprehensively every five years to provide a strategic vision for clinical health information technology.

(2) The Department shall submit the proposed Plan to the Green Mountain Care Board annually on or before November 1. The Green Mountain Care Board shall approve, reject, or request modifications to the Plan within 45 days following its submission; if the Board has taken no action after 45 days, the Plan shall be deemed to have been approved.

(3) The Secretary or designee Department, in consultation with the Steering Committee, shall administer the Plan, which shall include the implementation of an integrated electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, and patients. The Plan shall include standards and protocols designed to promote patient education, patient privacy, physician best practices, electronic connectivity to health care data, access to advance care planning documents, and, overall, a more efficient and less costly means of delivering quality health care in Vermont.

\* \* \*

(c) The Secretary of Administration or designee may update the Plan Department of Vermont Health Access, in consultation with the Steering Committee and subject to Green Mountain Care Board approval, may propose updates to the Plan in addition to the annual updates as needed to reflect emerging technologies, the State's changing needs, and such other areas as the

~~Secretary or designee Department~~ deems appropriate. The ~~Secretary or designee Department~~ shall solicit recommendations from ~~Vermont Information Technology Leaders, Inc. (VITL) and other entities~~ interested stakeholders in order to ~~update~~ propose updates to the Health Information Technology Plan pursuant to subsection (a) of this section and to this subsection, including applicable standards, protocols, and pilot programs, and following approval of the proposed updates by the Green Mountain Care Board, may enter into a contract or grant agreement with ~~VITL or other~~ appropriate entities to update some or all of the Plan. Upon approval ~~by the Secretary of the updated Plan by the Green Mountain Care Board~~, the Department of Vermont Health Access shall distribute the updated Plan shall be distributed to the Secretary of Administration; the Commissioner of Information and Innovation Secretary of Digital Services; the Commissioner of Financial Regulation; the Commissioner of Vermont Health Access; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; the House Committee on Health Care; affected parties; and interested stakeholders. Unless major modifications are required, the ~~Secretary Department~~ may present updated information about the Plan to the ~~Green Mountain Care Board~~ and legislative committees of jurisdiction in lieu of creating a written report.

\* \* \*

Sec. 3. 18 V.S.A. § 9352 is amended to read:

§ 9352. VERMONT INFORMATION TECHNOLOGY LEADERS

(a)(1) Governance. The Vermont Information Technology Leaders, Inc. (VITL) Board of Directors shall consist of no fewer than nine nor more than 14 members. The term of each member shall be two years, except that of the members first appointed, approximately one-half shall serve a term of one year and approximately one-half shall serve a term of two years, and members shall continue to hold office until their successors have been duly appointed. The Board of Directors shall comprise the following:

(A) ~~one member~~ two current members of the General Assembly, one of whom shall be a member of the House of Representatives appointed jointly by the Speaker of the House and the President Pro Tempore of the Senate one of whom shall be a member of the Senate appointed by the Committee on Committees, who and both of whom shall be entitled to the same per diem compensation and expense reimbursement of expenses pursuant to 2 V.S.A. § 406 as provided for attendance at sessions during adjournment of the General Assembly;

(B) one individual appointed by the Governor; and

- ~~(C) one representative of the business community;~~
- ~~(D) one representative of health care consumers;~~
- ~~(E) one representative of Vermont hospitals;~~
- ~~(F) one representative of Vermont physicians;~~
- ~~(G) one practicing clinician licensed to practice medicine in Vermont;~~
- ~~(H) one representative of a health insurer licensed to do business in Vermont;~~
- ~~(I) the President of VITL, who shall be an ex officio, nonvoting member;~~
- ~~(J) two individuals familiar with health information technology, at least one of whom shall be the chief technology officer for a health care provider; and~~
- ~~(K) two at-large members representatives of the business community, of health care consumers, of Vermont hospitals, of Vermont-licensed clinicians, and of health insurers licensed to offer plans in Vermont, as well as individuals familiar with health information technology, including, to the extent practicable, one or more individuals who are or have served as the chief technology officer for a health care facility.~~

(2) Except for the members appointed pursuant to subdivisions (1)(A) and (B) of this subsection, whenever a vacancy on the Board occurs, the members of the Board of Directors then serving shall appoint a new member who shall meet the same criteria as the member he or she replaces.

\* \* \*

(c)(1) Health information exchange operation. VITL shall be designated in the Health Information Technology Plan approved by the Green Mountain Care Board pursuant to section 9351 of this title to operate the exclusive statewide health information exchange network for this State. After the The Plan shall determine the manner in which Vermont's health information exchange network shall be managed. The Green Mountain Care Board approves shall have the authority to approve VITL's core activities and budget pursuant to chapter 220 of this title, ~~the Secretary of Administration or designee shall enter into procurement grant agreements with VITL pursuant to 8 V.S.A. § 4089k.~~ Nothing in this chapter shall impede local community providers from the exchange of electronic medical data.

(2) Notwithstanding any provision of 3 V.S.A. § 2222 or 2283b to the contrary, upon request of the Secretary of Administration, the ~~Department of~~

~~Information and Innovation Agency of Digital Services~~ shall review VITL's technology for security, privacy, and interoperability with State government information technology, consistent with the State's health information technology plan required by section 9351 of this title.

(d) Privacy. The standards and protocols implemented by VITL shall be consistent with those adopted by the statewide Health Information Technology Plan pursuant to subsection 9351(e) of this title.

(e) Report. ~~No later than~~ On or before January 15 of each year, VITL shall file a report with ~~the Green Mountain Care Board;~~ the Secretary of Administration; ~~the Commissioner of Information and Innovation~~ Secretary of Digital Services; the Commissioner of Financial Regulation; the Commissioner of Vermont Health Access; the Secretary of Human Services; the Commissioner of Health; the Commissioner of Mental Health; the Commissioner of Disabilities, Aging, and Independent Living; the Senate Committee on Health and Welfare; and the House Committee on Health Care. The report shall include an assessment of progress in implementing health information technology in Vermont and recommendations for additional funding and legislation required. In addition, VITL shall publish minutes of VITL meetings and any other relevant information on a public website. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(f) Funding authorization. VITL is authorized to seek matching funds to assist with carrying out the purposes of this section. In addition, it may accept any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from the federal or any local government, or any agency thereof, and from any person, firm, foundation, or corporation for any of its purposes and functions under this section and may receive and use the same, subject to the terms, conditions, and regulations governing such donations, gifts, and grants. VITL shall not use any State funds for health care consumer advertising, marketing, or similar services unless necessary to comply with the terms of a contract or grant that requires a contribution of State funds.

(g) Waivers. The Secretary of ~~Administration~~ Human Services or designee, in consultation with VITL, may seek any waivers of federal law, of rule, or of regulation that might assist with implementation of this section.

(h) [Repealed.]

(i) Certification of meaningful use and connectivity.

(1) To the extent necessary to support Vermont's health care reform goals or as required by federal law, VITL shall be authorized to certify the

meaningful use of health information technology and electronic health records by health care providers licensed in Vermont.

(2) VITL, in consultation with health care providers and health care facilities, shall establish criteria for creating or maintaining connectivity to the State's health information exchange network. VITL shall provide the criteria annually ~~by~~ on or before March 1 to the Green Mountain Care Board established pursuant to chapter 220 of this title.

(j) Scope of activities. VITL and any person who serves as a member, director, officer, or employee of VITL with or without compensation shall not be considered a health care provider as defined in subdivision 9432 of this title for purposes of any action taken in good faith pursuant to or in reliance upon provisions of this section relating to VITL's:

(1) governance;

(2) electronic exchange of health information and operation of the statewide Health Information Exchange Network as long as nothing in such exchange or operation constitutes the practice of medicine pursuant to 26 V.S.A. chapter 23 or 33;

(3) implementation of privacy provisions;

(4) funding authority;

(5) application for waivers of federal law;

(6) establishment and operation of a financing program providing electronic health records systems to providers; or

(7) certification of health care providers' meaningful use of health information technology.

Sec. 4. 18 V.S.A. § 9375(b) is amended to read:

(b) The Board shall have the following duties:

\* \* \*

(2)(A) Review and approve Vermont's statewide Health Information Technology Plan pursuant to section 9351 of this title to ensure that the necessary infrastructure is in place to enable the State to achieve the principles expressed in section 9371 of this title. ~~In performing its review, the Board shall consult with and consider any recommendations regarding the plan received from the Vermont Information Technology Leaders, Inc. (VITL).~~

(B) Review and approve the criteria required for health care providers and health care facilities to create or maintain connectivity to the State's health information exchange as set forth in section 9352 of this title.

Within 90 days following this approval, the Board shall issue an order explaining its decision.

(C) ~~Annually review the budget and all activities of VITL and approve the budget, consistent with available funds, and the core activities associated with public funding, which shall include establishing the interconnectivity of electronic medical records held by health care professionals and the storage, management, and exchange of data received from such health care professionals, for the purpose of improving the quality of and efficiently providing health care to Vermonters of the Vermont Information Technology Leaders, Inc. (VITL). This review shall take into account VITL's responsibilities pursuant to section 9352 of this title and the availability of funds needed to support those responsibilities.~~

\* \* \*

Sec. 5. 2013 Acts and Resolves No. 73, Sec. 60(10), as amended by 2017 Acts and Resolves No. 73, Sec. 14, is further amended to read:

(10) Secs. 48-51 (health claims tax) shall take effect on July 1, 2013 and 52 and 53 (health claims tax revenue; Health IT-Fund; sunset) shall take effect on July 1, ~~2018~~ 2019.

Sec. 6. FUTURE OF HEALTH INFORMATION EXCHANGE NETWORK;  
LEGISLATIVE INTENT

It is essential to the future of health information technology and health information exchange in Vermont that the recommendations of the health information technology report submitted to the General Assembly in accordance with 2017 Acts and Resolves No. 73, Sec. 15 are successfully implemented in a thorough and timely manner. If they are not successfully implemented pursuant to the timeline adopted in the work plan described in Sec. 1 of this act, it is the intent of the General Assembly to eliminate the designation of Vermont Information Technology Leaders, Inc. to operate the exclusive statewide health information exchange network for Vermont pursuant to 18 V.S.A. § 9352.

Sec. 7. HEALTH INFORMATION EXCHANGE; CONSENT POLICY;  
REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc., the Office of the Health Care Advocate, and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding whether individual consent to the exchange of health care information through the Vermont Health Information Exchange should be on an opt-in or opt-out



basis.

Sec. 8. IMPROVING INTEROPERABILITY OF ELECTRONIC HEALTH RECORDS SYSTEMS; REPORT

The Department of Vermont Health Access, in consultation with Vermont Information Technology Leaders, Inc. and other interested stakeholders, shall provide recommendations to the House Committees on Health Care and on Energy and Technology and the Senate Committee on Health and Welfare on or before January 15, 2019 regarding ways to improve the utility and interoperability of electronic health records and health information exchange in Vermont.

Sec. 8a. 2 V.S.A. chapter 18 is added to read:

CHAPTER 18. JOINT INFORMATION TECHNOLOGY  
OVERSIGHT COMMITTEE

\* \* \*

§ 614. JOINT INFORMATION TECHNOLOGY OVERSIGHT  
COMMITTEE

(a) Creation. There is created the Joint Information Technology Oversight Committee to oversee investments in and use of information technology in Vermont.

(b) Membership. The Committee shall be composed of six members as follows:

(1) three members of the House of Representatives, not all of whom shall be from the same political party, who shall be appointed by the Speaker of the House; and

(2) three members of the Senate, not all of whom shall be from the same political party, who shall be appointed by the Committee on Committees.

(c) Powers and duties. The Committee shall oversee, evaluate, and make recommendations on the following:

(1) the State's current deployment, management, and oversight of information technology in the furtherance of State governmental activities, including data processing systems, telecommunications networks, and related technologies, particularly with regard to issues of compatibility among existing and proposed technologies;

(2) issues related to the storage of, maintenance of, access to, privacy of, and restrictions on use of computerized records;

(3) issues of public policy related to the development and promotion of

the private, commercial, and nonprofit information infrastructure in the State, its relationship to the State government information infrastructure, and its integration with national and international information networks; and

(4) cybersecurity.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Council and the Joint Fiscal Office.

(e) Meetings.

(1) The Speaker of the House and the Committee on Committees shall appoint one member from the House and one member of the Senate as co-chairs of the Committee.

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

(3) The Committee may meet when the General Assembly is in session or at the call of the Co-Chairs.

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

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

(No House Amendments )

#### **S. 180**

An act relating to the Vermont Fair Repair Act

The Senate concurs in the House proposal of amendment thereto as follows:

In Sec. 2, by inserting a new subsection (e) to read:

(e) Scope. The Task Force may consider issues concerning the right to repair products beyond consumer electronic products if in the scope of its work it determines such consideration to be necessary and appropriate.

And by redesignating current subsections (e)–(h) to be alphabetically correct

**(For House Proposal of Amendment see House Journal May 3, 2018)**

#### **S. 222**

An act relating to miscellaneous judiciary procedures

The Senate concurs in the House proposal of amendment thereto as follows:

By adding Secs. 17a-17e to read as follows:

Sec. 17a. 18 V.S.A. § 4474c is amended to read:

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS  
REGARDING THE USE OF MARIJUANA FOR SYMPTOM  
RELIEF

\* \* \*

~~(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility. Personal cultivation of marijuana by a patient or caregiver on behalf of a patient only shall occur:~~

~~(1) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and~~

~~(2) in an enclosure that is screened from public view and is secure so that access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.~~

~~(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container. [Repealed.]~~

\* \* \*

~~(g) The use of marijuana by a registered patient shall not be the sole factor disqualifying the patient from any needed medical procedure or treatment, including organ and tissue transplants.~~

Sec. 17b. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, test, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and to his or her registered caregiver for the registered patient's use for symptom relief.

\* \* \*

(3)(A) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time ~~two~~ three mature marijuana plants, seven immature plants, and four ounces of usable marijuana for every registered patient for which the dispensary serves as the designated

dispensary.

\* \* \*

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in a secure, locked facility which is either indoors or outdoors, but not visible to the public and that can only be accessed by the owners, principals, financiers, and employees of the dispensary who have valid Registry identification cards. An outdoor facility is not required to have a roof, provided all other requirements are met. The Department shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' Registry identification numbers to protect their confidentiality.

(2)(A) A registered patient or registered caregiver may obtain marijuana from the dispensary by appointment only.

(B) A dispensary may deliver marijuana to a registered patient or registered caregiver. The marijuana shall be transported in a locked container.

(3) The operating documents of a dispensary shall include procedures for the oversight of the dispensary and procedures to ensure accurate record-keeping.

(4) A dispensary shall submit the results of a financial audit to the Department of Public Safety ~~no~~ not later than ~~60~~ 90 days after the end of the dispensary's first fiscal year, and every other year thereafter. The audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The Department may also periodically require, within its discretion, the audit of a dispensary's financial records by the Department.

\* \* \*

(n) Nothing in this subchapter shall prevent a dispensary from acquiring, possessing, cultivating, manufacturing, testing, transferring, transporting, supplying, selling, and dispensing hemp and hemp-infused products ~~for symptom relief~~. "Hemp" shall have the same meaning as provided in 6 V.S.A. § 562. A dispensary shall not be required to comply with the provisions of 6 V.S.A. chapter 34.

Sec. 17c. 18 V.S.A. § 4474g is amended to read:

§ 4474g. ~~DISPENSARY REGISTRY IDENTIFICATION CARD;~~  
~~CRIMINAL BACKGROUND CHECK~~

(a) ~~Except as provided in subsection (b) of this section, the~~ The Department shall issue each owner, principal, financier, and employee of a dispensary a Registry identification card or renewal card within 30 days ~~of~~ after receipt of the person's name, address, and date of birth and a fee of \$50.00. The fee shall be paid by the dispensary and the cost shall not be passed on to an owner, principal, financier, or employee. ~~A~~ Except as provided in subdivision (b)(2) of this section, a person shall not serve as an owner, principal, financier, or employee of a dispensary until that person has received a Registry identification card issued under this section. Each card shall specify whether the cardholder is an owner, principal, financier, or employee of a dispensary and shall contain the following:

- (1) the name, address, and date of birth of the person;
- (2) the legal name of the dispensary with which the person is affiliated;
- (3) a random identification number that is unique to the person;
- (4) the date of issuance and the expiration date of the Registry identification card; and
- (5) a photograph of the person.

(b)(1) Prior to acting on an application for a Registry identification card, the Department shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center.

(2) Once a Registry card application has been submitted, a person may serve as an owner, principal, financier, or employee of a dispensary pending the background check, provided the person is supervised in his or her duties by someone who is a cardholder. The Department shall issue a temporary permit to the person for this purpose, which shall expire upon the issuance of the Registry card or disqualification of the person in accordance with this section.

\* \* \*

Sec. 17d. 18 V.S.A. § 4474m is amended to read:

§ 4474m. ~~DEPARTMENT OF PUBLIC SAFETY; PROVISION OF~~  
~~EDUCATIONAL AND SAFETY INFORMATION~~

The Department of Public Safety shall provide educational and safety

information developed by the Vermont Department of Health, in consultation with dispensaries, to each registered patient upon registration pursuant to section 4473 of this title, and to each registered caregiver upon registration pursuant to section 4474 of this title.

Sec. 17e. AUTOMOBILE FINANCIAL RESPONSIBILITY; STUDY

The Commissioner of Financial Regulation shall review the minimum automobile insurance requirements in each of the states located in the northeastern region of the United States and shall report his or her findings and recommendations with respect to Vermont's minimum automobile insurance requirements to the General Assembly on or before November 1, 2018.

**(For House Proposal of Amendment see House Journal May 3, 2018 )**

**Amendment to be offered by Rep. Jessup of Middlesex to S. 222**

Moves to concur in the Senate Proposal of Amendment to House Proposal of Amendment with a further amendment thereto:

First: By striking out Sec. 17a in its entirety and inserting in lieu thereof a new Sec. 17a to read as follows:

Sec. 17a. 18 V.S.A. § 4474c is amended to read:

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS

REGARDING THE USE OF MARIJUANA FOR SYMPTOM

RELIEF

\* \* \*

~~(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container. [Repealed.]~~

\* \* \*

Second: By striking out Sec. 17b in its entirety and inserting in lieu thereof a new Sec. 17b to read as follows:

Sec. 17b. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

\* \* \*

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in a secure, locked facility which is either indoors or outdoors, but not visible to the public and that can only be accessed by the owners, principals, financiers,

and employees of the dispensary who have valid Registry identification cards. An outdoor facility is not required to have a roof, provided all other requirements are met. The Department shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' Registry identification numbers to protect their confidentiality.

\* \* \*

(4) A dispensary shall submit the results of a financial audit to the Department of Public Safety ~~no~~ not later than ~~60~~ 90 days after the end of the dispensary's first fiscal year, and every other year thereafter. The audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The Department may also periodically require, within its discretion, the audit of a dispensary's financial records by the Department.

\* \* \*

Third: In Sec. 17c, 18 V.S.A. § 4474g(b)(2), after the words "serve as an" by striking out "owner, principal, financier, or"

Fourth: By striking out Sec. 17d in its entirety and inserting in lieu thereof a new Sec. 17d to read as follows:

Sec. 17d. [Deleted.]

### **Ordered to Lie**

#### **H. 219**

An act relating to the Vermont spaying and neutering program.

Pending Question: Shall the House concur in the Senate proposal of amendment?

#### **S. 267**

An act relating to timing of a decree nisi in a divorce proceeding.

Pending Question: Shall the report of the committee on Judiciary be substituted by the amendment offered by Rep. LaLonde of South Burlington and other?

## **Consent Calendar**

### **Concurrent Resolutions**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

#### **H.C.R. 388**

House concurrent resolution honoring exemplary BFA-Fairfax educator Judith Stewart

#### **H.C.R. 389**

House concurrent resolution honoring Carla Lewis for her 40 years of outstanding service as a Fayston Elementary School teacher

#### **H.C.R. 390**

House concurrent resolution honoring Dartmouth College undergraduate students Nicole Beckman, Hanna Bliska, and Eliza Jane Schaeffer for their research report entitled "Medication Assisted Treatment Programs in State Correctional Facilities in Vermont"

#### **H.C.R. 391**

House concurrent resolution in memory of James H. Foster Jr.

#### **H.C.R. 392**

House concurrent resolution honoring Professor and former State Senator William T. Doyle on the conclusion of his distinguished academic career at Johnson State College

#### **H.C.R. 393**

House concurrent resolution congratulating the 75th Annual Vermont Conference on Recreation

#### **H.C.R. 394**

House concurrent resolution honoring Vermont Assistant Adjutant General-Army, Brigadier General Michael T. Heston for his outstanding military and law enforcement leadership

#### **H.C.R. 395**

House concurrent resolution honoring Robert Davis for his achievements as a



television news photographer

**H.C.R. 396**

House concurrent resolution honoring Curtis R. Whiteway of Craftsbury for his military valor, his participation in the liberation of Nazi concentration and death camps, and as a passionate Holocaust educator

**H.C.R. 397**

House concurrent resolution congratulating the Thetford Academy Drama Club on winning a New England Drama Council commendation

**H.C.R. 398**

House concurrent resolution honoring Peter Geiss for his exemplary public service as a school board member in the Underhill Central School and Mount Mansfield Modified Union School districts

**H.C.R. 399**

House concurrent resolution welcoming to Vermont the Association of Food and Drug Officials' 122nd Annual Educational Conference

**H.C.R. 400**

House concurrent resolution recognizing May 20–26 as National Public Works Week in Vermont

**H.C.R. 401**

House concurrent resolution honoring Nathaniel Frothingham as an outstanding educator and for his wise journalistic leadership of the Montpelier Bridge

**H.C.R. 402**

House concurrent resolution congratulating the St. Johnsbury Academy chess team on winning the 2018 Vermont State Scholastic Chess Championships

**H.C.R. 403**

House concurrent resolution in memory of former Governor Philip Henderson Hoff

**H.C.R. 404**

House concurrent resolution commemorating the 80-year history of the second Statue of Agriculture on the Vermont State House dome

**H.C.R. 405**

House concurrent resolution congratulating Dr. Delores Barbeau on her receipt of the 2018 George F. Leland Community Health Service Award

**H.C.R. 406**

House concurrent resolution recognizing June as National Dairy Month in Vermont

**H.C.R. 407**

House concurrent resolution honoring former Representative Jeff Young of St. Albans City for his civic and horticultural accomplishments

**H.C.R. 408**

House concurrent resolution in memory of Vermont folklorist Gregory L. Sharrow

**Action Postponed Indefinitely**

**H. 167**

An act relating to alternative approaches to addressing low-level illicit drug use