

Senate Calendar

THURSDAY, APRIL 26, 2018

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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, APRIL 24, 2018

Third Reading

H. 903.

An act relating to regenerative farming.

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 25, 2018

Third Reading

H. 915.

An act relating to the protection of pollinators.

**Proposal of amendment to H. 915 to be offered by Senators Baruth,
Balint, Bray, Campion and Sirotkin before Third Reading**

Senators Baruth, Balint, Bray, Campion and Sirotkin move to amend the Senate proposal of amendment as follows:

First: In Sec. 4 (report on impact of neonicotinoid-treated seeds on pollinators), in subsection (a), after the following: “beekeepers.” and before “On or before January 15, 2019,” by inserting the following new sentence: As part of the assessment, the Secretary shall review the recommendations of the Pollinator Protection Committee for reducing pollinator losses that were submitted to the General Assembly in February of 2017 in the report required under 2016 Acts and Resolves No. 83.

And in subdivision (a)(3), by striking out the word “and” following the semicolon

And by striking out subdivision (a)(4) in its entirety and inserting in lieu thereof new subdivisions (a)(4) and (5) to read as follows:

(4) a State pollinator protection plan as required by 2016 Acts and Resolves No. 83; and

(5) recommendations for preventing pollinator losses in Vermont.

Second: By striking out Sec. 6, Effective Date, in its entirety and inserting in lieu thereof Secs. 6, 7 and 8 to read as follows:

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

§ 1101. DEFINITIONS

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

* * *

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

* * *

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

* * *

(8) “Neonicotinoid pesticide” means any economic poison containing a chemical belonging to the neonicotinoid class of chemicals, including:

(A) imidacloprid;

(B) nithiazine;

(C) acetamiprid;

(D) clothianidin;

(E) dinotefuran;

(F) thiacloprid;

(G) thiamethoxam; and

(H) any other chemical designated by the Secretary by rule.

(9) “Ornamental plants” means any shrub, bush, tree, or other plant used or intended for a use other than farming as that term is defined in 10 V.S.A. § 6001.

Sec. 7. 6 V.S.A. § 1105b is added to read:

§ 1105b. APPLICATION OF NEONICOTINOID PESTICIDES

A person shall not apply neonicotinoid pesticides to ornamental plants in the State, except as authorized by the Secretary of Agriculture, Food and Markets under a right-of-way permit for the application of pesticides.

Sec. 8. EFFECTIVE DATES

This act shall take effect on July 1, 2018, except that Secs. 6 and 7 (neonicotinoid pesticide application to ornamental plants) shall take effect January 1, 2019.

House Proposal of Amendment

S. 92

An act relating to interchangeable biological products.

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

* * * Interchangeable Biological Products * * *

Sec. 1. 18 V.S.A. § 4601 is amended to read:

§ 4601. DEFINITIONS

~~For the purposes of this chapter, unless the context otherwise clearly requires~~ As used in this chapter:

(1) ~~“Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor; “Biological product” means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of a disease or condition in human beings.~~

(2) ~~“Generic name” means the official name of a drug product as established by the United States Adopted Names Council (USAN) or its successor, if applicable; “Brand name” means the registered trademark name given to a drug product by its manufacturer or distributor.~~

(3) ~~“Pharmacist” means a natural person licensed by the state board of pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons;~~

(4) ~~“Generic drug” means a drug listed by generic name and considered to be chemically and therapeutically equivalent to a drug listed by brand name, as both names are identified in the most recent edition of or supplement to the federal U.S. Food and Drug Administration’s “Orange Book” of approved drug products; Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).~~

(4) ~~“Generic name” means the official name of a drug product as established by the U. S. Adopted Names Council (USAN) or its successor, if applicable.~~

(5) ~~“Interchangeable biological product” means a biological product that the U.S. Food and Drug Administration has:~~

(A) licensed and determined, pursuant to 42 U.S.C. § 262(k)(4), to

be interchangeable with the reference product against which it was evaluated;
or

(B) determined to be therapeutically equivalent as set forth in the latest edition of or supplement to the U.S. Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book).

(6) "Pharmacist" means a natural person licensed by the State Board of Pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons.

(5)(7) "Prescriber" means any duly licensed physician, dentist, veterinarian, or other practitioner licensed to write prescriptions for the treatment or prevention of disease in man or animal.

(8) "Proper name" means the non-proprietary name of a biological product.

(9) "Reference product" means the single biological product licensed pursuant to 42 U.S.C. § 262(a) against which the interchangeable biological product was evaluated by the U.S. Food and Drug Administration pursuant to 42 U.S.C. § 262(k).

Sec. 2. 18 V.S.A. § 4605 is amended to read:

§ 4605. ALTERNATIVE DRUG OR BIOLOGICAL PRODUCT
SELECTION

(a)(1) When a pharmacist receives a prescription for a drug which that is listed either by generic name or brand name in the most recent edition of or supplement to the U.S. Department of Health and Human Services' publication Approved Drug Products With Therapeutic Equivalence Evaluations (the "Orange Book") of approved drug products, the pharmacist shall select the lowest priced drug from the list which is equivalent as defined by the "Orange Book," unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug.

(2) When a pharmacist receives a prescription for a biological product, the pharmacist shall select the lowest priced interchangeable biological product unless otherwise instructed by the prescriber, or by the purchaser if the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced biological product.

(3) Notwithstanding subdivisions (1) and (2) of this subsection, when a pharmacist receives a prescription from a Medicaid beneficiary, the pharmacist shall select the preferred brand-name or generic drug or biological product from the Department of Vermont Health Access's preferred drug list.

(b) The purchaser shall be informed by the pharmacist or his or her representative that an alternative selection as provided under subsection (a) of this section will be made unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(c) When refilling a prescription, pharmacists shall receive the consent of the prescriber to dispense a drug or biological product different from that originally dispensed, and shall inform the purchaser that a generic substitution shall be made pursuant to this section unless the purchaser agrees to pay any additional cost in excess of the benefits provided by the purchaser's health benefit plan if allowed under the legal requirements applicable to the plan, or otherwise to pay the full cost for the higher priced drug or biological product.

(d) Any pharmacist substituting a generically equivalent drug or interchangeable biological product shall charge no more than the usual and customary retail price for that selected drug or biological product. This charge shall not exceed the usual and customary retail price for the prescribed brand.

(e)(1) Except as described in subdivision (4) of this subsection, within five business days following the dispensing of a biological product, the dispensing pharmacist or designee shall communicate the specific biological product provided to the patient, including the biological product's name and manufacturer, by submitting the information in a format that is accessible to the prescriber electronically through one of the following:

- (A) an interoperable electronic medical records system;
- (B) an electronic prescribing technology;
- (C) a pharmacy benefit management system; or
- (D) a pharmacy record.

(2) Entry into an electronic records system as described in subdivision (1) of this subsection shall be presumed to provide notice to the prescriber.

(3)(A) If a pharmacy does not have access to one or more of the electronic systems described in subdivision (1) of this subsection (e), the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using telephone, facsimile, electronic transmission, or other prevailing means.

(B) If a prescription is communicated to the pharmacy by means other than electronic prescribing technology, the pharmacist or designee shall communicate to the prescriber the information regarding the biological product dispensed using the electronic process described in subdivision (1) of this subsection (e) unless the prescriber requests a different means of communication on the prescription.

(4) Notwithstanding any provision of this subsection to the contrary, a pharmacist shall not be required to communicate information regarding the biological product dispensed in the following circumstances:

(A) the U.S. Food and Drug Administration has not approved any interchangeable biological products for the product prescribed; or

(B) the pharmacist dispensed a refill prescription in which the product dispensed was unchanged from the product dispensed at the prior filling of the prescription.

(f) The Board of Pharmacy shall maintain a link on its website to the current lists of all biological products that the U.S. Food and Drug Administration has determined to be interchangeable biological products.

Sec. 3. 18 V.S.A. § 4606 is amended to read:

§ 4606. BRAND CERTIFICATION

If the prescriber has determined that the generic equivalent of a drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall indicate "brand necessary," "no substitution," "dispense as written," or "DAW" in the prescriber's own handwriting on the prescription blank or shall indicate the same using electronic prescribing technology and the pharmacist shall not substitute the generic equivalent or interchangeable biological product. If a prescription is unwritten and the prescriber has determined that the generic equivalent of the drug or the interchangeable biological product for the biological product being prescribed has not been effective or with reasonable certainty is not expected to be effective in treating the patient's medical condition or causes or is reasonably expected to cause adverse or harmful reactions in the patient, the prescriber shall expressly indicate to the pharmacist that the brand-name drug or biological product is necessary and substitution is not allowed and the pharmacist shall not substitute the generic equivalent drug or interchangeable biological product.

Sec. 4. 18 V.S.A. § 4607 is amended to read:

§ 4607. INFORMATION; LABELING

(a) Every pharmacy in the state State shall have posted a sign in a prominent place that is in clear unobstructed view which shall read: “Vermont law requires pharmacists in some cases to select a less expensive generic equivalent drug or interchangeable biological product for the drug or biological product prescribed unless you or your physician direct otherwise. Ask your pharmacist.”

(b) The label of the container of all drugs and biological products dispensed by a pharmacist under this chapter shall indicate the generic or proper name using an abbreviation if necessary, the strength of the drug or biological product, if applicable, and the name or number of the manufacturer or distributor.

Sec. 5. 18 V.S.A. § 4608 is amended to read:

§ 4608. LIABILITY

(a) Nothing in this chapter shall affect a licensed hospital with the development and maintenance of a hospital formulary system in accordance with that institution’s policies and procedures that pertain to its drug distribution system developed by the medical staff in cooperation with the hospital’s pharmacist and administration.

(b) The substitution of a generic drug or interchangeable biological product by a pharmacist under the provisions of this chapter does not constitute the practice of medicine.

Sec. 6. 8 V.S.A. § 4089i is amended to read:

§ 4089i. PRESCRIPTION DRUG COVERAGE

* * *

(g) A health insurance or other health benefit plan offered by a health insurer or by a pharmacy benefit manager on behalf of a health insurer that provides coverage for prescription drugs shall apply the same cost-sharing requirements to interchangeable biological products as apply to generic drugs under the plan.

(h) As used in this section:

* * *

(6) “Interchangeable biological products” shall have the same meaning as in 18 V.S.A. § 4601.

~~(h)~~(i) The Department of Financial Regulation shall enforce this section and may adopt rules as necessary to carry out the purposes of this section.

* * * Health Insurance Plan Reporting * * *

Sec. 7. 8 V.S.A. § 4062 is amended to read:

§ 4062. FILING AND APPROVAL OF POLICY FORMS AND PREMIUMS

* * *

(b)(1) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall file a plain language summary of the proposed rate. All summaries shall include a brief justification of any rate increase requested, the information that the Secretary of the U.S. Department of Health and Human Services (HHS) requires for rate increases over 10 percent, and any other information required by the Board. The plain language summary shall be in the format required by the Secretary of HHS pursuant to the Patient Protection and Affordable Care Act of 2010, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and shall include notification of the public comment period established in subsection (c) of this section. In addition, the insurer shall post the summaries on its website.

(2)(A) In conjunction with a rate filing required by subsection (a) of this section, an insurer shall disclose to the Board:

(i) for all covered prescription drugs, including generic drugs, brand-name drugs excluding specialty drugs, and specialty drugs dispensed at a pharmacy, network pharmacy, or mail-order pharmacy for outpatient use:

(I) the percentage of the premium rate attributable to prescription drug costs for the prior year for each category of prescription drugs;

(II) the year-over-year increase or decrease, expressed as a percentage, in per-member, per-month total health plan spending on each category of prescription drugs; and

(III) the year-over-year increase or decrease in per-member, per-month costs for prescription drugs compared to other components of the premium rate; and

(ii) the specialty tier formulary list.

(B) The insurer shall provide, if available, the percentage of the premium rate attributable to prescription drugs administered by a health care provider in an outpatient setting that are part of the medical benefit as separate from the pharmacy benefit.

(C) The insurer shall include information on its use of a pharmacy benefit manager, if any, including which components of the prescription drug

coverage described in subdivisions (A) and (B) of this subdivision (2) are managed by the pharmacy benefit manager, as well as the name of the pharmacy benefit manager or managers used.

(c)(1) The Board shall provide information to the public on the Board's website about the public availability of the filings and summaries required under this section.

(2)(A) ~~Beginning no later than January 1, 2014, the~~ The Board shall post the rate filings pursuant to subsection (a) of this section and summaries pursuant to subsection (b) of this section on the Board's website within five calendar days of following filing. The Board shall also establish a mechanism by which members of the public may request to be notified automatically each time a proposed rate is filed with the Board.

* * *

Sec. 8. 18 V.S.A. § 4636 is added to read:

§ 4636. IMPACT OF PRESCRIPTION DRUG COSTS ON HEALTH INSURANCE PREMIUMS; REPORT

(a)(1) Each health insurer with more than 1,000 covered lives in this State shall report to the Green Mountain Care Board, for all covered prescription drugs, including generic drugs, brand-name drugs, and specialty drugs provided in an outpatient setting or sold in a retail setting:

(A) the 25 most frequently prescribed drugs and the average wholesale price for each drug;

(B) the 25 most costly drugs by total plan spending and the average wholesale price for each drug; and

(C) the 25 drugs with the highest year-over-year price increases and the average wholesale price for each drug.

(2) A health insurer shall not be required to provide to the Green Mountain Care Board the actual price paid, net of rebates, for any prescription drug.

(b) The Green Mountain Care Board shall compile the information reported pursuant to subsection (a) of this section into a consumer-friendly report that demonstrates the overall impact of drug costs on health insurance premiums. The data in the report shall be aggregated and shall not reveal information as specific to a particular health benefit plan.

(c) The Board shall publish the report required pursuant to subsection (b) of this section on its website on or before January 1 of each year.

* * * Prescription Drug Price Transparency and Notice of
New High-Cost Drugs * * *

Sec. 9. 18 V.S.A. § 4635 is amended to read:

§ 4635. PHARMACEUTICAL PRESCRIPTION DRUG COST
TRANSPARENCY

(a) As used in this section:

(1) “Manufacturer” shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

(b)(1)(A) ~~The Green Mountain Care Board, in collaboration with the~~ Department of Vermont Health Access, shall ~~identify~~ create annually ~~up to 15~~ a list of 10 prescription drugs on which the State spends significant health care dollars and for which the wholesale acquisition cost has increased by 50 percent or more over the past five years or by 15 percent or more ~~over the past 12 months~~ during the previous calendar year, creating a substantial public interest in understanding the development of the drugs’ pricing. ~~The drugs identified shall represent different drug classes. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department shall include the percentage of the wholesale acquisition cost increase for each drug on the list; rank the drugs on the list from those with the largest increase in wholesale acquisition cost to those with the smallest increase; indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both; and provide the Department’s total expenditure for each drug on the list during the most recent calendar year.~~

(B) The Department of Vermont Health Access shall create annually a list of 10 prescription drugs on which the State spends significant health care dollars and for which the cost to the Department of Vermont Health Access, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, creating a substantial public interest in understanding the development of the drugs’ pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the Department considers to be specialty drugs. The Department shall rank the drugs on the list from those with the greatest increase in net cost to those with the smallest increase and indicate whether each drug was included on the list based on its cost increase over the past five years or during the previous calendar year, or both.

(C)(i) Each health insurer with more than 5,000 covered lives in this State for major medical health insurance shall create annually a list of 10 prescription drugs on which its health insurance plans spend significant amounts of their premium dollars and for which the cost to the plans, net of rebates and other price concessions, has increased by 50 percent or more over the past five years or by 15 percent or more during the previous calendar year, or both, creating a substantial public interest in understanding the development of the drugs' pricing. The list shall include at least one generic and one brand-name drug and shall indicate each of the drugs on the list that the health insurer considers to be specialty drugs.

(ii) A health insurer shall not be required to identify the exact percentage by which the net cost to its plans for any prescription drug increased over any specific period of time, but shall rank the drugs on its list in order from the largest to the smallest cost increase and shall provide the insurer's total expenditure, net of rebates and other price concessions, for each drug on the list during the most recent calendar year.

(2) The Board Department of Vermont Health Access and the health insurers shall provide to the Office of the Attorney General and the Green Mountain Care Board the list lists of prescription drugs developed pursuant to this subsection and the percentage of the wholesale acquisition cost increase for each drug and annually on or before June 1. The Office of the Attorney General and the Green Mountain Care Board shall make all of the information available to the public on the Board's website their respective websites.

(c)(1)(A) For each prescription drug identified Of the prescription drugs listed by the Department of Vermont Health Access and the health insurers pursuant to subsection (b) subdivisions (b)(1)(B) and (C) of this section, the Office of the Attorney General shall identify 15 drugs as follows:

(i) of the drugs appearing on more than one payer's list, the Office of the Attorney General shall identify the top 15 drugs on which the greatest amount of money was spent across all payers during the previous calendar year, to the extent information is available; and

(ii) if fewer than 15 drugs appear on more than one payer's list, the Office of the Attorney General shall rank the remaining drugs based on the amount of money spent by any one payer during the previous calendar year, in descending order, and select as many of the drugs at the top of the list as necessary to reach a total of 15 drugs.

(B) For the 15 drugs identified by the Office of the Attorney General pursuant to subdivision (A) of this subdivision (1), the Office of the Attorney General shall require the drug's manufacturer of each such drug to provide a justification all of the following:

(i) Justification for the increase in the wholesale acquisition net cost of the drug to the Department of Vermont Health Access, to one or more health insurers, or both, which shall be provided to the Office of the Attorney General in a format that the Office of the Attorney General determines to be understandable and appropriate and shall be provided in accordance with a timeline specified by the Office of the Attorney General. The manufacturer shall submit to the Office of the Attorney General all relevant information and supporting documentation necessary to justify the manufacturer's wholesale acquisition net cost increase over to the Department of Vermont Health Access, to one or more health insurers, or both during the identified period of time, which may include including:

(A)(I) all factors that have contributed to the wholesale acquisition each factor that specifically caused the net cost increase over to the Department of Vermont Health Access, to one or more health insurers, or both during the specified period of time;

(B)(II) the percentage of the total wholesale acquisition cost increase attributable to each factor; and

(C)(III) an explanation of the role of each factor in contributing to the wholesale acquisition cost increase.

(ii) A separate version of the information submitted pursuant to subdivision (i) of this subdivision (1)(B), which shall be made available to the public by the Office of the Attorney General and the Green Mountain Care Board pursuant to subsection (d) of this section. In the event that the manufacturer believes it necessary to redact certain information in the public version as proprietary or confidential, the manufacturer shall provide an explanation for each such redaction to the Office of the Attorney General. The information, format, and any redactions shall be subject to approval by the Office of the Attorney General.

(iii) Additional information in response to all requests for such information by the Office of the Attorney General.

(2) Nothing in this section shall be construed to restrict the legal ability of a prescription drug manufacturer to change prices to the extent permitted under federal law.

(d)(1) The Attorney General, ~~in consultation with the Department of Vermont Health Access,~~ shall provide a report to the General Assembly on or before December 1 of each year based on the information received from manufacturers pursuant to this section. The Attorney General shall also post the report and the public version of each manufacturer's information submitted pursuant to subdivision (c)(1)(B)(ii) of this section on the Office of the Attorney General's website.

(2) The Green Mountain Care Board shall post on its website the report prepared by the Attorney General pursuant to subdivision (1) of this subsection and the public version of each manufacturer’s information submitted pursuant to subdivision (c)(1)(B)(ii) of this section, and may inform the public of the availability of the report and the manufacturers’ justification information.

(e) Information provided to the Office of the Attorney General pursuant to this section is exempt from public inspection and copying under the Public Records Act and shall not be released in a manner that allows for the identification of an individual drug or manufacturer or that is likely to compromise the financial, competitive, or proprietary nature of the information, except for the information prepared for release to the public pursuant to subdivision (c)(1)(B)(ii) of this section.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney’s fees, and to impose on a manufacturer that fails to provide any of the information required by subsection (c) of this section, in the format requested by the Office of the Attorney General and in accordance with the timeline specified by the Office of the Attorney General, a civil penalty of ~~no~~ not more than \$10,000.00 per violation. Each unlawful failure to provide information shall constitute a separate violation. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

Sec. 10. 18 V.S.A. § 4637 is added to read:

§ 4637. NOTICE OF INTRODUCTION OF NEW HIGH-COST
PRESCRIPTION DRUGS

(a) As used in this section:

(1) “Manufacturer” shall have the same meaning as “pharmaceutical manufacturer” in section 4631a of this title.

(2) “Prescription drug” means a drug as defined in 21 U.S.C. § 321.

(b) A prescription drug manufacturer shall notify the Office of the Attorney General in writing if it is introducing a new prescription drug to market at a wholesale acquisition cost that exceeds the threshold set for a specialty drug under the Medicare Part D program. The manufacturer shall provide the written notice within three calendar days following the release of the drug in the commercial market. A manufacturer may make the notification pending approval by the U.S. Food and Drug Administration (FDA) if commercial availability is expected within three calendar days following the approval.

(c) Not later than 30 calendar days following notification pursuant to subsection (b) of this section, the manufacturer shall provide all of the following information to the Office of the Attorney General in a format that the Office prescribes:

(1) a description of the marketing and pricing plans used in the launch of the new drug in the United States and internationally;

(2) the estimated volume of patients who may be prescribed the drug;

(3) whether the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval; and

(4) the date and price of acquisition if the drug was not developed by the manufacturer.

(d) The manufacturer may limit the information reported pursuant to subsection (c) of this section to that which is otherwise in the public domain or publicly available.

(e) The Office of the Attorney General shall publish on its website at least quarterly the information reported to it pursuant to this section. The information shall be published in a manner that identifies the information that is disclosed on a per-drug basis and shall not be aggregated in a manner that would not allow identification of the drug.

(f) The Attorney General may bring an action in the Civil Division of the Superior Court, Washington County for injunctive relief, costs, and attorney's fees and to impose on a manufacturer that fails to provide the information required by subsection (c) of this section a civil penalty of not more than \$1,000.00 per day for every day after the notification period described in subsection (b) of this section that the required information is not reported. In any action brought pursuant to this section, the Attorney General shall have the same authority to investigate and to obtain remedies as if the action were brought under the Consumer Protection Act, 9 V.S.A. chapter 63.

* * * Disclosures by Pharmacists * * *

Sec. 11. 18 V.S.A. § 9473(b) is amended to read:

(b) A pharmacy benefit manager or other entity paying pharmacy claims shall not:

(1) impose a higher co-payment for a prescription drug than the co-payment applicable to the type of drug purchased under the insured's health plan;

(2) impose a higher co-payment for a prescription drug than the maximum allowable cost for the drug; or

(3) require a pharmacy to pass through any portion of the insured's co-payment to the pharmacy benefit manager or other payer;

(4) prohibit or penalize a pharmacy or pharmacist for providing information to an insured regarding the insured's cost-sharing amount for a prescription drug; or

(5) prohibit or penalize a pharmacy or pharmacist for the pharmacist or other pharmacy employee disclosing to an insured the cash price for a prescription drug or selling a lower cost drug to the insured if one is available.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

(a) Secs. 1–6 (interchangeable biological products) shall take effect on July 1, 2018.

(b) Sec. 11 (18 V.S.A. § 9473; disclosures by pharmacists) shall take effect on July 1, 2018 and shall apply to all contracts taking effect on or after that date.

(c) 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 prescription drug price transparency and cost containment.

NEW BUSINESS

Third Reading

H. 593.

An act relating to miscellaneous consumer protection provisions.

H. 676.

An act relating to miscellaneous energy subjects.

H. 892.

An act relating to regulation of short-term, limited-duration health insurance coverage and association health plans.

Second Reading

Favorable with Proposal of Amendment

H. 711.

An act relating to employment protections for crime victims.

Reported favorably with recommendation of proposal of amendment by Senator Soucy for the Committee on Economic Development, Housing and General Affairs.

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

* * * Employment Protection for Crime Victims * * *

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

§ 495. UNLAWFUL EMPLOYMENT PRACTICE

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

(2) For any person seeking employees or for any employment agency or labor organization to cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, age, or disability;

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age or against a qualified individual with a disability;

(4) For any labor organization, because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, crime victim status, or age to discriminate against any individual or against a qualified individual with a disability or to limit, segregate, or qualify its membership;

* * *

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

§ 495d. DEFINITIONS

As used in this subchapter:

* * *

(14) “Pregnancy-related condition” means a limitation of an employee’s ability to perform the functions of a job caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

(15) “Crime victim” means any of the following:

(A) a person who has obtained a relief from abuse order issued under 15 V.S.A. § 1103;

(B) a person who has obtained an order against stalking or sexual assault issued under 12 V.S.A. chapter 178;

(C) a person who has obtained an order against abuse of a vulnerable adult issued under 33 V.S.A. chapter 69; or

(D)(i) a victim as defined in 13 V.S.A. § 5301, provided that the victim is identified as a crime victim in an affidavit filed by a law enforcement official with a prosecuting attorney of competent state or federal jurisdiction; and

(ii) shall include the victim’s child, stepchild, foster child, parent, spouse, or a ward of the victim who lives with the victim, or a parent of the victim’s spouse, provided that the individual is not identified in the affidavit as the defendant.

Sec. 3. 21 V.S.A. § 472c is added to read:

§ 472c. LEAVE; CRIME VICTIMS

(a) As used in this section:

(1) “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.

(2) “Employee” means a person who is a crime victim as defined in section 495d of this chapter and, in consideration of direct or indirect gain or profit, has been continuously employed by the same employer for a period of six months for an average of at least 20 hours per week.

(b) In addition to the leave provided in section 472 of this title, an employee shall be entitled to take unpaid leave from employment for the purpose of attending a deposition or court proceeding related to:

(1) a criminal proceeding, when the employee is a victim as defined in 13 V.S.A. § 5301 and the employee has a right or obligation to appear at the proceeding;

(2) a relief from abuse hearing pursuant to 15 V.S.A. § 1103, when the employee seeks the order as plaintiff;

(3) a hearing concerning an order against stalking or sexual assault pursuant to 12 V.S.A. § 5133, when the employee seeks the order as plaintiff; or

(4) a relief from abuse, neglect, or exploitation hearing pursuant to 33 V.S.A. chapter 69, when the employee is the plaintiff.

(c) During the leave, at the employee's option, the employee may use accrued sick leave, vacation leave, or any other accrued paid leave. Use of accrued paid leave shall not extend the leave provided pursuant to this section.

(d) The employer shall continue employment benefits for the duration of the leave at the level and under the conditions coverage would be provided if the employee continued in employment continuously for the duration of the leave. The employer may require that the employee contribute to the cost of benefits during the leave at the existing rate of employee contribution.

(e) The employer shall post and maintain in a conspicuous place in and about each of its places of business printed notices of the provisions of this section on forms provided by the Commissioner of Labor.

(f)(1) Upon return from leave taken under this section, an employee shall be offered the same or comparable job at the same level of compensation, employment benefits, seniority, or any other term or condition of the employment existing on the day leave began.

(2) This subsection shall not apply if, prior to requesting leave, the employee had been given notice or had given notice that the employment would terminate.

(3) This subsection shall not apply if the employer can demonstrate by clear and convincing evidence that during the period of leave the employee's job would have been terminated or the employee would have been laid off for reasons unrelated to the leave or the condition for which the leave was granted.

(g) An employer may adopt a leave policy more generous than the leave provided by this section. Nothing in this section shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement

or any employment benefit program or plan that provides greater leave rights than the rights provided by this section. A collective bargaining agreement or employment benefit program or plan shall not diminish rights provided by this section. Notwithstanding the provisions of this section, an employee may, at the time a need for leave arises, waive some or all of the rights under this section, provided that the waiver is informed and voluntary and that any changes in conditions of employment related to the waiver shall be mutually agreed upon between the employer and the employee.

(h) Subsection (b) of this section shall not apply to an employer that provides goods or services to the general public if the employee's absence would require the employer to suspend all business operations at a location that is open to the general public.

* * * Employment Protection for Volunteer First Responders * * *

Sec. 4. 21 V.S.A. § 495o is added to read:

§ 495o. VOLUNTEER EMERGENCY RESPONDERS

(a) As used in this section:

(1) "Emergency medical personnel" shall include "emergency medical personnel," "ambulance service," "emergency medical services," and "first responder service" as defined in 24 V.S.A. § 2651.

(2) "Firefighter" shall have the same meaning as in 20 V.S.A. § 3151(3).

(3) "Volunteer emergency responder" means a volunteer firefighter or volunteer emergency medical personnel.

(b) An employer shall not discharge, discriminate, or retaliate against an employee because the employee was absent from work to perform duty as a volunteer emergency responder.

(c) This section shall not apply to:

(1) a public safety agency or provider of emergency medical services if, as determined by the employer, the employee's absence would hinder the availability of public safety or emergency medical services; or

(2) an employer that provides goods or services to the general public if the employee's absence would require the employer to suspend all business operations at a location that is open to the general public.

(d) An employee who is a volunteer emergency responder shall notify his or her employer at the time of hire or at the time that the employee becomes a volunteer emergency responder and shall provide the employer with a written statement signed by the chief of the volunteer fire department or the designated director or chief of the ambulance service or emergency medical services stating that the employee is a volunteer emergency responder.

(e) Nothing in this section shall prohibit an employer from requiring an employee to provide reasonable notice that the employee is leaving work to respond to an emergency.

(f)(1) An employer shall not be required to compensate an employee for time that an employee is absent from employment while performing his or her duty as a volunteer emergency responder.

(2)(A) An employer may require an employee to use any accrued time off for time that the employee is absent from work while performing his or her duty as a volunteer emergency responder, provided that the employer shall compensate the employee for any accrued time off used at his or her normal hourly wage rate.

(B) Notwithstanding subdivision (A) of this subdivision (2), an employer shall not prevent an employee from performing his or her duty as a volunteer emergency responder due to a lack of accrued time off or paid leave.

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(No House amendments)

H. 806.

An act relating to the Southeast State Correctional Facility.

Reported favorably with recommendation of proposal of amendment by Senator Soucy for the Committee on Institutions.

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

Sec. 1. SOUTHEAST STATE CORRECTIONAL FACILITY; REPORT

(a) The Commissioner of Buildings and General Services shall investigate and analyze options for the future use of the Southeast State Correctional Facility and the surrounding 118.57 acres of land owned by the Department of Buildings and General Services. As part of the investigation, the Commissioner shall consult with the Secretary of Administration and any other State entities that would have a potential use for the facility or land.

(b) On or before December 15, 2018, the Commissioner of Buildings and General Services shall submit a report, which shall include an analysis and recommendations, if any, on the highest and best State use resulting from the

investigation described in subsection (a) of this section to the House Committee on Corrections and Institutions, the Senate Committee on Institutions, and the Chair of the Town of Windsor Selectboard.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 2, 2018, page 578)

H. 856.

An act relating to miscellaneous amendments to municipal law.

Reported favorably with recommendation of proposal of amendment by Senator Clarkson for the Committee on Government Operations.

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

* * * Municipal Elections and Appointments * * *

Sec. 1. 17 V.S.A. § 2651a is amended to read:

§ 2651a. CONSTABLES; APPOINTMENT; REMOVAL

(a)(1) A town may vote by Australian ballot at an annual meeting to authorize the ~~selectmen~~ selectboard to appoint a first constable, and if needed a second constable, in which case at least a first constable shall be appointed.

(2) A constable so appointed may be removed by the ~~selectmen~~ selectboard for just cause after notice and hearing.

(3) When a town votes to authorize the ~~selectmen~~ selectboard to appoint constables, the ~~selectmen's~~ selectboard's authority to make such appointments shall remain in effect until the town rescinds that authority by the majority vote of the ~~legal~~ registered voters present and voting at an annual meeting, duly warned for that purpose.

(b) Notwithstanding the provisions of subsection (a) to the contrary, a vote to authorize the ~~selectmen~~ selectboard to appoint constables shall become effective only upon a two-thirds vote of those present and voting, if a written protest against the authorization is filed with the ~~legislative body~~ selectboard at least 15 days before the vote by at least five percent of the voters of the municipality town.

(c) The authority to authorize the selectboard to appoint the constable as provided in this section shall extend to all towns except those that have a charter that specifically provides for the election or appointment of the office of constable.

Sec. 2. 17 V.S.A. § 2651b is amended to read:

§ 2651b. ELIMINATION OF OFFICE OF AUDITOR; APPOINTMENT OF PUBLIC ACCOUNTANT

(a)(1) A town may vote by ballot at an annual meeting to eliminate the office of town auditor.

(2)(A) If a town votes to eliminate the office of town auditor, the selectboard shall contract with a public accountant, licensed in this State, to perform an annual financial audit of all funds of the town except the funds audited pursuant to 16 V.S.A. § 323.

(B) Unless otherwise provided by law, the selectboard shall provide for all other ~~auditor~~ auditor's duties to be performed.

(3) A vote to eliminate the office of town auditor shall remain in effect until rescinded by majority vote of the ~~legal~~ registered voters present and voting, by ballot, at an annual meeting duly warned for that purpose.

(b) The term of office of any auditor in office on the date a town votes to eliminate that office shall expire on the 45th day after such vote or on the date upon which the selectboard enters into a contract with a public accountant under this section, whichever occurs first.

(c) The authority to vote to eliminate the office of town auditor as provided in this section shall extend to all towns except those towns that have a charter that specifically provides for the election or appointment of the office of town auditor.

Sec. 3. 17 V.S.A. § 2651c is amended to read:

§ 2651c. LACK OF ELECTED LISTER; APPOINTMENT OF LISTER; ELIMINATION OF OFFICE

(a)(1) Notwithstanding any other provisions of law to the contrary and except as provided in subsection (b) of this section, in the event the board of listers of a ~~municipality town~~ falls below a majority and the selectboard is unable to find a person or persons to appoint as a lister or listers under the provisions of 24 V.S.A. § 963, the selectboard may appoint an assessor to perform the duties of a lister as set forth in Title 32 V.S.A. chapter 121, subchapter 2 until the next annual meeting.

(2) The appointed person need not be a resident of the ~~municipality town~~ and shall have the same powers and be subject to the same duties and penalties as a duly elected lister for the ~~municipality town~~.

(b)(1) A town may vote by ballot at an annual meeting to eliminate the office of lister.

(2)(A) If a town votes to eliminate the office of lister, the selectboard shall contract with or employ a professionally qualified assessor, who need not be a resident of the town.

(B) The assessor shall have the same powers, discharge the same duties, proceed in the discharge thereof in the same manner, and be subject to the same liabilities as are prescribed for listers or the board of listers under the provisions of Title 32.

(2)(3) A vote to eliminate the office of lister shall remain in effect until rescinded by majority vote of the ~~legal~~ registered voters present and voting at an annual meeting warned for that purpose.

(3)(c) The term of office of any lister in office on the date a town votes to eliminate that office shall expire on the 45th day after the vote or on the date upon which the selectboard appoints an assessor under this subsection, whichever occurs first.

(4)(d) The authority to vote to eliminate the office of lister as provided in this ~~subsection~~ section shall extend to all towns except those towns that have a charter that specifically provides for the election or appointment of the office of lister.

Sec. 4. 17 V.S.A. § 2651d is amended to read:

§ 2651d. COLLECTOR OF DELINQUENT TAXES; APPOINTMENT;
REMOVAL

(a)(1) A municipality may vote at an annual or special municipal meeting to authorize the legislative body to appoint a collector of delinquent taxes, who may be the municipal treasurer.

(2) A collector of delinquent taxes so appointed may be removed by the legislative body for just cause after notice and hearing.

(b) When a municipality votes to authorize the legislative body to appoint a collector of delinquent taxes, the legislative body's authority to make such appointment shall remain in effect until the municipality rescinds that authority by the majority vote of the ~~legal~~ registered voters present and voting at an annual or special meeting, duly warned for that purpose.

Sec. 5. 17 V.S.A. § 2651e is amended to read:

§ 2651e. MUNICIPAL CLERK; APPOINTMENT; REMOVAL

(a)(1) A municipality may vote at an annual meeting to authorize the legislative body to appoint the municipal clerk.

(2) A municipal clerk so appointed may be removed by the legislative body for just cause after notice and hearing.

(b) A vote to authorize the legislative body to appoint the municipal clerk shall remain in effect until rescinded by the majority vote of the ~~legal~~ registered voters present and voting at an annual or special meeting, duly warned for that purpose.

(c) The term of office of a municipal clerk in office on the date a municipality votes to allow the legislative body to appoint a municipal clerk shall expire 45 calendar days after the vote or on the date upon which the legislative body appoints a municipal clerk under this section, whichever occurs first, unless a petition for reconsideration or rescission is filed in accordance with section 2661 of this title.

(d) The authority to authorize the legislative body to appoint the municipal clerk as provided in this section shall extend to all municipalities except those that have a charter that specifically provides for the election or appointment of the office of municipal clerk.

Sec. 6. 17 V.S.A. § 2651f is amended to read:

§ 2651f. MUNICIPAL TREASURER; APPOINTMENT; REMOVAL

(a)(1) A municipality may vote at an annual meeting to authorize the legislative body to appoint the municipal treasurer.

(2) A treasurer so appointed may be removed by the legislative body for just cause after notice and hearing.

(b) A vote to authorize the legislative body to appoint the treasurer shall remain in effect until rescinded by the majority vote of the ~~legal~~ registered voters present and voting at an annual or special meeting, duly warned for that purpose.

(c) The term of office of a treasurer in office on the date a municipality votes to allow the legislative body to appoint a treasurer shall expire 45 calendar days after the vote or on the date upon which the legislative body appoints a treasurer under this section, whichever occurs first, unless a petition for reconsideration or rescission is filed in accordance with section 2661 of this title.

(d) The authority to authorize the legislative body to appoint the treasurer as provided in this section shall extend to all municipalities except those that have a charter that specifically provides for the election or appointment of the office of municipal treasurer.

* * * Local Incompatible Offices * * *

Sec. 7. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a)(1) An auditor shall not be town clerk, town treasurer, selectboard member, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, cemetery commissioner, or town district school director; nor shall a spouse of or any person assisting any of these officers in the discharge of official duties be eligible to hold office as auditor.

(2) A selectboard member or school director shall not be first constable, collector of taxes, town treasurer, assistant town treasurer, auditor, or town agent. A selectboard member shall not be lister or assessor.

(3) A cemetery commissioner or library trustee shall not be town treasurer, assistant town treasurer, or auditor.

(4) A town manager shall not hold any elective office in ~~the~~ that town or town school district.

(5) Election officers at local elections shall be disqualified as provided in section 2456 of this title.

* * *

* * * Smoking on Municipal Grounds * * *

Sec. 8. 18 V.S.A. § 1742 is amended to read:

§ 1742. RESTRICTIONS ON SMOKING IN PUBLIC PLACES

(a) The possession of lighted tobacco products or use of tobacco substitutes in any form is prohibited in:

(1) the common areas of all enclosed indoor places of public access and publicly owned buildings and offices;

(2) all enclosed indoor places in lodging establishments used for transient traveling or public vacationing, such as resorts, hotels, and motels, including sleeping quarters and adjoining rooms rented to guests;

(3) designated smoke-free areas of property or grounds owned by or leased to the State or a municipality; and

(4) any other area within 25 feet of State-owned buildings and offices, except that to the extent that any portion of the 25-foot zone is not on State property, smoking is prohibited only in that portion of the zone that is on State property unless the owner of the adjoining property chooses to designate his or her property smoke-free.

* * *

* * * Animal Pounds * * *

Sec. 9. 20 V.S.A. chapter 191, subchapter 2 is amended to read:

Subchapter 2. Pounds and Impounding

Article 1. General Provisions

§ 3381. MAINTENANCE OF POUNDS

(a)(1) Each organized town shall maintain as many good and sufficient pounds as it may need for the impounding of ~~beasts~~ animals liable to be impounded.

(2) The pound may be kept in an adjacent town if the adjacent town consents and the poundkeeper may be a resident of an adjacent town.

(b) Each town may regulate the operation of its pounds except as to matters regulated by ~~statute~~ law.

§ 3382. ~~PENALTY FOR FAILURE TO MAINTAIN POUND~~

~~If a town, for the term of six months at one time, is without such pound, it shall be fined \$30.00. [Repealed.]~~

* * *

Sec. 10. LEGISLATIVE COUNCIL; CONFORMING REVISIONS;
20 V.S.A. CHAPTER 191, SUBCHAPTER 2; REPLACE “BEAST”
WITH “ANIMAL”

When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Council shall replace “beast” with “animal” and “beasts” with “animals” throughout 20 V.S.A. chapter 191, subchapter 2 (pounds and impounding), provided the revisions have no other effect on the meaning of the affected statutes.

* * * Assistant Town Clerks * * *

Sec. 11. 24 V.S.A. § 1171 is amended to read:

§ 1171. DUTIES OF ASSISTANT CLERK

(a) ~~Such~~ The assistant clerk shall be sworn and is authorized to perform the recording and filing duties of the town clerk, to issue licenses and certified copies of records, and, in the absence, death, or disability of the town clerk, is further authorized to perform all other duties of ~~such~~ the clerk.

(b) ~~If the~~ there is a vacancy in the office of town clerk ~~dies~~, the authority of the assistant town clerk to perform the duties of the town clerk shall continue until a successor is appointed by the selectboard under section 963 of this title.

* * * Municipal Managers * * *

Sec. 12. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

* * *

(4) To have charge and supervision of all public town buildings, and repairs thereon, and repairs of buildings of the town school district upon requisition of the school directors; and all building done undertaken by the town or town school district, unless otherwise specially voted provided for by the selectboard, shall be done under his or her charge and supervision.

* * *

(8) To supervise and expend all special appropriations of the town, as if the same were a separate department of the town, unless otherwise ~~voted provided for~~ by the town selectboard.

* * *

* * * Municipal Finances * * *

Sec. 13. 24 V.S.A. chapter 51 is amended to read:

CHAPTER 51. FINANCES; ACCOUNTS AND AUDITS

Subchapter 1. Taxes

* * *

§ 1533. TOWN BOARD FOR THE ABATEMENT OF TAXES

(a) The board of civil authority, with the listers and the town treasurer, shall constitute a board for the abatement of town, ~~town school district,~~ and ~~current use~~ property taxes and water and sewer charges.

(b) The act of a majority of a quorum at a meeting shall be treated as the act of the board. This quorum requirement need not be met if the town treasurer, a majority of the listers, and a majority of the selectboard are present at the meeting.

* * *

§ 1535. ABATEMENT

(a) The board may abate in whole or part taxes, water charges, sewer charges, interest, or collection fees, or any combination of those, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

- (1) taxes or charges of persons who have died insolvent;
- (2) taxes or charges of persons who have ~~removed~~ moved from the State;
- (3) taxes or charges of persons who are unable to pay their taxes or charges, interest, and collection fees;
- (4) taxes in which there is manifest error or a mistake of the listers;
- (5) taxes or charges upon real or personal property lost or destroyed during the tax year;
- (6) the exemption amount available under 32 V.S.A. § 3802(11) to persons otherwise eligible for exemption who file a claim on or after May 1 but before October 1 due to the claimant's sickness or disability or other good cause as determined by the board of abatement; but that exemption amount shall be reduced by 20 percent of the total exemption for each month or portion of a month the claim is late filed;
- (7), (8) [Repealed.]
- (9) taxes or charges upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237.
 - (b) The board's abatement of an amount of tax or charge shall automatically abate any uncollected interest and fees relating to that amount.
 - (c) The board shall, in any case in which it abates taxes or charges, interest, or collection fees accruing to the town, or denies an application for abatement, state in detail in writing the reasons for its decision.
 - (d)
 - (1) The board may order that any abatement as to an amount or amounts already paid be in the form of a refund or in the form of a credit against the tax or charge for the next ensuing tax year, or charge billing cycle and for succeeding tax years or billing cycles if required to use up the amount of the credit.
 - (2) Whenever a municipality votes to collect interest on overdue taxes pursuant to 32 V.S.A. § 5136, interest in a like amount shall be paid by the municipality to any person for whom an abatement has been ordered.
 - (3) Interest on taxes or charges paid and subsequently abated shall accrue from the date payment was due or made, whichever is later. However, abatements issued pursuant to subdivision (a)(5) of this section need not include the payment of interest.

(4) When a refund has been ordered, the board shall draw an order on the town treasurer for ~~such~~ payment of the refund.

* * *

Subchapter 3. Orders Drawn by ~~Selectboard~~ Municipal Bodies

* * *

§ 1622. TOWN ORDERS; RECORD

(a)(1) The chair of the selectboard shall keep or cause to be kept a single record of all orders drawn by the board showing the number, date, to whom payable, for what purpose, and the amount of each ~~such~~ order.

(2) All other officers authorized by law to draw orders upon the town treasurer shall keep or cause to be kept a like record.

(b) Such records shall be submitted to the town auditors annually on or before February 1.

(c) If the records of orders named in this section are made by an assistant clerk, the assistant clerk shall not be the town treasurer, ~~or the wife or husband spouse of such~~ the town treasurer, or any person acting in the capacity of clerk for the town treasurer.

§ 1623. SIGNING ORDERS

(a) The selectboard may do either of the following:

(1) Authorize one or more members of the board to examine and allow claims against the town for town expenses and draw orders for such claims to the party entitled to payment.

(A) Orders shall state definitely the purpose for which ~~they are~~ each is drawn and shall serve as full authority to the treasurer to make the payments.

(B) The selectboard shall be provided with a record of orders drawn under this subdivision (1) whenever orders are signed by less than a majority of the board; ~~or~~.

(2) Submit to the town treasurer a certified copy of those portions of the selectboard minutes, properly signed by the clerk and chair or by a majority of the board, showing to whom and for what purpose each payment is to be made by the treasurer. The certified copy of the minutes shall serve as full authority to the treasurer to make the approved payments.

(b) This section shall apply to all municipal public bodies authorized by law to draw orders on the municipal treasurer.

* * *

Subchapter. 5. Auditors and Audits

* * *

§ 1684. TRUST ASSETS; INDEBTEDNESS

The auditors shall make a detailed statement showing:

(1) ~~The~~ the condition of all trust funds in which the town is interested ~~with and~~ a list of the assets of such funds, including the account of receipts and disbursements for the preceding year;

(2) ~~What~~ what bonds of the town ~~or town school district~~ are outstanding ~~with and~~ the rate of interest and the amount thereof; and

(3) ~~What interest bearing~~ what interest-bearing notes or orders of the town ~~or town school district~~ are outstanding ~~with and~~ the serial number, date, amount, payee, and rate of interest of each, and the total amount thereof.

* * * Penalties for Municipal Violations * * *

Sec. 14. 24 V.S.A. § 1974 is amended to read:

§ 1974. ENFORCEMENT OF CRIMINAL ORDINANCES

(a)(1) The violation of a criminal ordinance or rule adopted by a municipality under this chapter shall be a misdemeanor.

(2) The criminal ordinance or rule may provide for a fine or imprisonment, but no fine ~~may~~ shall exceed ~~\$500.00~~ \$800.00, nor may any term of imprisonment exceed one year.

(3) Each day the violation continues shall constitute a separate offense.

* * *

Sec. 15. 24 V.S.A. § 2201 is amended to read:

§ 2201. THROWING, DEPOSITING, BURNING, AND DUMPING
REFUSE; PENALTY; SUMMONS AND COMPLAINT

(a)(1) Prohibition. Every person shall be responsible for proper disposal of his or her own solid waste. A person shall not throw, dump, deposit, or cause, or permit to be thrown, dumped, or deposited any solid waste as defined in 10 V.S.A. § 6602, refuse of whatever nature, or any noxious thing in or on lands or waters of the State outside a solid waste management facility certified by the Agency of Natural Resources.

* * *

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than ~~\$500.00~~ \$800.00.

(1) This violation shall be enforceable in the Judicial Bureau pursuant to the provisions of 4 V.S.A. chapter 29 in an action that may be brought by a municipal attorney, a solid waste management district attorney, an environmental enforcement officer employed by the Agency of Natural Resources, a grand juror, or a designee of the legislative body of the municipality, or by any duly authorized law enforcement officer.

(2) If the throwing, placing, or depositing was done from a snowmobile, vessel, or motor vehicle, except a motor bus, there shall be a rebuttable presumption that the throwing, placing, or depositing was done by the operator of such the snowmobile, vessel, or motor vehicle.

(3) Nothing in this section shall be construed as affecting the operation of an automobile graveyard or salvage yard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the State or towns.

* * *

Sec. 16. 24 V.S.A. § 2297a is amended to read:

§ 2297a. ENFORCEMENT OF SOLID WASTE ORDINANCE BY TOWN, CITY, OR INCORPORATED VILLAGE

(a) Solid waste order. A legislative body may issue and enforce a solid waste order in accordance with this section. A solid waste order may include a directive that the respondent take actions necessary to achieve compliance with the ordinance, to abate hazards created as a result of noncompliance, or to restore the environment to the condition existing before the violation and may include a civil penalty of not more than ~~\$500.00~~ \$800.00 for each violation and in the case of a continuing violation, not more than \$100.00 for each succeeding day. In determining the amount of civil penalty to be ordered, the legislative body shall consider the following:

- (1) the degree of actual or potential impact on public health, safety, welfare, and the environment resulting from the violation;
- (2) whether the respondent has cured the violation;
- (3) the presence of mitigating circumstances;
- (4) whether the respondent knew or had reason to know the violation existed;
- (5) the respondent's record of compliance;
- (6) the economic benefit gained from the violation;
- (7) the deterrent effect of the penalty;

- (8) the costs of enforcement;
- (9) the length of time the violation has existed.

* * *

(e) Contents of proposed order. A proposed order shall include:

* * *

(5) if applicable, a civil penalty of not more than ~~\$500.00~~ \$800.00 for each violation and in the case of a continuing violation, not more than \$100.00 for each succeeding day.

* * * Municipal Planning and Development Bylaws * * *

Sec. 17. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

(1) Equal treatment of housing and required provisions for affordable housing.

* * *

(G) A residential care home or group home to be operated under state ~~State~~ licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, ~~except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home.~~ This subdivision (G) does not require a municipality to allow a greater number of residential care homes or group homes on a lot than the number of single-family dwellings allowed on the lot.

* * *

* * * Road Commissioner Compensation * * *

Sec. 18. 32 V.S.A. § 1225 is amended to read:

§ 1225. TOWN ROAD COMMISSIONER

The compensation of a town road commissioner shall be fixed by the selectboard, ~~shall not be less than \$2.00 per day for time actually spent, and shall be paid out of the Transportation Fund.~~

* * * Property Appraisal Appeals * * *

Sec. 19. 32 V.S.A. § 4404 is amended to read:

§ 4404. APPEALS FROM LISTERS AS TO GRAND LIST

(a) Within 14 days after the date of notice thereof, a person aggrieved by the final decision of the listers under the provisions of section 4221 of this title, may appeal in writing therefrom to the board of civil authority, by lodging his or her appeal with the town clerk, who shall record the same in the book containing the abstract of individual lists. The grounds upon which ~~such~~ the appeal is based shall therein be briefly set forth.

(b)(1) The town clerk forthwith shall call a meeting of the board to hear and determine such appeals, which shall be held at ~~such~~ a time, not later than 14 days after the last date allowed for notice of appeal, and at ~~such~~ a place within the town as that he or she shall designate.

(2) Notice of ~~such~~ the time and place shall be given by posting a warning therefor in three or more public places in ~~such~~ the town, and by mailing a copy of ~~such~~ the warning, postage prepaid, to each member of the board, the agent of the town to prosecute and defend suits, the chair of the board of listers, and to all persons so appealing.

(c)(1) The ~~Board~~ board shall meet at the time and place so designated, and on that day and from day to day thereafter shall hear and determine ~~such~~ the appeals until all questions and objections are heard and decided.

(2)(A) Each property, the appraisal of which is being appealed, shall be inspected by a committee of not less than three members of the board ~~who~~. At least one lister shall be allowed to attend the inspection. The committee shall report to the board within 30 days from the hearing on the appeal and before the final decision pertaining to the property is given.

(B) If, after notice, the appellant refuses to allow an inspection of the property or attendance of at least one lister, or both, as required under this subsection, including the interior and exterior of any structure on the property, the appeal shall be deemed withdrawn.

(3) The board shall, within 15 days from the time of the report, certify in writing its notice of decision, with reasons, in the premises, and shall file ~~such~~ the notice with the town clerk, who shall thereupon record the same in the book wherein the appeal was recorded and forthwith notify the appellant in writing of the action of ~~such~~ the board, by certified mail.

(4)(A) If the board does not substantially comply with the requirements of this subsection and if the appeal is not withdrawn by filing written notice of withdrawal with the board or deemed withdrawn as provided in this subsection, the grand list of the appellant for the year for which appeal is being made shall remain at the amount set before the appealed change was made by the listers; except, if there has been a complete reappraisal, the grand list of the appellant for the year for which appeal is being made shall be set at a value

which that will produce a tax liability equal to the tax liability for the preceding year.

(B) The town clerk shall immediately record the same in the book wherein the appeal was recorded and forthwith notify the appellant in writing of ~~such~~ the action, by certified mail. Thereupon the appraisal so determined pursuant to this subsection shall become a part of the grand list of such person.

(d) Listers and agents to prosecute and defend suits wherein a town is interested shall not be eligible to serve as members of the board while convened to hear and determine ~~such~~ those appeals nor shall an appellant, or his or her servant, agent, or attorney be eligible to serve as a member of the ~~Board~~ board while convened to hear and determine any appeals. However, listers and agents to prosecute and defend suits wherein a town is interested shall be given the opportunity to defend the appraisals in question.

* * * State Holidays * * *

Sec. 20. 1 V.S.A. § 371 is amended to read:

§ 371. LEGAL HOLIDAYS

(a) The following shall be legal holidays:

New Year's Day, January 1;

Martin Luther King, Jr.'s Birthday, the third Monday in January;

~~Lincoln's Birthday, February 12;~~

~~Washington's Birthday~~ Presidents' Day, the third Monday in February;

Town Meeting Day, the first Tuesday in March;

Memorial Day, the last Monday in May;

Independence Day, July 4;

Bennington Battle Day, August 16;

Labor Day, the first Monday in September;

Columbus Day, the second Monday in October;

Veterans' Day, November 11;

Thanksgiving Day, the fourth Thursday in November;

Christmas Day, December 25.

* * *

* * * Effective Date * * *

Sec. 21. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 14, 2018, pages 628-642)

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 897.

An act relating to enhancing the effectiveness, availability, and equity of services provided to students who require additional support.

Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Education.

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

* * * Findings * * *

Sec. 1. FINDINGS

(a) In 2016 Acts and Resolves No. 148, the General Assembly directed the Agency of Education to contract with a consulting firm to review current practices and recommend best practices for the delivery of special education services in school districts. The Agency of Education contracted with the District Management Group, which issued in November 2017 its report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” (Delivery of Services Report).

(b) In Act 148, the General Assembly also directed the Agency of Education to contract for a study of special education funding and practice and to recommend a funding model for Vermont designed to provide incentives for desirable practices and stimulate innovation in the delivery of services. The General Assembly required that the study consider a census-based model of funding. The Agency of Education contracted with the University of Vermont and State Agricultural College, and the report of its Department of Education and Social Services entitled “Study of Vermont State Funding for Special Education” was issued in December 2017 (Funding Report).

(c) The Delivery of Services Report made the following five recommendations on best practices for the delivery of special education services:

(1) ensure core instruction meets most needs of most students;

(2) provide additional instructional time outside core subjects to students who struggle, rather than providing interventions instead of core instruction;

(3) ensure students who struggle receive all instruction from highly skilled teachers;

(4) create or strengthen a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) provide specialized instruction from skilled and trained experts to students with more intensive needs.

(d) The Funding Report noted, based on feedback from various stakeholders, including educators, school leaders, State officials, parents, and others, that Vermont's existing reimbursement model of funding special education has a number of limitations in that it:

(1) is administratively costly for the State and localities;

(2) is misaligned with policy priorities, particularly with regard to the delivery of a multitiered system of supports and positive behavioral interventions and supports;

(3) creates misplaced incentives for student identification, categorization, and placement;

(4) discourages cost containment; and

(5) is unpredictable and lacks transparency.

(e) The Funding Report assessed various funding models that support students who require additional support, including a census-based funding model. A census-based model would award funding to supervisory unions based on the number of students within the supervisory union and could be used by the supervisory union to support the delivery of services to all students. The Funding Report noted that the advantages of a census-based model are that it is simple and transparent, allows flexibility in how the funding is used by supervisory unions, is aligned with the policy priorities of serving students who require additional support across the general and special education service-delivery systems, and is predictable.

* * * Goals * * *

Sec. 2. GOALS

(a) By enacting this legislation, the General Assembly intends to enhance the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont's school districts.

(b)(1) To support the enhanced delivery of these services, the State funding model for special education shall change for all supervisory unions in fiscal year 2021, for school year 2020-2021, from a reimbursement model to a census-based model, which will provide more flexibility in how the funding can be used, is aligned with the State's policy priorities of serving students who require additional support across the general and special education service-delivery systems, and will simplify administration.

(2) The General Assembly recognizes that a student on an individualized education program, is entitled, under federal law, to a free and appropriate public education in the least restrictive environment in accordance with that program. The changes to State funding for special education and the delivery of special education services as envisioned under this act are intended to facilitate the exercise of this entitlement.

(c) The General Assembly recognizes that it might be appropriate and equitable to provide a higher amount of census-based funding to supervisory unions that have relatively higher costs in supporting students who require additional support, but the General Assembly does not have sufficient information on which to base this determination. Therefore, this act directs the Agency of Education to make a recommendation to the General Assembly on whether the amount of the census grant should be increased for supervisory unions that have relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. The General Assembly intends to reconsider this matter after receiving this recommendation and before the census-based model is implemented.

Sec. 3. 16 V.S.A. § 2901 is amended to read:

§ 2901. SUCCESS FOR ALL STUDENTS IN THE GENERAL
EDUCATION ENVIRONMENT

(a) It is the policy of the State that each ~~Each~~ local school district shall develop and maintain, in consultation with parents, a comprehensive system of education that ~~will~~ is designed to result, to the extent appropriate, in all students succeeding in the general education environment. A comprehensive system of education includes a full range of services and accommodations that are needed by students in the district. These services could include a separate

alternative program if the district finds that some of its students could be better served in an environment outside the classroom, or if the district finds that separate placement is the best way to provide services to a student who is ~~disrupting the class or~~ having difficulty learning in a traditional school setting for educational, emotional, or personal reasons and thereby impairing the ability of the classroom teacher to provide ~~quality~~ high-quality services to that student or to other students. This chapter does not replace or expand entitlements created by federal law, nor is it the intent of this chapter to create a higher standard for maintaining a student in the general classroom than the standard created in the following federal laws: 20 U.S.C. ~~§ 1401 et seq. chapter 33~~, Individuals with Disabilities Education Act; 29 U.S.C. § 794, Section 504 of the Rehabilitation Act of 1973; and 42 U.S.C. ~~§ 12101 et seq. chapter 126~~, Americans with Disabilities Act.

(b) [Repealed.]

(c) No individual entitlement or private right of action is created by this section.

Sec. 4. 16 V.S.A. § 2902 is amended to read:

§ 2902. TIERED SYSTEM OF SUPPORTS AND EDUCATIONAL
SUPPORT TEAM

(a) Within each school district's comprehensive system of educational services, each public school shall develop and maintain a tiered system of academic and behavioral supports for the purpose of providing all students with the opportunity to succeed or to be challenged in the general education environment. For each school it maintains, a school district board shall assign responsibility for developing and maintaining the tiered system of supports either to the superintendent pursuant to a contract entered into under section 267 of this title or to the school principal. The school shall provide all students a full and fair opportunity to access the system of supports and achieve educational success. The tiered system of supports shall, at a minimum, include an educational support team, instructional and behavioral interventions, and accommodations that are available as needed for any student who requires support beyond what can be provided in the general education classroom, and may include intensive, individualized interventions for any student requiring a higher level of support.

(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~~ emotional or behavioral challenges 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~~ positive behavioral practices that ~~teach and encourage prosocial skills and behaviors~~ schoolwide promote social and emotional learning, including trauma-sensitive programming, that are both school-wide and focused on specific students or groups of students;

(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 full implementation of the multi-tiered system of support.

(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.

(2) Identify the classroom accommodations, remedial services, and other supports ~~that have been~~ to be provided to the identified student.

(3) Assist teachers to plan for and provide services and accommodations to students in need of classroom supports or enrichment activities.

(4) Develop an individualized strategy, in collaboration with the student's parents or legal guardian whenever possible, to assist the identified student to succeed in school and to complete his or her secondary education.

(5) Maintain a written record of its actions.

~~(6) Report no less than annually to the Secretary, in a form the Secretary prescribes, on the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school and on the additional financial costs of complying with this subsection (c).~~

(d) No individual entitlement or private right of action is created by this section.

(e) The Secretary shall establish guidelines for teachers and administrators in following federal laws relating to provision of services for children with

disabilities and the implementation of this section. The Secretary shall develop and provide to supervisory unions information to share with parents of children suspected of having a disability that describes the differences between the tiered system of academic and behavioral supports required under this section, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, including how and when school staff and parents of children having a suspected disability may request interventions and services under those entitlements.

(f) It is the intent of the General Assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. It is not the intent of the General Assembly that funding under chapter 101 of this title shall be available for a gifted and talented student unless the student has been otherwise determined to be a student for whom funding under that chapter is available.

(g) The tiered system of academic and behavioral supports required under this section shall not be used by a school district to deny a timely initial comprehensive special education evaluation for children suspected of having a disability. The Agency of Education shall adopt policies and procedures to ensure that a school district's evaluation of a child suspected of having a disability is not denied because of implementation of the tiered system of academic and behavioral supports. The policies and procedures shall include:

(1) the definition of what level of progress is sufficient for a child to stop receiving instructional services and supports through the tiered system of academic and behavioral supports;

(2) guidance on how long children are to be served in each tier; and

(3) guidance on how a child's progress is to be measured.

* * * Census-based Funding Model; Amendment of Special
Education Laws * * *

Sec. 5. 16 V.S.A. chapter 101 is amended to read:

CHAPTER 101. SPECIAL EDUCATION

Subchapter 1. General Provisions

§ 2941. POLICY AND PURPOSE

It is the policy of the State to ensure equal educational opportunities for all children in Vermont. This means that children with disabilities are entitled to receive a free appropriate public education. ~~It is further the policy of the State to pay 60 percent of the statewide costs expended by public education for children with disabilities.~~ The purpose of this chapter is to enable the Agency

to ensure the provision of ~~the special educational facilities and instruction education services and supports in accordance with individualized education programs~~ necessary to meet the needs of children with disabilities.

§ 2942. DEFINITIONS

As used in this chapter

* * *

(8) A “student who requires additional support” means a student who:

(A) is on an individualized education program;

(B) is on a section 504 plan under the Rehabilitation Act of 1973, 29 U.S.C. § 794;

(C) is not on an individualized education program or section 504 plan but whose ability to learn is negatively impacted by a disability or by social, emotional, or behavioral needs, or whose ability to learn is negatively impacted because the student is otherwise at risk;

(D) is an English language learner; or

(E) reads below grade level.

* * *

Subchapter 2. Aid for Special Education and Support Services

§ 2961. ~~STANDARD MAINSTREAM BLOCK GRANTS~~ CENSUS GRANT

~~(a) Each supervisory union shall be eligible to receive a standard mainstream block grant each school year. The mainstream block grant shall be equal to the supervisory union’s mainstream salary standard multiplied by 60 percent.~~

~~(b) The supervisory union shall expend all such assistance for special education services or for remedial or compensatory services in accordance with its service plan as required under section 2964 of this title. It shall likewise expend, from local funds, an amount not less than 40 percent of its mainstream salary standard for special education.~~

~~(c) As used in this section:~~

~~(1) “Mainstream salary standard” means:~~

~~(A) the supervisory union’s full-time equivalent staffing for special education for the preceding year multiplied by the average special education teacher salary in the State for the preceding year; plus~~

~~(B) an amount equal to the average special education administrator salary in the State for the preceding year, plus, for any supervisory union with~~

~~member districts which have in the aggregate more than 1,500 average daily membership, a fraction of an additional full-time equivalent salary for a special education administrator, the numerator of which is the aggregate average daily membership of the supervisory union's member districts minus 1,500, and the denominator of which is the aggregate average daily membership of member districts in the largest supervisory union in the State minus 1,500.~~

~~(2) "Full-time equivalent staffing" means 9.75 special education teaching positions per 1,000 average daily membership.~~

~~(d) If in any fiscal year, a supervisory union in which a school is maintained does not expend an amount equal to its mainstream salary standard on special education expenditures, the supervisory union may expend the balance, including the matching funds, to provide support and remedial services pursuant to section 2902 or 2903 of this title. A supervisory union choosing to expend funds in this way shall submit a report describing the services provided and their costs with the final financial report submitted under section 2968 of this title.~~

As used in this section:

(1) "Average daily membership" shall have the same meaning as in subdivision 4001(1) of this title, except it shall exclude State-placed students.

(2) "Average daily membership of a supervisory union" means the aggregate average daily membership of the school districts that are members of the supervisory union or, for a supervisory district, the average daily membership of the supervisory district.

(3) "Long-term membership" of a supervisory union in any school year means the average of the supervisory union's average daily membership over three school years.

(4) "Uniform base amount" means an amount determined by:

(A) dividing an amount:

(i) equal to the average State appropriation for fiscal years 2018, 2019, and 2020 for special education under 16 V.S.A. §§ 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances); and

(ii) increased by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis; by

(B) the statewide average daily membership for prekindergarten through grade 12 for the 2019–2020 school year.

(b) The State commits to satisfying its special education maintenance of fiscal support requirement under 34 C.F.R. § 300.163(a).

(c) Each supervisory union shall receive a census grant each fiscal year to support the provision of special education services to students on an individualized education program. Supervisory unions shall use this funding and other available sources of funding to provide special education services to students in accordance with their individualized education programs as mandated under federal law. A supervisory union may use census grant funds to support the delivery of the supervisory union’s comprehensive system of educational services under sections 2901 and 2902 of this title, but shall not use census grant funds in a manner that abrogates its responsibility to provide special education services to students in accordance with their individualized education programs as mandated under federal law.

(d)(1)(A) For fiscal year 2021, the amount of the census grant for a supervisory union shall be:

(i) the average amount it received for fiscal years 2017, 2018, and 2019 from the State for special education under sections 2961 (standard mainstream block grants), 2963 (special education expenditures reimbursement), and 2963a (exceptional circumstances) of this title; increased by

(ii) the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(B) The amount determined under subdivision (A) of this subdivision (1) shall be divided by the supervisory union’s long-term membership, to determine the base amount of the census grant, which is the amount of the census grant calculated on a per student basis.

(2) For fiscal year 2025 and subsequent fiscal years, the amount of the census grant for a supervisory union shall be the uniform base amount multiplied by the supervisory union’s long-term membership.

(3) For fiscal years 2022, 2023, and 2024, the amount of the census grant for a supervisory union shall be determined by multiplying the supervisory union’s long-term membership by a base amount established under this subdivision. The base amounts for each supervisory union for fiscal years 2022, 2023, and 2024 shall move gradually the supervisory union’s fiscal year 2021 base amount to the fiscal year 2025 uniform base amount by pro rating

the change between the supervisory union's fiscal year 2021 base amount and the fiscal year 2025 uniform base amount over this three-fiscal-year period.

§ 2962. EXTRAORDINARY SERVICES SPECIAL EDUCATION
REIMBURSEMENT

~~(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or to a supervisory union.~~

~~(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to 95 percent of its extraordinary special education expenditures.~~

~~(c) As used in this subchapter, "extraordinary special education expenditures" means a school district's or supervisory union's allowable expenditures that for any one child exceed \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.~~

(1) As used in this section, "child" means a student with disabilities who is three years of age or older in the current school year.

(2) As used in this subchapter, "extraordinary expenditures" means a supervisory union's allowable special education expenditures that for any one child in a fiscal year exceed \$60,000.00, increased annually by the annual change in the National Income and Product Accounts (NIPA) Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

(3) The State Board of Education shall define allowable special education expenditures that shall include any expenditures required under federal law in order to implement fully individual education programs under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, and any costs of mediation conducted by a mediator who is approved by the Secretary.

(b) If a supervisory union has extraordinary expenditures, it shall be eligible for extraordinary special education reimbursement (extraordinary reimbursement) as provided in this section.

(c) A supervisory union that has extraordinary expenditures in a fiscal year for any one child shall be eligible for extraordinary reimbursement equal to:

(1) an amount equal to its special education expenditures in that fiscal year for that child that exceed the extraordinary expenditures threshold amount under subdivision (a)(2) of this section (excess expenditures) multiplied by 95 percent; plus

(2) an amount equal to the lesser of:

(A) the amount of its excess expenditures; or

(B)(i) the extraordinary expenditures threshold amount under subdivision (a)(2) of this section; minus

(ii) the base amount of the census grant received by the supervisory union under subsection 2961(d) of this title for that fiscal year; multiplied by

(iii) 60 percent.

(d) The State Board of Education shall establish by rule the administrative process for supervisory unions to submit claims for extraordinary reimbursement under this section and for the review and payment of those claims.

(e) Under section 2973 of this title, a supervisory union, in its role as the local education agency, may place a student with an individualized education plan under the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33, with certain approved independent schools that accept public tuition. If the approved independent school is entitled to special education cost reimbursement under that section, it may bill the supervisory union for excess special education costs incurred by the independent school in providing special education services to that student beyond those covered by general tuition. If those costs for that student exceed the extraordinary expenditures' threshold as defined in subdivision (a)(2) of this section, the supervisory union shall be entitled to extraordinary reimbursement under this section for that student as if it incurred those costs directly.

§ 2963. SPECIAL EDUCATION EXPENDITURES REIMBURSEMENT

(a) Based on where the related cost is incurred, each town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, and unorganized town or gore or supervisory union shall receive a special education expenditures reimbursement grant each school year.

(b) The amount of a school district's or supervisory union's special education expenditures reimbursement shall be equal to the total of its special education expenditures multiplied by the reimbursement rate for that year.

(c) As used in this subchapter:

~~(1) Special education expenditures are allowable expenditures for special education, as defined by rule of the State Board, less the following:~~

~~(A) revenue from federal aid for special education;~~

~~(B) mainstream service costs, as defined in subdivision 2961(c)(1) of this title;~~

~~(C) extraordinary special education expenditures, as defined in section 2962 of this title;~~

~~(D) any transportation expenses already reimbursed;~~

~~(E) special education costs for a student eligible for aid under section 2963a of this title; and~~

~~(F) other State funds used for special education costs as defined by the State Board by rule.~~

~~(2) The State Board shall define allowable expenditures under this subsection. Allowable expenditures shall include any expenditures required under federal law.~~

~~(3) "Special education expenditures reimbursement rate" means a percentage of special education expenditures that is calculated to achieve the 60 percent share required by subsection 2967(b) of this title. [Repealed.]~~

~~§ 2963a. EXCEPTIONAL CIRCUMSTANCES~~

~~(a) In lieu of reimbursement under section 2963 of this title, the Secretary shall reimburse a school district or supervisory union for 80 percent of the costs not eligible for reimbursement under section 2962 of this title for each student causing the school district or supervisory union to be eligible for extraordinary services reimbursement pursuant to that section. However, in order for a school district or supervisory union to be eligible for reimbursement under this section, the total costs of the school district or supervisory union eligible for extraordinary services reimbursement must equal or exceed 15 percent of the total costs eligible for State assistance under sections 2961, 2962, and 2963 of this title.~~

~~(b) An eligible school district or supervisory union may apply to the Secretary to receive reimbursement under this section. The Secretary shall award reimbursement to a school district or supervisory union under this section if the Secretary makes a determination that the school district or supervisory union considered all the cost-effective and appropriate available alternatives for placement and programs for students before incurring these costs. A decision of the Secretary shall be final. [Repealed.]~~

~~§ 2964. SERVICE PLAN~~

~~(a) As a condition of receiving assistance under this subchapter, a supervisory union shall file a service plan with the Secretary annually on or before October 15. The service plan shall contain the anticipated special education expenditures for the following school year for the supervisory union and its member districts. The plan shall be in a form prescribed by the Secretary and shall include information on services planned and anticipated expenditures.~~

~~(b) If a supervisory union fails to file a service plan by October 15, the Secretary may withhold any funds due the supervisory union and its member districts under this title until a service plan is filed and accepted by the Secretary as properly completed. [Repealed.]~~

* * *

§ 2967. AID PROJECTION; STATE SHARE

~~(a) On or before December 15, the Secretary shall publish an estimate, by supervisory union and its member districts to the extent they anticipate reimbursable, of its anticipated special education expenditures under this chapter, of the amount of State assistance necessary to fully fund sections 2961 through 2963 of this title in for the ensuing school year.~~

~~(b) The total expenditures made by the State in any fiscal year pursuant to this chapter shall be 60 percent of the statewide total special education expenditures of funds that are not derived from federal sources. Special As used in this section, special education expenditures shall include:~~

~~(1) costs eligible for grants and reimbursements under sections 2961 through 2963a and 2962 of this title;~~

~~(2) costs for services for persons who are visually impaired; and~~

~~(3) costs for persons who are deaf and or hard of hearing;~~

~~(3)(4) costs for the interdisciplinary team program;~~

~~(4) costs for regional specialists in multiple disabilities;~~

~~(5) funds expended for training and programs to meet the needs of students with emotional or behavioral problems challenges under subsection 2969(c) of this title; and~~

~~(6) funds expended for training under subsection 2969(d) of this title.~~

§ 2968. REPORTS

~~(a) On or before November 15, March 15, and August 1 of each school year, each supervisory union and its member districts to the extent they incur reimbursable expenditures under this chapter shall file a financial report with~~

~~the Secretary in a form prescribed by the Secretary. The report shall describe total expenditures for special education actually incurred during the preceding period, and shall describe revenues derived from different funding sources, including federal assistance, State assistance under this chapter, and local effort.~~

~~(b) If a supervisory union or its member districts that have incurred reimbursable expenditures under this chapter fail to file a complete report by August 1, until the properly completed August 1 report is filed and accepted by the Secretary, the Secretary may withhold any funds due the supervisory union or school district under this title and shall subtract \$100.00 per business day from funds due to the supervisory union or school district under this title for that fiscal year. The Secretary may waive the \$100.00 penalty required under this subsection upon appeal by the supervisory union or school district. The Secretary shall establish procedures for administration of this subsection.~~

~~(c) The Secretary shall review and monitor the reports received pursuant to subsection (a) of this section as well as the service plans received pursuant to section 2964 of this title, and shall assist supervisory unions and school districts to complete and submit these documents in a timely and accurate fashion.~~

~~(d) Special education receipts and expenditures shall be included within the audits required of a supervisory union and its member districts that have incurred reimbursable expenditures under this chapter pursuant to section 323 of this title. [Repealed.]~~

§ 2969. PAYMENTS

~~(a)(1) On or before August 15, December 15, and April 15 of each fiscal year, the State Treasurer shall withdraw from the Education Fund, based on a warrant issued by the Commissioner of Finance and Management, and shall forward to each supervisory union and its member districts to the extent they anticipate reimbursable expenditures under this chapter, the amount of State assistance estimated in accordance with State Board rules to be necessary to fund sections 2961 through 2963a of this title in the current fiscal period. The State Board shall by rule ensure that the amount of such assistance shall be adjusted to compensate for any overpayments or underpayments determined, after review and acceptance of the reports submitted under section 2968 of this title, to have been made in previous periods. Notwithstanding this subsection, failure to submit the reports within the timelines established by subsection 2968(a) of this title shall result in the withholding of any payments until the report is filed one-third of the census grant due to the supervisory union under section 2961 of this title for that fiscal year.~~

(2) On or before November 15, January 15, April 15, and August 1 of each school year, each supervisory union, to the extent it incurs extraordinary expenditures under section 2962 of this title, shall file a financial report with the Secretary in a form prescribed by the Secretary. The report shall describe total extraordinary expenditures actually incurred during the reporting period.

(3) On or before December 15, February 15, May 15, and September 15 of each school year, based on a warrant issued by the Commissioner of Finance and Management, the State Treasurer shall withdraw from the Education Fund and shall forward to each supervisory union the amount of extraordinary reimbursement incurred by the supervisory union under section 2962 of this title that is unreimbursed and determined by the Agency of Education to be payable to the supervisory union.

(b) [Repealed.]

(c) For the purpose of meeting the needs of students with emotional or behavioral problems ~~problems~~ challenges, each fiscal year the Secretary shall use for training, program development, and building school and regional capacity; up to one percent of the State funds appropriated under this subchapter.

(d) For the training of teachers, administrators, and other personnel in the identification and evaluation of, ~~and provision of education~~ educational services to children who require educational supports, each fiscal year the Secretary shall use up to 0.75 percent of the State funds appropriated under this subchapter. In order to set priorities for the use of these funds, the Secretary shall identify effective practices and areas of critical need. The Secretary may expend up to five percent of these funds for statewide training and shall distribute the remaining funds to school districts or supervisory unions.

(e) School districts and supervisory unions that apply for funds under this section must submit a plan for training that will result in lasting changes in their school systems and give assurances that at least 50 percent of the costs of training, including in-kind costs, will be assumed by the applicant. The Secretary shall establish written procedures and criteria for the award of such funds. In addition, the Secretary may identify schools most in need of training assistance and may pay for 100 percent of the assistance to the supervisory union or school district for these schools to fund the provision of training assistance for these schools.

* * *

§ 2974. SPECIAL EDUCATION PROGRAM; FISCAL REVIEW

(a) Annually, the Secretary shall report to the State Board regarding:

~~(1) special education expenditures by supervisory unions~~ the total amount of census grants made to supervisory unions under section 2961 of this title;

~~(2) the rate of growth or decrease in special education costs, including the identity of high- and low-spending supervisory unions~~ the total amount of extraordinary special education reimbursement made to supervisory unions under section 2962 of this title;

(3) results for special education students;

(4) the availability of special education staff;

(5) the consistency of special education program implementation statewide;

(6) ~~the status of the education support systems~~ tiered systems of supports in supervisory unions; and

(7) a statewide summary of the special education student count, including:

(A) the percentage of the total average daily membership represented by special education students statewide and by supervisory union;

(B) the percentage of special education students by disability category; and

(C) the percentage of special education students served by public schools within the supervisory union, by day placement, and by residential placement.

~~(b) The Secretary's report shall include the following data for both high- and low-spending supervisory unions:~~

~~(1) each supervisory union's special education staff-to-child count ratios as compared to the State average, including a breakdown of ratios by staffing categories;~~

~~(2) each supervisory union's percentage of students in day programs and residential placements as compared to the State average of students in those placements and information about the categories of disabilities for the students in such placements;~~

~~(3) whether the supervisory union was in compliance with section 2901 of this title;~~

~~(4) any unusual community characteristics in each supervisory union relevant to special education placements;~~

~~(5) a review of high- and low-spending supervisory unions' special~~

education student count patterns over time;

~~(6) a review of the supervisory union's compliance with federal and State requirements to provide a free, appropriate public education to eligible students; and~~

~~(7) any other factors affecting its spending.~~

~~(c) The Secretary shall review low-spending supervisory unions to determine the reasons for their spending patterns and whether those supervisory unions used cost-effective strategies appropriate to replicate in other supervisory unions.~~

~~(d) For the purposes of this section, a "high-spending supervisory union" is a supervisory union that, in the previous school year, spent at least 20 percent more than the statewide average of special education eligible costs per average daily membership. Also for the purposes of this section, a "low-spending supervisory union" is a supervisory union that, in the previous school year, spent no more than 80 percent of the statewide average of special education eligible costs per average daily membership.~~

~~(e) The Secretary and Agency staff shall assist the high-spending supervisory unions, that have been identified in subsection (a) of this section and have not presented an explanation for their spending that is satisfactory to the Secretary, to identify reasonable alternatives and to develop a remediation plan. Development of the remediation plan shall include an on-site review. The supervisory union shall have two years to make progress on the remediation plan. At the conclusion of the two years or earlier, the supervisory union shall report its progress on the remediation plan.~~

~~(f) Within 30 days of receipt of the supervisory union's report of progress, the Secretary shall notify the supervisory union that its progress is either satisfactory or not satisfactory.~~

~~(1) If the supervisory union fails to make satisfactory progress, the Secretary shall notify the supervisory union that, in the ensuing school year, the Secretary shall withhold 10 percent of the supervisory union's special education expenditures reimbursement pending satisfactory compliance with the plan.~~

~~(2) If the supervisory union fails to make satisfactory progress after the first year of withholding, 10 percent shall be withheld in each subsequent year pending satisfactory compliance with the plan; provided, however, before funds are withheld in any year under this subdivision (f)(2), the supervisory union shall explain to the State Board either the reasons the supervisory union believes it made satisfactory progress on the remediation plan or the reasons it failed to do so. The State Board's decision whether to withhold funds under~~

~~this subdivision shall be final.~~

~~(3) If the supervisory union makes satisfactory progress under any subdivision of this subsection, the Secretary shall release to the supervisory union any special education expenditures reimbursement withheld for the prior fiscal year only.~~

~~(g) Within 10 days after receiving the Secretary's notice under subdivision (f)(1) of this section, the supervisory union may challenge the Secretary's decision by filing a written objection to the State Board outlining the reasons the supervisory union believes it made satisfactory progress on the remediation plan. The Secretary may file a written response within 10 days after the supervisory union's objection is filed. The State Board may give the supervisory union and the Secretary an opportunity to be heard. The State Board's decision shall be final. The State shall withhold no portion of the supervisory union's reimbursement before the State Board issues its decision under this subsection.~~

~~(h) Nothing in this section shall prevent a supervisory union from seeking and receiving the technical assistance of Agency staff to reduce its special education spending.~~

§ 2975. UNUSUAL SPECIAL EDUCATION COSTS; FINANCIAL ASSISTANCE

The Secretary may use up to two percent of the funds appropriated for allowable special education expenditures, as that term is defined in subsection 2967(b) of this title State Board of Education rules, to directly assist supervisory unions with special education expenditures of an unusual or unexpected nature. ~~These funds shall not be used for exceptional circumstances that are funded under section 2963a of this title.~~ The Secretary's decision regarding a supervisory union's eligibility for and amount of assistance shall be final.

* * * Technical and Conforming Changes * * *

Sec. 6. 16 V.S.A. § 826 is amended to read:

§ 826. NOTICE OF TUITION RATES; SPECIAL EDUCATION CHARGES

* * *

(c) Excess special education costs incurred by a district supervisory union in providing special education services to a student beyond those covered by tuition may be charged to the student's supervisory union for the district of residence. However, only actual costs or actual proportionate costs attributable to the student may be charged.

* * *

Sec. 7. 16 V.S.A. § 2958 is amended to read:

§ 2958. RESIDENTIAL PLACEMENT REVIEW TEAM; RESIDENTIAL PLACEMENTS

(a) A ~~school district~~ supervisory union shall notify the parents and the Secretary when it believes residential placement is a possible option for inclusion in a child's individualized education program.

* * *

Sec. 8. 16 V.S.A. § 4002 is amended to read:

§ 4002. PAYMENT; ALLOCATION

(a) State and federal funds appropriated for services delivered by the supervisory union and payable through the Agency shall be paid to the order of the supervisory union and administered in accordance with the plan adopted under subdivision 261a(4) of this title. Funding for special education services under section 2969 of this title shall be paid to the ~~districts and~~ supervisory unions in accordance with that section.

(b) The Secretary shall notify the superintendent or chief executive officer of each supervisory union in writing of federal or State funds disbursed to member school districts.

* * * Census-based Funding Advisory Group * * *

Sec. 9. CENSUS-BASED FUNDING ADVISORY GROUP

(a) Creation. There is created the Census-based Funding Advisory Group to consider and make recommendations on the implementation of a census-based model of funding for students who require additional support.

(b) Membership. The Advisory Group shall be composed of the following 12 members:

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

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

(3) the Executive Director of the Vermont Council of Special Education Administrators or designee;

(4) the Executive Director of the Vermont Principals' Association or designee;

(5) the Executive Director of the Vermont Independent Schools Association or designee;

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

(7) the Secretary of Education or designee;

(8) one member selected by the Vermont-National Education Association who is a special education teacher;

(9) one member selected by the Vermont Association of School Business Officials;

(10) one member selected by the Vermont Legal Aid Disability Law Project;

(11) one member who is either a family member, guardian, or education surrogate of a student requiring special education services or a person who has received special education services directly, selected by the Vermont Coalition for Disability Rights; and

(12) the Commissioner of the Vermont Department of Mental Health or designee.

(c) Powers and duties. The Advisory Group shall:

(1) advise the State Board of Education on the development of proposed rules to implement this act prior to the submission of the proposed rules to the Interagency Committee on Administrative Rules;

(2) advise the Agency of Education and supervisory unions on the implementation of this act; and

(3) recommend to the General Assembly any statutory changes it determines are necessary or advisable to meet the goals of this act, including any statutory changes necessary to align special education funding for approved independent schools with the census grant funding model for public schools as envisioned in the amendments to 16 V.S.A. chapter 101 in Sec. 5 of this act.

(d) Assistance. The Advisory Group shall have the administrative, technical, and legal assistance of the Agency of Education.

(e) Meetings.

(1) The Secretary of Education shall call the first meeting of the Advisory Group to occur on or before September 30, 2018.

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

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

(4) The Advisory Group shall cease to exist on June 30, 2022.

(f) Reports. On or before January 15, 2019, the Advisory Group shall submit a written report to the House and Senate Committees on Education and the State Board of Education with its findings and recommendations on the development of proposed rules to implement this act and any recommendations for legislation. On or before January 15 of 2020, 2021, and 2022, the Advisory Group shall submit a supplemental written report to the House and Senate Committees on Education and the State Board of Education with a status of implementation under this act and any recommendations for legislation.

(g) Reimbursement. Members of the Advisory Group 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 eight meetings per year.

(h) Appropriation. The sum of \$3,900.00 is appropriated for fiscal year 2018 from the General Fund to the Agency of Education to provide funding for per diem compensation and reimbursement under subsection (g) of this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020, 2021, and 2022 the amount of \$3,900.00 to provide funding for per diem compensation and reimbursement under subsection (g) of this section.

* * * Census Grant Supplemental Adjustment;
Pupil Weighting Factors; Report * * *

Sec. 10. REPEAL

2017 Acts and Resolves No. 49, Sec. 35 (education weighting report) is repealed.

Sec. 11. CENSUS GRANT SUPPLEMENTAL ADJUSTMENT; PUPIL WEIGHTING FACTORS; REPORT

(a) The Agency of Education, in consultation with the Secretary of Human Services, the Vermont Superintendents Association, the Vermont School Boards Association, and the Vermont-National Education Association, shall consider and make recommendations on the following:

(1) Whether the census grant, as defined in the amendment to 16 V.S.A. § 2961 in Sec. 5 of this act, should be increased for supervisory unions that have, in any year, relatively higher costs in supporting students who require additional support, and if so, the criteria for qualification for the adjustment and the manner in which the adjustment should be applied. In making this recommendation, the Agency of Education shall consider the report entitled "Study of Vermont State Funding for Special Education" issued in December

2017 by the University of Vermont Department of Education and Social Services.

(2) Methods, other than the use of per pupil weighting factors, that would further the quality and equity of educational outcomes for students.

(3) The criteria used for determining weighted long-term membership of a school district under 16 V.S.A. § 4010, including each of the following:

(A) The current weighting factors and any supporting evidence or basis in the historical record for these factors.

(B) The relationship between each of the current weighting factors and the quality and equity of educational outcomes for students.

(C) Whether any of the weighting factors, including the weighting factors for students from economically deprived backgrounds and for students for whom English is not the primary language, should be modified, and if so, how the weighting factors should be modified and whether the modification would further the quality and equity of educational outcomes for students.

(D) Whether to add any weighting factors, including a school district population density factor and a factor for students who attend regional career technical education centers, and if so, why the weighting factor should be added and whether the weighting factor would further the quality and equity of educational outcomes for students. In considering whether to recommend the addition of a school district population density factor, the Agency of Education shall consider the practices of other states, information from the National Conference of State Legislatures, and research conducted by higher education institutions working on identifying rural or urban education financing factors.

(b) On or before November 1, 2019, the Agency of Education shall submit a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance with its findings and any recommendations.

(c) The Agency of Education shall have the technical assistance of the Joint Fiscal Office and the Office of Legislative Council.

(d) Notwithstanding any provision to the contrary in 16 V.S.A. § 4025, the sum of \$250,000.00 is appropriated for fiscal year 2018 from the Education Fund to the Agency of Education to provide funding for the purposes set forth in this section. The Agency of Education shall contract with a contractor with expertise in Vermont's education funding system to assist the Agency in producing the study required by this section. Any application of funds for the purpose of administrative overhead shall be capped at ten percent of the total sum allocated pursuant to this subsection.

* * * Training and Technical Assistance on the Delivery of Special
Education Services * * *

Sec. 12. TRAINING AND TECHNICAL ASSISTANCE ON THE
DELIVERY OF SPECIAL EDUCATION SERVICES

(a) The Agency of Education shall, for the 2018–2019, 2019–2020, and 2020–2021 school years, assist supervisory unions to expand and improve their delivery of services to students who require additional supports in accordance with the report entitled “Expanding and Strengthening Best-Practice Supports for Students who Struggle” delivered to the Agency of Education in November 2017 from the District Management Group. This assistance shall include the training of teachers and staff and technical assistance with the goal of embedding the following best practices for the delivery of special education services:

(1) ensuring core instruction meets most needs of most students;

(2) providing additional instructional time outside core subjects to students who require additional support, rather than providing interventions instead of core instruction;

(3) ensuring students who require additional support receive all instruction from highly skilled teachers;

(4) creating or strengthening a systems-wide approach to supporting positive student behaviors based on expert support; and

(5) providing specialized instruction from skilled and trained experts to students with more intensive needs.

(b) The sum of \$200,000.00 is appropriated from federal funds that are available under the Individuals with Disabilities Education Act for fiscal year 2019 to the Agency of Education, which the Agency shall administer in accordance with this section. The Agency shall include in its budget request to the General Assembly for each of fiscal years 2020 and 2021 the amount of \$200,000.00 from federal funds that are available under the Individuals with Disabilities Education Act for administration in accordance with this section.

(c) The Agency of Education shall present to the General Assembly on or before December 15 in 2019, 2020, and 2021 a report describing what changes supervisory unions have made to expand and improve their delivery of services to students who require additional supports and describing the associated delivery challenges. The Agency shall share each report with all supervisory unions.

* * * Agency of Education; Staffing * * *

Sec. 13. AGENCY OF EDUCATION; STAFFING

The following positions are created in the Agency of Education: one full-time, exempt legal counsel specializing in special education law and two full-time, classified positions specializing in effective instruction for students who require additional support. There is appropriated to the Agency of Education from the General Fund for fiscal year 2019 the amount of \$325,000.00 for salaries, benefits, and operating expenses.

* * * Extraordinary Services Reimbursement * * *

Sec. 14. 16 V.S.A. § 2962 is amended to read:

§ 2962. EXTRAORDINARY SERVICES REIMBURSEMENT

(a) Except as otherwise provided in this subchapter, extraordinary services reimbursement shall be payable, based on where the related cost is incurred, to a town school district, city school district, union school district, unified union school district, incorporated school district, the member school districts of an interstate school district, ~~and~~ an unorganized town or gore or to a supervisory union.

(b) The amount of extraordinary services reimbursement provided to each district or supervisory union shall be equal to ~~90~~ 95 percent of its extraordinary special education expenditures.

(c) As used in this subchapter, “extraordinary special education expenditures” means a school district’s or supervisory union’s allowable expenditures that for any one child exceed ~~\$50,000.00~~ \$60,000.00 for a fiscal year. In this subsection, child means a student with disabilities who is three years of age or older in the current school year. The State Board shall define allowable expenditures that shall include any expenditures required under federal law, and any costs of mediation conducted by a mediator who is approved by the Secretary.

Sec. 15. 16 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

As used in this chapter:

* * *

(6) “Education spending” means the amount of the school district budget, any assessment for a joint contract school, career technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) that is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental ~~fund-raising~~ fundraising, federal funds, nongovernmental grants, or other State funds such as special education funds paid under chapter 101 of this title.

(A) [Repealed.]

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12), “education spending” shall not include:

* * *

(v) Spending attributable to the district’s share of special education spending in excess of \$50,000.00 that is not reimbursed as an extraordinary reimbursement under section 2962 of this title for any one student in the fiscal year occurring two years prior.

* * *

* * * Rulemaking * * *

Sec. 16. RULEMAKING

The Agency of Education shall recommend to the State Board proposed rules that are necessary to implement this act and, on or before November 1, 2019, the State Board of Education shall adopt rules that are necessary to implement this act. The State Board and the Agency of Education shall consult with the Census-based Funding Advisory Group established under Sec. 9 of this act in developing the State Board rules. The State Board rules shall include rules that establish processes for reporting, monitoring, and evaluation designed to ensure:

(1) the achievement of the goal under this act of enhancing the effectiveness, availability, and equity of services provided to all students who require additional support in Vermont’s school districts; and

(2) that supervisory unions are complying with the Individuals with Disabilities Education Act, 20 U.S.C. chapter 33.

* * * Transition * * *

Sec. 17. TRANSITION

(a) Notwithstanding the requirement under 16 V.S.A. § 2964 for a supervisory union to submit a service plan to the Secretary of Education, a supervisory union shall not be required to submit a service plan for fiscal year 2021.

(b) On or before November 1, 2019, a supervisory union shall submit to the Secretary such information as required by the Secretary to estimate the supervisory union’s projected fiscal year 2021 extraordinary special education reimbursement under Sec. 5 of this act.

(c) The Agency of Education shall assist supervisory unions as they transition to the census-based funding model in satisfying their maintenance of effort requirements under federal law.

Sec. 18. TRANSITION FOR ALLOWABLE SPECIAL EDUCATION COSTS

(a) Allowable special education costs shall include salaries and benefits of licensed special education teachers, including vocational special needs teachers and instructional aides for the time they carry out special education responsibilities.

(1) The allowable cost that a local education agency may claim includes a school period or service block during which the staff member identified in this subsection is providing special education services to a group of eight or fewer students, and not less than 25 percent of the students are receiving the special education services, in accordance with their individualized education programs.

(2) In addition to the time for carrying out special education responsibilities, a local education agency may claim up to 20 percent of special education staff members' time, if that staff spends the additional time performing consultation to assist with the development of and providing instructional services required by:

(A) a plan pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; or

(B) a plan for students who require additional assistance in order to succeed in the general education environment.

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

* * * Approved Independent Schools * * *

Sec. 19. FINDINGS AND GOALS

(a) The General Assembly created the Approved Independent Schools Study Committee in 2017 Acts and Resolves No. 49 to consider and make recommendations on the criteria to be used by the State Board of Education for designation of an "approved" independent school. The Committee was specifically charged to consider and make recommendations on:

(1) the school's enrollment policy and any limitation on a student's ability to enroll;

(2) how the school should be required to deliver special education services and which categories of these services; and

(3) the scope and nature of financial information and special education information that should be required to be reported by the school to the State Board or Agency of Education.

(b) The General Assembly in Act 49 directed the State Board of Education to suspend further development of the amendments to its rules for approval of independent schools pending receipt of the report of the Committee.

(c) The Committee issued its report in December 2017, noting that, while it was unable to reach consensus on specific legislative language, it did agree unanimously that Vermont students with disabilities should be free to attend the schools that they, their parents, and their local education agency deem appropriate to them.

(d) This act completes that work and provides the direction necessary for the State Board of Education to develop further the amendments to its rules for approval of independent schools.

Sec. 20. 16 V.S.A. § 166 is amended to read:

§ 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

* * *

(b) Approved independent schools.

(1) On application, the State Board shall approve an independent school that offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study pursuant to section 906 of this title and that it substantially complies with all statutory requirements for approved independent schools and the Board's rules for approved independent schools. An independent school that intends to accept public tuition shall be approved by the State Board only on the condition that the school agrees, notwithstanding any provision of law to the contrary, to enroll any student who requires special education services and who is placed in or referred to the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education plan team or by the local education agency; provided, however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the local education agency and the school.

(2) Except as provided in subdivision (6) of this subsection, the Board's rules must at minimum require that the school ~~has~~ have the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any State or federal law or regulation.

(3) Approval may be granted without State Board evaluation in the case of any school accredited by a private, State, or regional agency recognized by the State Board for accrediting purposes, provided that the State Board shall determine that the school complies with all student enrollment provisions required by law.

* * *

(5) The State Board may revoke or suspend, or impose conditions upon the approval of an approved independent school, after having provided an opportunity for a hearing, for substantial failure to comply with the minimum course of study, for failure to demonstrate that the school has the resources required to meet its stated objectives, for failure to comply with statutory requirements or the Board's rules for approved independent schools, or for failure to report under subdivision (4) of this subsection (b). Upon that revocation or suspension, students required to attend school who are enrolled in that school shall become truant unless they enroll in a public school, an approved or recognized independent school, or a home study program.

* * *

(8)(A) If an approved independent school experiences any of the following financial reporting events during the period of its approved status, the school shall notify the Secretary of Education within five days after its knowledge of the event unless the failure is de minimis:

(i) the school's failure to file its federal or State tax returns when due, after permissible extension periods have been taken into account;

(ii) the school's failure to meet its payroll obligations as they are due or to pay federal or State payroll tax obligations as they are due;

(iii) the school's failure to maintain required retirement contributions;

(iv) the school's use of designated funds for nondesignated purposes;

(v) the school's inability to fully comply with the financial terms of its secured installment debt obligations over a period of two consecutive months, including the school's failure to make interest or principal payments as they are due or to maintain any required financial ratios;

(vi) the withdrawal or conditioning of the school's accreditation on financial grounds by a private, State, or regional agency recognized by the State Board for accrediting purposes; or

(vii) the school's insolvency, as defined in 9 V.S.A. § 2286(a).

(B)(i) If the State Board reasonably believes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, then the State Board shall notify the school in writing of the reasons for this belief and permit the school a reasonable opportunity to respond.

(ii) If the State Board, after having provided the school a reasonable opportunity to respond, does not find that the school has satisfactorily responded or demonstrated its financial capacity, the State Board may establish a review team, that, with the consent of the school, includes a member of the Council of Independent Schools, to:

(I) conduct a school visit to assess the school's financial capacity;

(II) obtain from the school such financial documentation as the review team requires to perform its assessment; and

(III) submit a report of its findings and recommendations to the State Board.

(iii) If the State Board concludes that an approved independent school lacks financial capacity to meet its stated objectives during the period of its approved status, the State Board may take any action that is authorized by this section.

(iv) In considering whether an independent school lacks financial capacity to meet its stated objectives during the period of its approved status and what actions the State Board should take if it makes this finding, the State Board may consult with, and draw on the analytical resources of, the Vermont Department of Financial Regulation.

(C) Information provided by an independent school under this subsection that is not already in the public domain is exempt from public inspection and copying under the Public Records Act and shall be kept confidential.

* * *

Sec. 21. 16 V.S.A. § 2973 is amended to read:

§ 2973. ~~INDEPENDENT SCHOOL TUITION RATES~~ SCHOOLS

(a)(1) Notwithstanding any provision of law to the contrary, an approved independent school that accepts public tuition shall enroll any student with an individualized education plan who requires special education services and who is placed in the approved independent school as an appropriate placement and least restrictive environment for the student by the student's individualized education plan team or by the local education agency (LEA); provided,

however, that this requirement shall not apply to an independent school that limits enrollment to students who are on an individualized education plan or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school.

(2) In placing a student with an independent school under subdivision (1) of this subsection, the student’s individualized education plan team and the LEA shall comply with all applicable federal and State requirements.

(3) An approved independent school is not required to demonstrate that it has the resources to serve every category of special education as defined under State Board of Education rules in order to be approved or retain its approval to receive public funding for general tuition.

(4) The terms “special education services,” “LEA,” and “individualized education plan” or “IEP” as used in this section shall have the same meanings as defined by State Board rules.

(b)(1) The Secretary of Education shall establish minimum standards of services for students receiving special education services in independent schools in Vermont; shall set, after consultation with independent schools in Vermont, the maximum rates to be paid by the Agency and school districts for tuition, room, and board based on the level of services; and may advise independent schools as to the need for certain special education services in Vermont.

(2)(A) The Secretary of Education shall set, after consultation with independent schools in Vermont, and based on the level of services provided by the schools, the maximum rates to be paid by the Agency and supervisory unions or school districts for tuition, room, and board for residential placement of students who require special education services. The amount charged by an independent school for tuition shall reflect the school’s actual or anticipated costs of providing special education services to the student and shall not exceed the maximum rates set by the Secretary, provided that the Secretary may permit charges in excess of these maximum rates where the Secretary deems warranted.

(B)(i) An approved independent school that enrolls a student under subdivision (a)(1) of this section on a nonresidential basis may bill the responsible LEA for excess special education costs incurred by the independent school in providing special education services beyond those covered by general tuition. Reimbursement of these excess special education costs shall be based on the direct-costs rates approved by the Secretary for services actually provided to the student consistent with the Agency of Education Technical Manual for special education cost accounting. The

Agency of Education shall publish specific elements that must be included as part of an independent school's invoice for excess special education costs, and these elements shall be included in the written agreement required under subdivision (c)(2) of this section.

(ii) In establishing the direct cost rates for reimbursement under this subdivision (B), the Secretary shall apply the principle of treating an approved independent school and a public school with parity in the amount of federal, State, and local contributions to cover the costs of providing special education services.

(C)(i) The Secretary shall set, after consultation with independent schools in Vermont, the maximum tuition rates to be paid by the Agency and supervisory unions or school districts to independent schools that limit enrollment to students who are on an IEP or a plan under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to a written agreement between the LEA and the school. The maximum tuition rates shall be based on the level of services provided by the school.

(ii) The tuition rates established by the Secretary under this subdivision (C) shall be no more than the costs that are reasonably related to the level of services provided by the school and shall be set forth on a form prescribed for that purpose by the Secretary of Education. The Secretary shall determine the relationship between costs and the level of services by using generally accepted accounting principles, such as those set forth in the Handbook (II) for Financial Accounting of Vermont School Systems.

(iii) After the Secretary approves a tuition rate for an independent school under this subdivision (C), the school shall not exceed that tuition rate until such time as a new tuition rate is approved by the Secretary.

(3) An approved independent school shall provide such documentation to the Secretary as the Secretary deems necessary in order to ensure that amounts payable under this subsection to the school are reasonable in relation to the special education services provided by the school. The Secretary may withhold, or direct an LEA to withhold, payment under this subsection pending the Secretary's receipt of required documentation under this subsection, or may withhold, or direct an LEA to withhold, an amount determined by the Secretary as not reasonable in relation to the special education services provided by the school.

(c)(1) In order to be approved as an independent school eligible to receive State funding under subdivision (a)(1) of this section, the school shall demonstrate the ability to serve students with disabilities by:

(A) demonstrating an understanding of special education requirements, including the:

(i) provision of a free and appropriate public education in accordance with federal and State law;

(ii) provision of education in the least restrictive environment in accordance with federal and State law;

(iii) characteristics and educational needs associated with any of the categories of disability or suspected disability under federal and State law; and

(iv) procedural safeguards and parental rights, including discipline procedures, specified in federal and State law;

(B) committing to implementing the IEP of an enrolled student with special education needs, providing the required services, and appropriately documenting the services and the student's progress;

(C) subject to subsection (d) of this section, employing or contracting with staff who have the required licensure to provide special education services;

(D) agreeing to communicate with the responsible LEA concerning:

(i) the development of, and any changes to, the IEP;

(ii) services provided under the IEP and recommendations for a change in the services provided;

(iii) the student's progress;

(iv) the maintenance of the student's enrollment in the independent school; and

(v) the identification of students with suspected disabilities; and

(E) committing to participate in dispute resolution as provided under federal and State law.

(2) An approved independent school that enrolls a student requiring special education services who is placed under subdivision (a)(1) of this section:

(A) shall enter into a written agreement with the LEA:

(i) committing to the requirements under subdivision (1) of this subsection (c); and

(ii) if the LEA provides staff or resources to the approved independent school on an interim basis under subsection (d) of this section,

setting forth the terms of that arrangement with assistance from the Agency of Education on the development of those terms and on the implementation of the arrangement; and

(B) subject to subsection (d) of this section, shall ensure that qualified school personnel attend evaluation and planning meetings and IEP meetings for the student.

(d) If an approved independent school enrolls a student under subdivision (a)(1) of this section but does not have the staff or State Board certification to provide special education services in the specific disability category that the student requires, then:

(1) The LEA, in consultation with the approved independent school and the Agency of Education, shall determine what special education services and supports the school is able to provide to the student.

(2) The LEA shall, on an interim basis and at its cost, provide such additional staff and other resources to the approved independent school as are necessary to support the student until such time as the approved independent school is able to directly provide these services and has the appropriate State Board certification; provided, however, that the school shall have all required staff and resources and the appropriate State Board certification within nine academic months after the date of the student's initial enrollment.

(3) If the school does not have all required staff and resources and the appropriate State Board certification within nine academic months after the date of the student's initial enrollment as required under subdivision (2) of this subsection (d), then, in the event that the State Board determines that the school has failed to make good faith and reasonable efforts to secure the required staff, resources, and certification, the State Board may take any action that is authorized by section 166 of this title.

(b)(e) Neither a school districts district nor any State agency shall pay rates for tuition, room, and board, for students receiving special education in independent schools outside Vermont that are in excess of allowable costs approved by the authorized body in the state in which the independent school is located, except in exceptional circumstances or for a child who needs exceptional services, as approved by the Secretary.

(e)(f) The State Board is authorized to enter into interstate compacts with other states to regulate rates for tuition, room, and board for students receiving special education in independent schools.

* * * Effective Dates * * *

Sec. 22. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2020:

(1) Sec. 5 (amendment to 16 V.S.A. chapter 101); and

(2) Sec. 17 (transition).

(b) The following sections shall take effect on July 1, 2019:

(1) Sec. 14 (extraordinary services reimbursement);

(2) Sec. 15 (amendment to 16 V.S.A. § 4001); and

(3) Secs. 19-21 (approved independent schools).

(c) This section and the remaining sections shall take effect on passage.

(Committee vote: 5-1-0)

(For House amendments, see House Journal for March 21, 2018, pages 774-779 and March 22, 2018, page 812)

Reported without recommendation by Senator Campion for the Committee on Finance.

(Committee vote: 6-0-1)

H. 924.

An act relating to making appropriations for the support of government.

Reported favorably with recommendation of proposal of amendment by Senator Kitchel for the Committee on Appropriations.

(For text of report of Committee on Appropriations, see Addendum to Senate Calendar for April 26, 2018)

(For House amendments, see House Journal for March 23, 2018, page 851)

House Proposal of Amendment

S. 85

An act relating to simplifying government for small businesses.

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

Sec. 1. SIMPLIFYING GOVERNMENT FOR SMALL BUSINESSES;
ONE-STOP BUSINESS PORTAL

(a) The Secretary of State, the Secretary of Commerce and Community Development, and the Secretary of Digital Services or their designees shall

serve as a steering committee that, in collaboration with leaders of the Program to Improve Vermont Outcomes Together, other State agencies, and business community stakeholders, shall gather requirements and review and consider the necessary procedural and substantive steps to create a one-stop business portal for businesses, entrepreneurs, and citizens that provides information about starting and operating a business in Vermont.

(b) The steering committee shall evaluate the cost and efficacy of potential features of the portal, including features that:

(1) enhance State websites to simplify registrations and provide a clear compilation of other State business requirements, including permits and licenses;

(2) simplify the mechanism for making payments to the State, by allowing a person to pay amounts he or she owes to the State for taxes, fees, or other charges to a single recipient within State government;

(3) simplify annual filing requirements by allowing a person to make a single filing to a single recipient within State government and check a box if nothing substantive has changed from the prior year;

(4) provide guidance, assistance with navigation, and other support to persons who are forming or operating a small business;

(5) after registration, provide information about additional and ongoing State requirements and a point of contact to discuss questions or explore any assistance needed;

(6) provide guidance and information about State and federal programs and initiatives, as well as State partner organizations and Vermont-based businesses of interest; and

(7) map communication channels for project updates, including digital channels such as e-mail, social media, and other communications.

(c) State agencies and departments shall provide assistance to the steering committee upon its request.

(d) On or before January 15, 2019, the Secretary of State, on behalf of the steering committee, shall submit a design proposal, including a project scope, timeline, and roadmap and the resources and any statutory or regulatory changes needed to implement a one-stop business portal.

(e) The steering committee shall focus its review on providing services through the one-stop business portal primarily for the benefit of businesses with 20 or fewer employees.

(f) The Agency of Digital Services shall temporarily assign a project

manager or business analyst to report directly to the Secretary of State to assist with the implementation of this act.

Sec. 2. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 1(f) shall take effect on July 1, 2018.

CONCURRENT RESOLUTIONS FOR NOTICE

Concurrent Resolutions For Notice Under Joint Rule 16

The following joint concurrent resolutions have been introduced for approval by the Senate and House. They will be adopted by the Senate unless a Senator requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration should be communicated to the Secretary's Office.

H.C.R. 346 - 360 (For text of Resolutions, see Addendum to House Calendar for April 26, 2018)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Utility Commission shall be fully and separately acted upon.

Andrew Hathaway of Waterbury – Member, Children and Family Council for Prevention Programs – By Senator Cummings for the Committee on Health and Welfare. (4/19/18)