

# Senate Calendar

WEDNESDAY, MAY 02, 2018

SENATE CONVENES AT: 1:00 P.M.

## TABLE OF CONTENTS

Page No.

### ACTION CALENDAR

#### UNFINISHED BUSINESS OF MAY 1, 2018

##### Second Reading

##### Favorable with Proposal of Amendment

**H. 908** An act relating to the Administrative Procedure Act  
Government Operations Report - Sen. White ..... 2675

**H. 910** An act relating to the Open Meeting Law and the Public  
Records Act  
Government Operations Report - Sen. Collamore ..... 2697

##### House Proposals of Amendment to Senate Proposals of Amendment

**H. 143** An act relating to automobile insurance requirements and  
transportation network companies.....2704

**H. 874** An act relating to inmate access to prescription drugs ..... 2714

### NEW BUSINESS

#### Third Reading

**H. 132** An act relating to limiting landowner liability for posting  
the dangers of swimming holes.....2715

**H. 526** An act relating to regulating notaries public.....2715

**H. 780** An act relating to portable rides at agricultural fairs, field days,  
and other similar events..... 2716

**H. 859** An act relating to requiring municipal corporations to  
affirmatively vote to retain ownership of lease lands.....2716

**H. 894** An act relating to pensions, retirement, and setting the  
contribution rates for municipal employees.....2716

|  |      |
|--|------|
| <b>H. 895</b> An act relating to legislative review of certain report requirements.....        | 2716 |
| <b>H. 923</b> An act relating to capital construction and State bonding budget adjustment..... | 2716 |

**Second Reading**

**Favorable with Proposal of Amendment**

|   |      |
|---|------|
| <b>H. 912</b> An act relating to the health care regulatory duties of the Green Mountain Care Board |      |
| Health and Welfare Report - Sen. Ayer .....   | 2716 |
| Finance Report - Sen. Sirotkin .....  | 2721 |
| Amendment - Sen. Sirotkin .....   | 2723 |

**NOTICE CALENDAR**

**Second Reading**

**Favorable**

|  |      |
|--|------|
| <b>H. 925</b> An act relating to approval of amendments to the charter of the City of Barre      |      |
| Government Operations Report - Sen. Collamore .....  | 2724 |
| Finance Report - Sen. Cummings .....   | 2724 |
| <b>H. 926</b> An act relating to approval of amendments to the charter of the Town of Colchester |      |
| Government Operations Report - Sen. Collamore .....  | 2724 |

**Favorable with Proposal of Amendment**

|   |      |
|---|------|
| <b>H. 614</b> An act relating to the sale and use of fireworks  |      |
| Econ. Dev., Housing and General Affairs Report - Sen. Soucy .....   | 2725 |
| <b>H. 660</b> An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification |      |
| Judiciary Report - Sen. Benning .....   | 2725 |
| Appropriations Report - Sen. Sears .....  | 2728 |
| <b>H. 736</b> An act relating to lead poisoning prevention  |      |
| Health and Welfare Report - Sen. Lyons .....  | 2728 |
| Finance Report - Sen. Lyons .....   | 2729 |
| <b>H. 899</b> An act relating to fees for records filed in town offices and a town fee report and request                 |      |
| Government Operations Report - Sen. Collamore .....   | 2729 |
| Finance Report - Sen. Champion .....  | 2734 |
| Appropriations Report - Sen. Kitchel .....  | 2734 |

|   |      |
|---|------|
| <b>H. 913</b> An act relating to boards and commissions |      |
| Government Operations Report - Sen. Pearson .....       | 2735 |
| Appropriations Report - Sen. Kitchel .....              | 2745 |

**House Proposal of Amendment**

|   |      |
|---|------|
| <b>S. 166</b> An act relating to the provision of medication-assisted treatment<br>for inmates..... | 2745 |
| Amendment - Sen. Rodgers .....  | 2748 |

**House Proposal of Amendment to Senate Proposal of Amendment**

|   |      |
|---|------|
| <b>H. 608</b> An act relating to creating an Older Vermonters Act working<br>group..... | 2749 |
|---|------|



---

**ORDERS OF THE DAY**

---

**ACTION CALENDAR  
UNFINISHED BUSINESS OF TUESDAY, MAY 1, 2018**

**Second Reading  
Favorable with Proposal of Amendment**

**H. 908.**

An act relating to the Administrative Procedure Act.

**Reported favorably with recommendation of proposal of amendment by Senator White 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:

Sec. 1. PURPOSE

The General Assembly adopts the changes in this act to:

- (1) improve public participation in rulemaking and public access to the rulemaking process and to adopted rules;
- (2) increase the efficiency of the rulemaking process; and
- (3) ensure that rules are authorized, necessary, and reasonable and are subject to a thorough regulatory analysis.

Sec. 2. 3 V.S.A. chapter 25 is amended to read:

CHAPTER 25. ADMINISTRATIVE PROCEDURE

Subchapter 1. General Provisions

§ 800. PURPOSE

The General Assembly intends that:

- (1) agencies Agencies maximize the involvement of the public in the development of rules;
- (2) agency Agency inclusion of public participation in the rule-making processes rulemaking process should be consistent;
- (3) Agencies write rules so that they are clear and accessible to the public.
- (4) When an agency adopts rules, it subjects the rules to thorough regulatory analysis.

(5) ~~the~~ The General Assembly should articulate, as clearly as possible, the intent of any legislation ~~which~~ that delegates ~~rule-making~~ rulemaking authority;

(4)(6) ~~when~~ When an agency adopts policy ~~or~~ procedures, or guidance, it ~~should~~ shall not do so to supplant or avoid the adoption of rules.

#### § 801. SHORT TITLE AND DEFINITIONS

(a) This chapter may be cited as the “Vermont Administrative Procedure Act.”

(b) As used in this chapter:

\* \* \*

(7) “Practice” means a substantive or procedural requirement of an agency, affecting one or more persons who are not employees of the agency, ~~which~~ that is used by the agency in the discharge of its powers and duties. The term includes all such requirements, regardless of whether they are stated in writing.

(8) “Procedure” means a practice ~~which~~ that has been adopted in the ~~manner provided in section 835 of this title~~ writing, either at the election of the agency or as the result of a request under subsection 831(b) of this title. The term includes any practice of any agency that has been adopted in writing, whether or not labeled as a procedure, except for each of the following:

(A) a rule adopted under sections 836-844 of this title;

(B) a written document issued in a contested case that imposes substantive or procedural requirements on the parties to the case;

(C) a statement that concerns only:

(i) the internal management of an agency and does not affect private rights or procedures available to the public;

(ii) the internal management of facilities that are secured for the safety of the public and the individuals residing within them; or

(iii) guidance regarding the safety or security of the staff of an agency or its designated service providers or of individuals being provided services by the agency or such a provider;

(D) an intergovernmental or interagency memorandum, directive, or communication that does not affect private rights or procedures available to the public;

(E) an opinion of the Attorney General; or

(F) a statement that establishes criteria or guidelines to be used by

the staff of an agency in performing audits, investigations, or inspections, in settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if disclosure of the criteria or guidelines would compromise an investigation or the health and safety of an employee or member of the public, enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons that are in an adverse position to the State.

\* \* \*

(13)(A) “Arbitrary,” when applied to an agency rule or action, means that one or more of the following apply:

(i) There is no factual basis for the decision made by the agency.

(ii) The decision made by the agency is not rationally connected to the factual basis asserted for the decision.

(iii) The decision made by the agency would not make sense to a reasonable person.

(B) The General Assembly intends that this definition be applied in accordance with the Vermont Supreme Court’s application of “arbitrary” in *Beyers v. Water Resources Board*, 2006 VT 65, and *In re Town of Sherburne*, 154 Vt. 596 (1990).

(14) “Guidance document” means a written record that has not been adopted in accordance with sections 836-844 of this title and that is issued by an agency to assist the public by providing an agency’s current approach to or interpretation of law or describing how and when an agency will exercise discretionary functions. The term does not include the documents described in subdivisions (8)(A) through (F) of this section.

(15) “Index” means a searchable list of entries that contains subjects and titles with page numbers, hyperlinks, or other connections that link each entry to the text or document to which it refers.

\* \* \*

#### § 806. PROCEDURE TO REQUEST ADOPTION OF RULES OR PROCEDURES; GUIDANCE DOCUMENTS

(a) A person may submit a written request to an agency asking the agency to adopt, amend, or repeal a procedure or rule. Within 30 days of after receiving the request, the agency shall initiate ~~rule-making~~ rulemaking proceedings; shall adopt a, amend, or repeal the procedure; or shall deny the request, giving its reasons in writing.

(b) A person may submit a written request to an agency asking the agency to adopt a guidance document as a rule or to amend or repeal the guidance document. Within 30 days after receiving the request, the agency shall initiate rulemaking proceedings; shall amend or repeal the guidance document; or shall deny the request, giving its reasons in writing.

\* \* \*

### Subchapter 2. Contested Cases

#### § 809. CONTESTED CASES; NOTICE; HEARING; RECORDS

\* \* \*

(i) When a board or commission member who hears all or a substantial part of a case retires from office or completes his or her term before the case is completed, he or she may remain a member of the board or commission for the purpose of deciding and concluding the case. If the member who retires or completes his or her term is a chair, the member may also remain a member for the purpose of certifying questions of law if an appeal is taken, when such is required by law. For this service, the member may be compensated in the manner provided for active members.

\* \* \*

### Subchapter 3. Rulemaking; Procedures; Guidance Documents

#### § 817. LEGISLATIVE COMMITTEE ON ADMINISTRATIVE RULES

\* \* \*

#### § 818. SECRETARY OF STATE; CENTRALIZED RULE SYSTEM

(a) The Secretary of State shall establish and maintain a centralized rule system that is open and available to the public. The system shall include all rules in effect or proposed as of July 1, 2019 and all rules proposed and adopted by agencies of the State after that date.

(b) The Secretary shall design the centralized rule system to:

(1) facilitate public notice of and access to the rulemaking process;

(2) provide the public with greater access to current and previous versions of adopted rules; and

(3) promote more efficient and transparent filing by State agencies of rulemaking documents and review by the committees established in this chapter.

(c) At a minimum, the records included in the system shall include all documents submitted to the Secretary of State under this subchapter.



(d) The centralized rule system may be digital, may be available online, and may be designed to support such other functions as the Secretary of State determines are consistent with the goals of this section and section 800 of this title.

\* \* \*

#### § 831. REQUIRED POLICY STATEMENTS AND RULES

(a) Where due process or a statute directs an agency to adopt rules, the agency shall initiate rulemaking and adopt rules in the manner provided by sections 836-844 of this title.

(b) An agency shall adopt a procedure describing an existing practice when so requested by an interested person.

(c) An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the Legislative Committee on Administrative Rules. An agency shall not be required to initiate rulemaking with respect to any practice or procedure, except as provided by this subsection.

(d) An agency required to hold hearings on contested cases as required by section 809 of this title shall adopt rules of procedure in the manner provided in this chapter.

(e) Within 30 days after an agency discovers that the text of a final proposed rule as submitted to the Legislative Committee on Administrative Rules deviates from the text that the agency intended to submit to the Committee, the agency shall initiate rulemaking to correct the rule if the period for final adoption of the rule under subsection 843(c) of this title has elapsed.

(f) Except as provided in subsections (a)-(d)(e) of this section, an agency shall not be required to initiate rulemaking or to adopt a procedure or a rule.

\* \* \*

#### § 832a. RULES AFFECTING SMALL BUSINESSES

~~(a) Where a rule provides for the regulation of a small business, an agency shall consider ways by which a small business can reduce the cost and burden of compliance by specifying less numerous, detailed or frequent reporting requirements, or alternative methods of compliance.~~

~~(b) An agency shall also consider creative, innovative, or flexible methods of compliance with the rule when the agency finds, in writing, such action would not:~~

~~(1) significantly reduce the effectiveness of the rule in achieving the~~

~~objectives or purposes of the statutes being implemented or interpreted; or~~

~~(2) be inconsistent with the language or purpose of statutes that are implemented or interpreted by the rule; or~~

~~(3) increase the risk to the health, safety, or welfare of the public or to the beneficiaries of the regulation, or compromise the environmental standards of the State.~~

~~(c) This section shall not apply where the regulation is incidental to:~~

~~(1) a purchase of goods or services by the State or an agency thereof; or~~

~~(2) the payment for goods or services by the State or an agency thereof for the benefit of a third party. [Repealed.]~~

#### § 832b. ADMINISTRATIVE RULES AFFECTING SCHOOL DISTRICTS

~~If a rule affects or provides for the regulation of public education and public schools, the agency proposing the rule shall evaluate the cost implications to local school districts and school taxpayers, clearly state the associated costs, and report them in a local school cost impact statement to be filed with the economic impact statement on the rule required by subsection 838(c) of this title. An agency proposing a rule affecting school districts shall also consider and include in the local school cost impact statement an evaluation of alternatives to the rule, including no rule on the subject which would reduce or ameliorate costs to local school districts while achieving the objectives or purposes of the proposed rule. The Legislative Committee on Administrative Rules may object to any proposed rule if a local school cost impact statement is not filed with the proposed rule, or the Committee finds the statement to be inadequate, in the same manner in which the Committee may object to an economic impact statement under section 842 of this title. [Repealed.]~~

#### § 833. STYLE OF RULES

(a) Rules and procedures shall be written in a clear and coherent manner using words with common and everyday meanings, consistent with the text of the rule or procedure.

(b)(1) When an agency proposes to amend an existing rule, it shall replace terms identified as potentially disrespectful by the study produced in accordance with 2012 Acts and Resolves No. 24, Sec. 1 with respectful language recommended therein or used in the Vermont Statutes Annotated, where appropriate.

(2) All new rules adopted by agencies shall use, to the fullest extent possible, respectful language consistent with the Vermont Statutes Annotated and the respectful language study produced in accordance with 2012 Acts and Resolves No. 24, Sec. 1, where appropriate.

(c) The Secretary of State may issue a guidance document suggesting how agencies may draft rules and procedures in accordance with this section. The guidance document may include suggestions on style, numbering, and drafting the content of the filings required under this subchapter.

\* \* \*

§ 835. COMPILATION OF PROCEDURES AND GUIDANCE DOCUMENTS

(a) Procedures and guidance documents shall be maintained by the agency in an official current compilation that is indexed by subject includes an index. Each addition, change, or deletion to the official compilation shall also be dated, indexed, and recorded. The compilation shall be a public record. The agency shall publish the compilation and index on its Internet website and make all procedures and guidance documents available to the public. On or after January 1, 2024, an agency shall not rely on a procedure or guidance document or cite it against any party to a proceeding, unless the procedure or guidance document is included in a compilation maintained and published in accordance with this subsection.

(b) A procedure or guidance document shall not have the force of law. However, this subsection shall not apply to a procedure if a statute that specifically enables the procedure states that it has the force of law. This subsection is not intended to affect whether a court or quasi-judicial body gives deference to a procedure or guidance document issued by an agency whose action is before the court or body.

§ 836. PROCEDURE FOR ADOPTION OF RULES

(a) Except for emergency rules, rules shall be adopted by taking the following steps:

- (1) prefiling, when required;
- (2) filing the proposed rule;
- (3) publishing the proposed rule;
- (4) holding a public hearing and receiving comments;
- (5) filing the final proposal;
- (6) responding to the Legislative Committee on Administrative Rules when required; and
- (7) filing the adopted rule.

(b) During the rulemaking process, the agency proposing the rule shall post on its website information concerning the proposal.

(1) The agency shall post the information on a separate page that is readily accessible from a prominent link on its main web page and that lists proposed rules by title and topic.

(2) For each rulemaking, the posted information shall include:

(A) The proposed rule as filed under section 838 of this title.

(B) The date by which comments may be submitted on the proposed rule and the address for such submission.

(C) The date and location of any public hearing.

(D) Each comment submitted to the agency on the proposed rule. The agency shall redact sensitive personal information from the posted comments. As used in this subdivision (D), “sensitive personal information” means each of the items listed in 9 V.S.A. § 2430(5)(A)(i)–(iv) and does not include the name, affiliation, and contact information of the commenter.

(E) The final proposed rule as filed under section 841 of this title.

(F) Each document submitted by the agency to the Legislative Committee on Administrative Rules.

(3) The agency shall maintain the information required by this subsection on its website until the earliest of the following dates: filing of a final adopted rule under section 843 of this title; withdrawal of the proposed rule; or expiration of the period for final adoption under subsection 843(c) of this title.

(4) If an agency is a board or commission exercising quasi-judicial functions and members of the public can access all of the information required by subdivision (2) of this subsection through the agency’s online case-management system, this information need not also be posted on the agency’s website. Instead, the list of proposed rules on the agency’s website shall include the case number for each proposed rule and instructions for accessing all of the information about the proposed rule in the agency’s online case-management system.

\* \* \*

## § 838. FILING OF PROPOSED RULES

(a) Filing; information. Proposed rules shall be filed with the Secretary of State.—The filing shall include in a format determined by the Secretary that includes the following information:

(1) a cover sheet; The name of the agency and the subject or title of the rule.

- (2) ~~an~~ An analysis of economic impact statement;
- (3) ~~an incorporation~~ An analysis of environmental impact.
- (4) An explanation of all material incorporated by reference statement,  
if the proposed rule includes an incorporation by reference; any.
- ~~(4) an adopting page;~~
- (5) ~~the~~ The text of the proposed rule;
- (6) ~~an~~ An annotated text showing changes from existing rules; The annotated text of the rule shall include markings to indicate clearly changed wording from any existing rule.
- (7) ~~an~~ An explanation of the strategy for maximizing public input on the proposed rule as prescribed by the Interagency Committee on Administrative Rules; and
- (8) a A brief summary of the scientific information upon which the proposed rule is based, to the extent the proposed rule depends on scientific information for its validity. The summary shall refer to the scientific studies on which the proposed rule is based and shall explain the procedure for obtaining such studies from the agency.
- ~~(b) The cover sheet shall be on a form prepared by the Secretary of State containing at least the following information:~~
  - ~~(1) the name of the agency;~~
  - ~~(2) the title or subject of the rule;~~
  - ~~(3)~~(9) a A concise summary in plain language explaining the effect of the rule; and its effect.
  - ~~(4)~~(10) ~~the~~ The specific statutory authority for the rule, and, if none exists, the general statutory authority for the rule;
  - ~~(5)~~(11) ~~an~~ An explanation of why the rule is necessary;
  - ~~(6)~~(12) ~~an~~ An explanation of the people, enterprises, and government entities affected by the rule;
  - ~~(7) a brief summary of the economic impact of the rule;~~
  - ~~(8)~~(13) ~~the~~ The name, address, and telephone number of an individual in the agency able to answer questions and receive comments on the proposal;
  - ~~(9)~~(14) a A proposed schedule for completing the requirements of this chapter, including, if there is a hearing scheduled, the date, time, and place of that hearing and a deadline for receiving comments;

~~(10)~~(15) ~~whether~~ Whether the rule contains an exemption from inspection and copying of public records, or otherwise contains a Public Records Act exemption by designating information as confidential or limiting its public release and, if so, the asserted statutory authority for the exemption and a brief summary of the reason for the exemption; ~~and.~~

~~(11)~~(16) a A signed and dated statement by the adopting authority approving the contents of the filing.

~~(e)~~(b) Economic impact analysis; rules affecting small businesses and school districts.

(1) General requirements. The economic impact ~~statement~~ analysis shall analyze the anticipated costs and benefits to be expected from adoption of the rule. Specifically, each economic impact ~~statement~~ analysis shall, for each requirement in the rule:

(A) ~~List categories~~ list each category of people, enterprises, and government entities potentially affected and estimate for each the costs and benefits anticipated; ~~and~~

(B) ~~Compare~~ compare the economic impact of the rule with the economic impact of other alternatives to the rule, including having no rule on the subject or a rule having separate requirements for small ~~business~~ businesses.

~~(C) Include a flexibility statement.~~ The flexibility statement shall compare the burden imposed on small businesses by compliance with the rule to the burden which would be imposed by alternatives considered under section 832a of this title.

~~(D) Include a greenhouse gas impact statement.~~ The greenhouse gas impact statement shall explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted. The Secretary of Administration, in conjunction with the Secretaries of Agriculture, Food and Markets, of Natural Resources, and of Transportation, and the Commissioner of Public Service shall provide a checklist which shall be used in the adoption of rules to assure the full consideration of greenhouse gas impacts, direct and indirect.

(2) Small businesses. When a rule provides for the regulation of a small business, in the economic impact analysis, the agency shall include, when appropriate, a specific and clearly demarcated evaluation of ways by which a small business can reduce the cost and burden of compliance by specifying less numerous, detailed, or frequent reporting requirements or alternative methods of compliance.

(A) An agency shall also include in this evaluation its consideration of creative, innovative, or flexible methods of compliance with the rule when the agency finds, in writing, that these methods of compliance would not:

(i) significantly reduce the effectiveness of the rule in achieving the objectives or purposes of the statutes being implemented or interpreted; or

(ii) be inconsistent with the language or purpose of statutes that are implemented or interpreted by the rule; or

(iii) increase the risk to the health, safety, or welfare of the public or to the beneficiaries of the regulation or compromise the environmental standards of the State.

(B) This subdivision (2) shall not apply when the regulation is incidental to:

(i) a purchase of goods or services by the State or an agency thereof; or

(ii) the payment for goods or services by the State or an agency thereof for the benefit of a third party.

(3) School districts. If a rule affects or provides for the regulation of public education and public schools, the economic impact analysis shall include a specific and clearly demarcated evaluation of the cost implications to local school districts and school taxpayers and shall clearly state the associated costs. This evaluation also shall include consideration of alternatives to the rule, including having no rule on the subject, that would reduce or ameliorate costs to local school districts while achieving the objectives or purposes of the proposed rule.

(4) Most appropriate method. In addition, each economic impact statement analysis shall conclude that the rule is the most appropriate method of achieving the regulatory purpose and, with respect to small businesses, contain any findings required by section 832a of this title. Only employees of the agency and information either already available to the agency or available at reasonable cost shall need be used in preparing economic impact statements analyses.

(c) Environmental impact analysis. The environmental impact analysis shall:

(1) Analyze the anticipated environmental impacts, whether positive or negative, from adoption of the rule. Examples of environmental impacts include the emission of greenhouse gases; the discharge of pollutants to water; and effects on the ability of the environment to provide benefits such as food and fresh water, regulation of climate and water flow, and recreation.

(2) Compare the environmental impact of the rule with the environmental impact of other alternatives to the rule, including having no rule on the subject.

(d) Incorporation by reference.

(1) A rule may incorporate by reference all or any part of a code, standard, or rule that has been adopted by an agency of the United States, this State, or another state or by a nationally recognized organization or association, if:

(A) repeating verbatim the text of the code, standard, or rule in the rule would be unduly cumbersome, expensive, or otherwise inexpedient; and

(B) the reference in the rule fully identifies the incorporated code, standard, or rule by citation, date, and place where copies are available.

(2) Materials incorporated by reference shall be readily available to the public. As used in this subsection, “readily available” means that all of the following apply:

(A) Each filing states where copies of the incorporated code, standard, or rule are available in written or electronic form from the agency adopting the rule or the agency of the United States, this State, another state, or the organization or association originally issuing the code, standard, or rule.

(B) A copy of the code, standard, or rule is made available for public inspection at the principal office of the agency, and is available at that office for copying in the manner set forth in 1 V.S.A. § 316 and subject to the exceptions set forth in 1 V.S.A. § 317(c).

(C) The incorporated code, standard, or rule is made available for free public access online unless the agency is prevented from providing such access by law or legally enforceable contract.

~~(d) Any required incorporation by reference statement shall include a separately signed statement by the adopting authority:~~

~~(1) certifying that the text of the matter incorporated has been reviewed by the agency, with the name of the reviewing official;~~

~~(2) explaining how the text of the matter incorporated can be obtained by the public, and at what cost;~~

~~(3) explaining any modifications to the matter incorporated;~~

~~(4) discussing the comparative desirability of reproducing the incorporated matter in full in the text of the rule; and~~

~~(5) certifying that the agency has the capability and the intent to enforce~~



the rule.

~~(e) The adopting page shall be on a form prepared by the Secretary of State and shall contain the name of the agency, the subject of the proposed rule, an explanation of the effect of the proposal on existing rules, and any internal reference number assigned by the agency.~~

~~(f) The annotated text of the rule shall include markings to clearly indicate changed wording from any existing rule.~~

~~(g) The brief summary of scientific information shall refer to scientific studies upon which the proposed rule is based and shall explain the procedure for obtaining such studies from the agency.~~

#### § 839. PUBLICATION OF PROPOSED RULES

(a) Online. The Secretary of State shall publish online notice of a proposed rule within two weeks ~~of~~ after receipt of the proposed rule. Notice shall include the following information:

- (1) the name of the agency;
- (2) the title or subject of the rule;
- (3) a concise summary in plain language of the effect of the rule;
- (4) an explanation of the people, enterprises, and governmental entities affected by the rule;
- (5) a brief summary of the economic impact;
- (6) the name, telephone number, and address of an agency official able to answer questions and receive comments on the proposal;
- (7) the date, time, and place of the hearing or hearings; and
- (8) the deadline for receiving comments.

(b) Editing of notices. The Secretary of State may edit all notices for clarity, brevity, and format and shall include a brief statement explaining how members of the public can participate in the rulemaking process.

(c) Newspaper publication. The Secretary of State shall arrange for one formal publication, in a consolidated advertisement in newspapers having general circulation in different parts of the State as newspapers of record approved by the Secretary of State, of information relating to all proposed rules that includes the following information:

- (1) the name of the agency and its Internet address;
- (2) the title or subject and a concise summary of the rule and the Internet address at which the rule may be viewed; and

(3) the office name, office telephone number, and office mailing address of an agency official able to answer questions and receive comments on the proposal.

(d) Reimbursement. The Secretary of State shall be reimbursed by agencies making publication in accordance with subsection (c) of this section so that all costs are prorated among agencies publishing at the same time.

\* \* \*

#### § 841. FINAL PROPOSAL

(a) After considering public comment as required in section 840 of this title, an agency shall file a final proposal with the Secretary of State and with the Legislative Committee on Administrative Rules. The Committee may require that the agency include an electronic copy of the final proposal with its filing.

(b) The filing of the final proposal shall include all information required to be filed with the original proposal, suitably amended to reflect any changes made in the rule and the fact that public hearing and comment ~~has~~ have been completed.

(1) With the final proposal, the agency shall include a statement that succinctly and separately addresses each of the following:

(A) how the proposed rule is within the authority of the agency;

(B) why the proposed rule is not arbitrary;

(C) the strategy for maximizing public input that was prescribed by the Interagency Committee on Administrative Rules and the actions taken by the agency that demonstrate compliance with that strategy;

(D) the sufficiency of the economic impact analysis; and

(E) the sufficiency of the environmental impact analysis.

(2) ~~Where~~ When an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision.

\* \* \*

#### § 842. REVIEW BY LEGISLATIVE COMMITTEE

(a) Objection; time frame; process. ~~Within 30 days of the date a rule is first placed on the Committee's agenda but no later than 45 days after the filing of a final proposal unless the agency consents to an extension of this~~

review period, the Legislative Committee on Administrative Rules, by majority vote of the entire Committee, may object under subsection (b), ~~(c)~~, or ~~(d)~~ of this section, and recommend that the agency amend or withdraw the proposal. The agency shall be notified promptly of the objections. Failure to give timely notice shall be deemed approval. The agency shall within 14 days ~~of~~ after receiving notice respond in writing to the Committee and send a copy to the Secretary of State. In its response, the agency may include revisions to the proposed rule or filing documents that seek to cure defects noted by the Committee. After receipt of this response, the Committee may withdraw or modify its objections.

(b) Grounds for objection. The Committee may object under this subsection if:

- (1) a proposed rule is beyond the authority of the agency;
- (2) a proposed rule is contrary to the intent of the Legislature;
- (3) a proposed rule is arbitrary; ~~or~~
- (4) the agency did not adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules;
- (5) a proposed rule is not written in a satisfactory style in accordance with section 833 of this title;
- (6) the economic impact analysis fails to recognize a substantial economic impact of the proposed rule, fails to include an evaluation and statement of costs to local school districts required under section 838 of this title, or fails to recognize a substantial economic impact of the rule to such districts; or
- (7) the environmental impact analysis fails to recognize a substantial environmental impact of the proposed rule.

(c) Objections; legal effect.

(1) When objection is made under this ~~subsection~~ section, and the objection is not withdrawn after the agency responds, on majority vote of the entire Committee, it may file the objection in certified form with the Secretary of State. The objection shall contain a concise statement of the Committee's reasons for its action. The Secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency.

(2) After a Committee objection is filed with the Secretary under this subsection, or on the same grounds under subsection 817(d) of this title, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for

enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary, and is written in a satisfactory style in accordance with section 833 of this title, and that the agency did adhere to the strategy for maximizing public input prescribed by the Interagency Committee on Administrative Rules and its economic and environmental impact analyses did not fail to recognize a substantial economic or environmental impact. The objection of the Committee shall not be admissible evidence in any proceeding other than to establish the fact of the objection. If the agency fails to meet its burden of proof, the ~~Court~~ court shall declare the whole or portion of the rule objected to invalid.

(3) The failure of the Committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

~~(c) The Committee may object under this subsection if a proposed rule is not written in a satisfactory style according to section 833 of this title.~~

~~(d) The Committee may object under this subsection if the economic impact statement fails to recognize a substantial economic impact of the proposed rule that the Committee describes in its notice of objection. The Committee may object one time under this subsection and return the proposed rule to the agency as unacceptable for filing. The agency may then cure the defect and adopt the rule, or it may adopt the rule without change.~~

~~(e) Notice of objection; inclusion on rule copies. When an objection is made under subsection (b) of this section and has been certified by the Secretary of State, notice of the objection shall be included on all copies of the rule distributed to the public.~~

#### § 843. FILING OF ADOPTED RULES

(a) An adopting authority may adopt a properly filed final proposed rule after:

(1) The passage of 30 days from the date a rule is first placed on the committee's agenda or 45 days after filing of a final proposal under section 841 of this title, whichever occurs first, provided the agency has not received notice of objection from the Legislative Committee on Administrative Rules; or

(2) Receiving notice of approval from the Legislative Committee on Administrative Rules; or

(3) Responding to an objection of the Legislative Committee on Administrative Rules under section 842 of this title. After responding to such an objection, an agency may adopt the rule without change or may make a germane change in accordance with subsection (b) of this section.

(b) The text of the adopted rule shall be the same as the text of the final proposed rule submitted under section 841, except that any germane change may be made by the agency in response to an objection or expressed concern of the Legislative Committee on Administrative Rules.

(c) Adoption shall be complete upon proper filing with the Secretary of State and with the Legislative Committee on Administrative Rules. An agency shall have eight months from the date of initial filing with the Secretary of State to adopt a rule unless extended by action or request of the Legislative Committee on Administrative Rules. The Secretary of State shall refuse to accept a final filing after that date, except that:

(1) Within 30 days after discovering that the text of a final adopted rule deviates from the text of a final proposed rule as approved by the Legislative Committee on Administrative Rules, an agency shall correct the adopted rule to conform to the final proposed rule as so approved and shall refile the adopted rule in the manner set forth in this section, along with documentation demonstrating that the refiled adopted rule conforms to the final proposed rule as approved.

(2) An agency may refile a final adopted rule in the manner set forth in this section solely for the purpose of correcting one or more typographic errors that do not change the substance or effect of the rule.

\* \* \*

#### § 844. EMERGENCY RULES

(a) Where an agency believes that there exists an imminent peril to public health, safety, or welfare, it may adopt an emergency rule. The rule may be adopted without having been prefiled or filed in proposed or final proposed form, and may be adopted after whatever notice and hearing that the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are known to persons who may be affected by them.

(b) Emergency rules adopted under this section shall not remain in effect for more than ~~120~~ 180 days. An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule.

(c) Emergency rules adopted under this section shall be filed with the Secretary of State and with the Legislative Committee on Administrative Rules. The Legislative Committee on Administrative Rules shall distribute copies of emergency rules to the appropriate standing committees.

(d) Emergency rules adopted under this section shall include:

(1) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(2) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety, or welfare and approving of the contents of the rules.

(e)(1) On a majority vote of the entire Committee, the Committee may object under this subsection if an emergency rule is:

(A) beyond the authority of the agency;

(B) contrary to the intent of the Legislature;

(C) arbitrary; or

(D) not necessitated by an imminent peril to public health, safety, or welfare sufficient to justify adoption of an emergency rule.

(2) When objection is made under this subsection, on majority vote of the entire Committee, the Committee may file the objection in certified form with the Secretary of State. The objection shall contain a concise statement of the Committee's reasons for its action. The Secretary shall affix to each objection a certification of its filing and as soon as practicable transmit a copy to the agency. After a Committee objection is filed with the Secretary under this subsection, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the Legislature, is not arbitrary, and is justified by an imminent peril to the public health, safety, or welfare. If the agency fails to meet its burden of proof, the ~~Court~~ court shall declare the whole or portion of the rule objected to invalid. The failure of the Committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(3) When the Committee makes an objection to an emergency rule under this subsection, the agency may withdraw the rule to which an objection was made. Prior to withdrawal, the agency shall give notice to the Committee of its intent to withdraw the rule. A rule shall be withdrawn upon the filing of a notice of withdrawal with the Secretary of State and the Committee. If the emergency rule amended an existing rule, upon withdrawal of the emergency rule, the existing rule shall revert to its original form, as though the emergency rule had never been adopted.

(f) In response to an expressed concern of the Legislative Committee on Administrative Rules, an agency may make a germane change to an emergency rule that is approved by the Committee. A change under this subsection shall not be considered a newly adopted emergency rule and shall not extend the period during which the emergency rule remains in effect.

(g) In the alternative to the grounds specified in subsection (a) of this section, an agency may adopt emergency amendments to existing rules using the process set forth in this section if each of the subdivisions (1)–(5) of this subsection applies. On a majority vote of the entire Committee, the Legislative Committee on Administrative Rules may object to the emergency amendments on the basis that one or more of these subdivisions do not apply or under subdivision (e)(1)(A), (B), or (C) of this section, or both.

(1) The existing rules implement a program controlled by federal statute or rule or by a multistate entity.

(2) The controlling federal statute or rule has been amended to require a change in the program or the multistate entity has made a change in the program that is to be implemented in all of the participating states.

(3) The controlling federal statute or rule or the multistate entity requires implementation of the change within 120 days or less.

(4) The adopting authority finds each of the following in writing:

(A) The agency cannot by the date required for implementation complete the final adoption of amended rules using the process set forth in sections 837 through 843 of this title.

(B) Failure to amend the rules by the date required for implementation would cause significant harm to the public health, safety, or welfare or significant financial loss to the State.

(5) On the date the emergency rule amendments are adopted pursuant to this subsection, the adopting authority prefiles a corresponding permanent rule pursuant to section 837 of this title.

#### § 845. EFFECT OF RULES

(a) Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as provided by subsections 842(b)(c) and 844(e) of this title, rules shall be prima facie evidence of the proper interpretation of the matter ~~that~~ to which they refer ~~to~~.

(b) No agency shall grant routine waivers of or variances from any provisions of its rules without either amending the rules, or providing by rule for a process and specific criteria under which the agency may grant a waiver or variance procedure in writing. The duration of the waiver or variance may be temporary if the rule so provides.

\* \* \*

§ 847. AVAILABILITY OF ADOPTED RULES; RULES BY SECRETARY OF STATE

(a) Availability from agency. An agency shall make each rule it has finally adopted available to the public online and for physical inspection and copying. Online, the agency shall post its adopted rules on a separate web page that is readily accessible from a prominent link on its main web page, that lists adopted rules by title and topic, and that is searchable.

(b) Register; code.

(1) The Secretary of State (Secretary) shall keep open to public inspection a permanent register of rules. The Secretary may satisfy this requirement by incorporating the register into the centralized rule system created pursuant to section 818 of this title.

(2) The Secretary also shall publish a code of administrative rules that contains the rules adopted under this chapter. The requirement to publish a code shall be considered satisfied if a commercial publisher offers such a code in print at a competitive price and at no charge online. However, if the Secretary establishes the centralized rule system under section 818 of this title as a digital system, then the system shall include the online publication of this code.

~~(b) The Secretary of State shall publish not less than quarterly a bulletin setting forth the text of all rules filed since the immediately preceding publication and any objections filed under subsection 842(b) or 844(e) of this title.~~

~~(c) The bulletin may omit any rule if either:~~

~~(1) a commercial publisher offers a comparable publication at a competitive price; or~~

~~(2) all three of the following apply:~~

~~(A) its publication would be unduly cumbersome or expensive; and~~

~~(B) the rule is made available on application to the adopting agency; and~~

~~(C) the bulletin contains a notice stating the general subject matter of the omitted rule and stating how a copy of the rule and any objection filed under subsection 842(b) or 844(e) of this title may be obtained.~~

~~(d) Bulletins shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.~~



~~(e)~~(c) Rules for administration. The Secretary of State shall adopt rules for the effective administration of this chapter. These rules shall be applicable to every agency and shall include uniform procedural requirements, style, appropriate forms, and a system for compiling and indexing rules.

§ 848. ~~RULES REPEAL; OPERATION OF LAW~~ AMENDMENT OF AUTHORITY; NOTICE BY AGENCY

(a) Repeal by operation of law. A rule shall be repealed without formal proceedings under this chapter if:

(1) the agency that adopted the rule is abolished and its authority, specifically including its authority to implement its existing rules, has not been transferred to another agency; ~~or~~

(2) a court of competent jurisdiction has declared the rule to be invalid; or

(3) the statutory authority for the rule, as stated by the agency under subdivision 838(b)(4) of this title, is repealed by the General Assembly or declared invalid by a court of competent jurisdiction.

(b) Notice to Secretary of State; deletion. When a rule is repealed by operation of law under this section, the agency that adopted the rule shall notify the Secretary of State in such manner as the Secretary may prescribe by rule or procedure, and the Secretary of State shall delete the rule from the published code of administrative rules.

(c) Repeal for nonpublication.

(1) On July 1, 2018, a rule shall be repealed without formal proceedings under this chapter if:

(A) as of July 1, 2016, the rule was in effect but not published in the code of administrative rules; and

(B) the rule is not published in such code before July 1, 2018.

(2) An agency seeking to publish a rule described in subdivision (1) of this subsection may submit a digital copy of the rule to the Secretary of State with proof acceptable to the Secretary that as of July 1, 2016 the rule was adopted and in effect under this chapter and the digital copy consists of the text of such rule without change.

(d) Amendment of authority for rule.

(1) If the statutory authority for a rule, as stated by the agency under subdivision 838(b)(4) of this title, is amended by the General Assembly, and the amendment does not transfer authority from the adopting agency to another agency, the agency within 30 days following the effective date of the statutory

amendment shall review the rule and make a written determination as to whether such the statutory amendment repeals the authority upon which the rule is based, or requires revision of the rule and shall, within 60 days of the effective date of the statutory amendment, inform in writing submit a copy of this written determination to the Secretary of State and the Legislative Committee on Administrative Rules whether repeal or revision of the rule is required by the statutory amendment, in such manner as the Secretary may prescribe by rule or procedure.

(2) If the statutory authority for a rule, as stated by the agency under subdivision 838(b)(4) of this title, is transferred by act of the General Assembly to another agency, the agency to which the authority is transferred shall provide notice of the transfer, in such manner as the Secretary of State may prescribe by rule or procedure, within 30 days following the effective date of the statutory amendment, to the Secretary and the Legislative Committee on Administrative Rules.

#### § 849. BOARDS AND COMMISSIONS; RETIRING MEMBERS

When a board or commission member, who hears all or a substantial part of a case, retires from office or completes his or her term before the case is completed, he or she may remain a member of the board or commission for the purpose of deciding and concluding the case. If the member who retires or completes his or her term is a chair, he or she may also remain a member for the purpose of certifying questions of law if appeal is taken, where such is required by law. For this service, the member may be compensated in the manner provided for active members. [Repealed.]

#### Sec. 3. REDESIGNATION

Within 3 V.S.A. chapter 25 (administrative procedure):

- (1) §§ 800–808 shall be within subchapter 1.
- (2) §§ 809–816 shall be within subchapter 2.
- (3) §§ 817–849 shall be within subchapter 3.

#### Sec. 4. MISFILING OF EDUCATION RULES

(a) Filing of incorrect rule text.

(1) On or about April 16, 2013, the State Board of Education (SBE) approved revisions to its rules on special education, Series 2360 (the Rules) for submission to the Legislative Committee on Administrative Rules (LCAR). The rulemaking number for the proposed revisions was 12-P55.

(2) On May 30, 2013, LCAR approved revisions to the Rules proposed by the SBE. LCAR approved the Rules as it received them, without change.

(3) On or about June 4, 2013, the SBE submitted the approved rule in final adopted form to LCAR and the Secretary of State (SOS). The number for the final adopted rule was 13-03.

(4) In 2013, the versions of the Rules submitted by the SBE for approval by LCAR and for final adoption were not the correct version and were submitted in error.

(5) The correct version of the Rules was the text approved by the SBE on or about April 16, 2013. This version was distributed by the Agency of Education to the public as if it were the adopted rule.

(b) Notwithstanding any contrary provision of 3 V.S.A. § 836, 843, or 845, on or before 30 days after the effective date of this section, the SBE shall file the version of the Rules approved by the SBE on or about April 16, 2013 as a final proposal pursuant to 3 V.S.A. § 841. The SBE shall include with this filing a certification signed by the Chair of the SBE that the text of the final proposal is the same as the version of the rules approved by the SBE on or about April 16, 2013.

#### Sec. 5. EFFECTIVE DATES

(a) This section and Sec. 4 (misfiling of education rules) shall take effect on passage.

(b) The remainder of this act shall take effect on July 1, 2018, except that in Sec. 2, 3 V.S.A. §§ 818 and 847(b) and (c) shall take effect on July 1, 2019.

(Committee vote: 4-0-1)

(No House amendments)

### **H. 910.**

An act relating to the Open Meeting Law and the Public Records Act.

**Reported favorably with recommendation of proposal of amendment by Senator Collamore 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:

\* \* \* Open Meeting Law \* \* \*

Sec. 1. 1 V.S.A. § 310 is amended to read:

§ 310. DEFINITIONS

As used in this subchapter:

(1) “Business of the public body” means the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(2) “Deliberations” means weighing, examining, and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2)(3)(A) “Meeting” means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.

(B) “Meeting” shall not mean ~~written correspondence or an electronic~~ any communication, including in person or through e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that:

(i) no other business of the public body is discussed or conducted; and

(ii) such a ~~written correspondence or such an electronic~~ communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act as set forth in chapter 5, subchapter 3 of this title.

(C) “Meeting” shall not mean occasions when a quorum of a public body attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, provided that the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.

(D) “Meeting” shall not mean a gathering of a quorum of a public body at a duly warned meeting of another public body, provided that the attending public body does not take action on its business.

(3)(4) “Public body” means any board, council, or commission of the State or one or more of its political subdivisions, any board, council, or commission of any agency, authority, or instrumentality of the State or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils, or commissions, except that “public body” does not include councils or similar groups established by the Governor for the sole purpose of advising the Governor with respect to policy.

(4)(5) “Publicly announced” means that notice is given to an editor, publisher, or news director of a newspaper or radio station serving the area of the State in which the public body has jurisdiction, and to any person who has

requested under subdivision 312(c)(5) of this title to be notified of special meetings.

~~(5)~~(6) “Quasi-judicial proceeding” means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

\* \* \* Public Records Act \* \* \*

Sec. 2. 1 V.S.A. § 315 is amended to read:

#### § 315. STATEMENT OF POLICY; SHORT TITLE

(a) It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

(b) The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information that allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens.

(c) This subchapter may be known and cited as the Public Records Act or the PRA.

Sec. 3. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS; EXEMPTIONS

\* \* \*

(e)(1) For any exemption to the Public Records Act enacted or substantively amended in legislation introduced in the General Assembly in 2019 or later, in the fifth year after the effective date of the enactment, reenactment, or substantive amendment of the exemption, the exemption shall be repealed on July 1 of that fifth year except if the General Assembly reenacts the exemption prior to July 1 of the fifth year or if the law otherwise requires.

(2) Legislation that enacts, reenacts, or substantively amends an exemption to the Public Records Act shall explicitly provide for its repeal on July 1 of the fifth year after the effective date of the exemption unless the legislation specifically provides otherwise.

(f) Unless otherwise provided by law, a record produced or acquired during the period of applicability of an exemption that is subsequently repealed shall, if exempt during that period, remain exempt following the repeal of the exemption.

Sec. 4. LEGISLATIVE INTENT

(a) In Sec. 3 of this act, the repeal and reenactment provision added in 1 V.S.A. § 317(e) shall apply only to Public Records Act exemptions that are enacted, reenacted, or substantively amended in legislation introduced in the General Assembly in 2019 or later.

(b) In rearranging the text of existing law in 1 V.S.A. § 318(b)-(c) within Sec. 5 of this act, the General Assembly intends to make the text more organized and clear, and does not intend to effect any substantive changes through the rearrangement of existing text.

Sec. 5. 1 V.S.A. § 318 is amended to read:

§ 318. PROCEDURE

(a)(1) As used in this section, “promptly” means immediately, with little or no delay, and, unless otherwise provided in this section, not more than three business days:

(A) from receipt of a request under this subchapter; or

(B) in the case of a reversal on appeal by a head of the agency pursuant to subsection (c) of this section, from the date of the determination on appeal.

(2) A custodian or head of the agency who fails to comply with the applicable time limit provisions of this section shall be deemed to have denied the request or the appeal upon the expiration of the time limit.

(b) Upon request, the custodian of a public record shall promptly produce the record for inspection or a copy of the record, except that:

(1) If the record is in active use or in storage and therefore not available for use at the time the person asks to examine it, the custodian shall so promptly certify this fact in writing to the applicant and, in the certification, set a date and hour within one calendar week of the request when the record will be available for examination.

(2) If the custodian considers the record to be exempt from inspection and copying under the provisions of this subchapter, the custodian shall promptly so certify in writing. Such certification shall identify the records withheld and the basis for the denial. A record shall be produced for inspection or a certification shall be made that a record is exempt within three business days of receipt of the request, unless otherwise provided in subdivision (5) of this subsection. The certification shall:

(A) identify the records withheld;

(B) include the asserted statutory basis for denial and a brief statement of the reasons and supporting facts for denial. The custodian shall also;

(C) provide the names and titles or positions of each person responsible for denial of the request; and

(D) notify the person of his or her right to appeal to the head of the agency any adverse determination.

(3) If appealed to the head of the agency, the head of the agency shall make a determination with respect to any appeal within five business days after the receipt of such appeal. If an appeal of the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under section 319 of this title. [Repealed.]

(4) If a record does not exist, the custodian shall promptly certify in writing that the record does not exist under the name given to the custodian by the applicant or by any other name known to the custodian.

(5) In unusual circumstances as herein specified, the time limits prescribed in this subsection section may be extended by written notice to the person making such the request setting forth the reasons for such the extension and the date on which a determination is expected to be dispatched. No such

notice shall specify a date that would result in an extension for more than ten business days from receipt of the request or, in the case of a reversal on appeal by a head of the agency pursuant to subsection (c) of this section, from the date of the determination on appeal. As used in this subdivision, “unusual circumstances” means to the extent reasonably necessary to the proper processing of the particular request:

(A) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(B) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records ~~which~~ that are demanded in a single request; or

(C) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, or with the Attorney General.

~~(b) Any person making a request to any agency for records under subsection (a) of this section shall be deemed to have exhausted the person’s administrative remedies with respect to each request if the agency fails to comply within the applicable time limit provisions of this section. Upon any determination by an agency to comply with a request for records, the records shall be made available promptly to the person making such request. Any notification of denial of any request for records under this section shall set forth the names and titles or positions of each person responsible for the denial of such request.~~

(c)(1) Any denial of access by the custodian of a public record may be appealed to the head of the agency. The head of the agency shall make a written determination on an appeal within five business days after the receipt of the appeal.

(2) A If the head of the agency upholds the denial of a request for records, in whole or in part, the written determination shall include:

(A) the asserted statutory basis for upholding the denial and;

(B) a brief statement of the reasons and supporting facts for upholding the denial; and

(C) notification of the provisions for judicial review of the determination under section 319 of this title.

~~(2)(3)~~ (3) If the head of the agency reverses the denial of a request for records, the records shall be promptly made available to the person making the



~~request. A failure by the agency to comply with any of the time limit provisions of this section shall be deemed a final denial of the request for records by the agency.~~

\* \* \*

(h) The head of a State agency or department shall:

(1) designate the agency's or department's records officer described in 3 V.S.A. § 218, or shall designate some other person, to be accountable for overseeing the processing of requests for public records received by the agency or department in accordance with this section; and

(2) post on the agency's or department's website the name and contact information of the person designated under subdivision (1) of this subsection.

Sec. 6. 1 V.S.A. § 318a is added to read:

§ 318a. EXECUTIVE BRANCH AGENCY PUBLIC RECORDS REQUEST SYSTEM

(a) The Secretary of Administration shall maintain and update the Public Records Request System established pursuant to 2006 Acts and Resolves No. 132, Sec. 3 and 2011 Acts and Resolves No. 59, Sec. 13 with the information furnished under subsection (b) of this section and post System information on the website of the Agency of Administration.

(b) All public agencies of the Executive Branch of the State:

(1) that receive a written request to inspect or copy a record under this subchapter shall catalogue the request in the Public Records Request System established and maintained by the Secretary of Administration by furnishing the following information:

(A) the date the request was received;

(B) the agency that received the request;

(C) the person that made the request, including a contact name;

(D) the status of the request, including whether the request was fulfilled in whole, fulfilled in part, or denied;

(E) if the request was fulfilled in part or denied, the exemption or other grounds asserted as the basis for partial fulfillment or denial;

(F) the estimated hours necessary to respond to the request;

(G) the date the agency closed the request; and

(H) the elapsed time between receipt of the request and the date the agency closed the request; and

(2) shall post in a conspicuous location on their respective websites a link to the location on the Agency of Administration’s website where Public Records Request System information is maintained.

Sec. 7. REPEAL

2011 Acts and Resolves No. 59, Sec. 13 (State agency public request system) is repealed.

\* \* \* Effective Date \* \* \*

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2018, except that Sec. 3 shall take effect on January 1, 2019.

(Committee vote: 4-0-1)

(No House amendments)

**House Proposals of Amendment to Senate Proposals of Amendment**

**H. 143**

An act relating to automobile insurance requirements and transportation network companies

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that this act is a step toward uniform regulation of all vehicle for hire companies and vehicle for hire drivers in Vermont.

Sec. 2. 23 V.S.A. chapter 10 is added to read:

CHAPTER 10. TRANSPORTATION NETWORK COMPANIES

§ 750. DEFINITIONS; INSURANCE REQUIREMENTS

(a) Definitions. As used in this chapter:

(1) “Digital network” or “network” means any online-enabled application, software, website, or system offered or used by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

(2) “Personal vehicle” means a vehicle that is:

- (A) used by a driver to provide a prearranged ride;
- (B) owned, leased, or otherwise authorized for use by the driver; and
- (C) not a taxicab, limousine, or other for-hire vehicle.

(3) “Prearranged ride” or “ride” means the transportation provided by a driver to a transportation network company rider, beginning when a driver accepts the rider’s request for a ride through a digital network controlled by a company; continuing while the driver transports the rider; and ending when the last rider departs from the vehicle. The term does not include:

- (A) shared-expense carpool or vanpool arrangements;
- (B) use of a taxicab, limousine, or other for-hire vehicle;
- (C) use of a public or private regional transportation company that operates along a fixed route; or
- (D) a ride furnished through a broker using a publicly funded network to connect riders to drivers through the Elders and Persons with Disabilities Program, Medicaid Non-Emergency Medical Transportation Program, or other similar governmental transportation program.

(4) “Transportation network company” or “company” means a person that uses a digital network to connect riders to drivers who provide prearranged rides.

(5) “Transportation network company driver” or “driver” means an individual who:

- (A) receives connections to potential riders and related services from a transportation network company in exchange for payment of a fee to the company; and
- (B) uses a personal vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a transportation network company in exchange for compensation or payment of a fee.

(6) “Transportation network company rider” or “rider” means an individual who uses a company’s digital network to connect with a driver who provides rides in his or her personal vehicle between points chosen by the rider.

(b) Company’s financial responsibility.

(1) Beginning on July 1, 2018, a driver, or company on the driver’s behalf, shall maintain primary automobile insurance that recognizes that the driver is a company driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver while the driver is logged on to the company’s digital network or while the driver is engaged in a prearranged ride.

(2)(A) The following automobile insurance requirements shall apply while a participating driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride:

(i) primary automobile liability insurance in the amount of at least \$50,000.00 for death and bodily injury per person, \$100,000.00 for death and bodily injury per incident, and \$25,000.00 for property damage; and

(ii) any other State-mandated coverage under section 941 of this title.

(B) The coverage requirements of this subdivision (2) may be satisfied by any of the following:

(i) automobile insurance maintained by the driver;

(ii) automobile insurance maintained by the company; or

(iii) any combination of subdivisions (i) and (ii) of this subdivision (2)(B).

(3)(A) The following automobile insurance requirements shall apply while a driver is engaged in a prearranged ride:

(i) primary automobile liability insurance that provides at least \$1,000,000.00 for death, bodily injury, and property damage; and

(ii) uninsured and underinsured motorist coverage that provides at least \$1,000,000.00 for death, bodily injury, and property damage.

(B) The coverage requirements of this subdivision (3) may be satisfied by any of the following:

(i) automobile insurance maintained by the driver;

(ii) automobile insurance maintained by the company; or

(iii) any combination of subdivisions (i) and (ii) of this subdivision (3)(B).

(4) If insurance maintained by a driver under subdivision (2) or (3) of this subsection has lapsed or does not provide the required coverage, insurance maintained by the company shall provide such coverage beginning with the first dollar of a claim and shall have the duty to defend such claim.

(5) Coverage under an automobile insurance policy maintained by the company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(6) Insurance required by this subsection may be placed with an insurer licensed under chapter 101 (insurance companies generally) or 138 (surplus lines insurance) of this title.

(7) Insurance satisfying the requirements of this subsection shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under section 800 of this title.

(8) A driver shall carry proof of coverage satisfying this section at all times during use of a vehicle in connection with a company's digital network. In the event of an accident or traffic violation, a driver shall provide this insurance coverage information to the directly interested parties, automobile insurers, and law enforcement, upon request. Upon such request, a driver shall also disclose whether he or she was logged on to the network or was on a prearranged ride at the time of an accident or traffic violation.

(9) A person who fails to maintain primary automobile insurance as required in subdivisions (2) and (3) of this subsection (b) shall be assessed a civil penalty consistent with subsection 800(b) of this title, and such violation shall be a traffic violation within the meaning of chapter 24 of this title. A person who fails to carry proof of insurance as required under subdivision (8) of this subsection (b) shall be subject to a civil penalty consistent with subsection 800(d) of this title. Notwithstanding any provision of law to the contrary, a person who operates a vehicle without financial responsibility as required by this subsection (b) is subject to administrative action as set forth in chapter 11 of this title.

(c) Disclosures. A transportation network company shall disclose in writing to its drivers the following before they are allowed to accept a request for a prearranged ride on the company's digital network:

(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the company provides while the driver uses a personal vehicle in connection with the company's network; and

(2) that the driver's own automobile insurance policy, depending on its terms, might not provide any coverage while the driver is logged on to the company's network and available to receive transportation requests or engaged in a prearranged ride.

(d)(1) Automobile insurers. Notwithstanding any other provision of law to the contrary, insurers that write automobile insurance in Vermont may exclude any and all coverage afforded under a policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage in an automobile insurance policy, including:

- (A) liability coverage for bodily injury and property damage;
- (B) personal injury protection coverage;
- (C) uninsured and underinsured motorist coverage;
- (D) medical payments coverage;
- (E) comprehensive physical damage coverage; and
- (F) collision physical damage coverage.

(2) Nothing in this subsection implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to a company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a vehicle to transport passengers for compensation.

(3) Nothing in this section shall be construed to require an insurer to use any particular policy language or reference to this section in order to exclude any and all coverage for any loss or injury that occurs while a driver is logged on to a company's digital network or while a driver provides a prearranged ride.

(4) Nothing in this subsection is deemed to preclude an insurer from providing primary or excess coverage for the driver's vehicle, if it chooses to do so by contract or endorsement.

(5) Insurers that exclude the coverage described under subsection (b) of this section shall have no duty to defend or indemnify any claim expressly excluded thereunder.

(6) Nothing in this section is deemed to invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in Vermont prior to the enactment of this section, that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

(7) An insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subsection (b) of this section at the time of loss.

(8) In a claims coverage investigation, transportation network companies shall immediately provide, upon request by directly involved parties or any insurer of the transportation network company driver, if applicable, the precise times that a transportation network company driver logged on and off the transportation network company's digital network in the

12-hour period immediately preceding and in the 12-hour period immediately following the accident. Insurers providing coverage under subsection (b) of this section shall disclose, upon request by any other insurer involved in the particular claim, the applicable charges, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the requirements of subsection (b) of this section.

§ 751. DRIVER REQUIREMENTS; BACKGROUND CHECKS

(a) A company shall not allow an individual to act as a driver on the company's network without requiring the individual to submit to the company an application that includes:

(1) the individual's name, address, and date of birth;

(2) a copy of the individual's driver's license;

(3) a copy of the registration for the personal vehicle that the individual will use to provide prearranged rides; and

(4) proof of financial responsibility for the personal vehicle described in subdivision (3) of this subsection of a type and in the amounts required by the company.

(b)(1) A company shall not allow an individual to act as a driver on the company's network unless, with respect to the driver, the company:

(A) contracts with an accredited entity to conduct a local, State, and national background check of the individual, including the multistate-multijurisdiction criminal records locator or other similar national database, the U.S. Department of Justice national sex offender public website, and the Vermont sex offender public website;

(B) confirms that the individual is at least 18 years of age and, if the individual is 18 years of age, he or she has at least one year of driving experience or has been issued a commercial driver license; and

(C) confirms that the individual possesses proof of registration, automobile liability insurance, and proof of inspection if required by the state of vehicle registration for the vehicle to be used to provide prearranged rides.

(2) The background checks required by this subsection shall be conducted annually by the company.

(3) With respect to a person who is a driver as of the effective date of this act, the requirements of subdivision (1)(A) of this subsection (b) shall be deemed satisfied if the background check is completed within 30 days of the effective date of this act or if a background check that satisfies the requirements of subdivision (1)(A) of this subsection (b) was conducted by the

company on or after July 1, 2017. This subdivision shall not be construed to exempt drivers from undergoing an annual background check as required under subdivision (2) of this subsection (b).

(c) A company shall not allow an individual to act as a driver on the company's network if the company knows or should know that the individual:

(1) has been convicted within the last seven years of:

(A) a listed crime as defined in 13 V.S.A. § 5301(7);

(B) a felony level violation of 18 V.S.A. chapter 84 for selling, dispensing, or trafficking a regulated drug;

(C) a violation of section 1201 (operating a vehicle while under the influence of alcohol or drugs) of this title;

(D) a felony violation of 13 V.S.A. chapter 47 (frauds) or 57 (larceny and embezzlement); or

(E) a comparable offense in another jurisdiction;

(2) has been convicted within the last three years of:

(A) more than three moving violations as defined in subdivision 4(44) of this title;

(B) grossly negligent operation of a motor vehicle in violation of section 1091 of this title or operating with a suspended or revoked license in violation of section 674 of this title; or

(C) a comparable offense in another jurisdiction;

(3) has been subject to a civil suspension within the last seven years under section 1205 (operating a vehicle while under the influence of alcohol or drugs) of this title; or

(4) is listed on the U.S. Department of Justice national sex offender public website or the Vermont sex offender public website or has been convicted of homicide, manslaughter, kidnapping, or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(d) A company shall establish and enforce a zero tolerance policy for drug and alcohol use by drivers during any period when a driver is engaged in, or is logged into the company's network but is not engaged in, a prearranged ride. The policy shall include provisions for investigations of alleged policy violations and the suspension of drivers under investigation.

(e) A company shall require that a personal vehicle used to provide prearranged rides complies with all applicable laws and regulations concerning vehicle equipment.



## § 752. RECORDS; INSPECTION

(a) The Commissioner of Motor Vehicles or designee, not more frequently than once per year, shall visually inspect a random sample of up to 25 drivers' records per company demonstrating compliance with the requirements of this chapter. The records inspected pursuant to this section shall pertain to drivers operating in Vermont. A company shall have an ongoing duty to make such records available for inspection under this section during reasonable business hours and in a manner approved by the Commissioner.

(b) The Commissioner or designee may visually inspect additional random samples of drivers' records if there is a reasonable basis to suspect that a company is not in compliance with this chapter. The records inspected pursuant to this section shall pertain to drivers operating in Vermont.

(c) If the Commissioner receives notice of a complaint against a company or a driver, the company shall cooperate in investigating the complaint, including producing any necessary records.

(d) Any records, data, or information disclosed to the Commissioner by a company, including the names, addresses, and any other personally identifiable information regarding drivers, are exempt from inspection and copying under the Public Records Act and shall not be released.

## § 753. ENFORCEMENT; ADMINISTRATIVE PENALTIES

(a) The Commissioner of Motor Vehicles may impose an administrative penalty pursuant to this section if a company violates a provision of this chapter.

(b) A violation may be subject to an administrative penalty of not more than \$500.00. Each violation is a separate and distinct offense and, in the case of a continuing violation, each day's continuance may be deemed a separate and distinct offense.

(c) The company shall be given notice and opportunity for a hearing for alleged violations under this section. Service of the notice shall be sufficient if sent by first class mail to the applicable address on file with the Secretary of State. The notice shall include the following:

- (1) a factual description of the alleged violation;
- (2) a reference to the particular statute allegedly violated;
- (3) the amount of the proposed administrative penalty; and

(4) a warning that the company will be deemed to have waived its right to a hearing and that the penalty will be imposed if no hearing is requested within 15 days from the date of the notice.

(d) A company that receives notice under subsection (c) of this section shall be deemed to have waived the right to a hearing unless, within 15 days from the date of the notice, the company requests a hearing in writing. If the company waives the right to a hearing, the Commissioner shall issue a final order finding the company in default and imposing the penalty.

(e) The provisions of sections 105, 106, and 107 of this title shall apply to hearings conducted under this section.

(f) The Commissioner may collect an unpaid administrative penalty by filing a civil action in Superior Court or through any other means available to State agencies.

(g) The remedies authorized by this section shall be in addition to any other civil or criminal remedies provided by law for violation of this chapter.

#### § 754. PREEMPTION; SAVINGS CLAUSE

(a) Municipal ordinances, resolutions, or bylaws regulating transportation network companies are preempted to the extent they are inconsistent with the provisions of this chapter.

(b) Subsection (a) of this section shall not apply to a municipal ordinance, resolution, or bylaw regulating transportation network companies adopted by a municipality with a population of more than 35,000 residents based on the 2010 census and in effect on July 1, 2017. This subsection shall be repealed on July 1, 2020.

#### Sec. 3. STUDY; STATEWIDE REGULATION OF VEHICLES FOR HIRE

(a) The Commissioner of Financial Regulation, in consultation with the Commissioner of Motor Vehicles, the Director of the Office of Professional Regulation, and representatives from other State agencies and departments, as the Commissioner deems necessary, and with input from the Vermont League of Cities and Towns and industry and consumer stakeholders, including representatives of transportation network companies (TNCs) and non-TNC companies and career drivers, shall conduct a study of whether and to what extent vehicles for hire, vehicle for hire drivers, and vehicle for hire companies should be regulated by the State, and how State regulations would affect relevant municipal regulations. Among other things, the Commissioner shall consider:

(1) issues related to public safety, necessity, and convenience;

(2) regulatory models adopted in other state and local jurisdictions, including in both urban and rural municipalities in Vermont, applicable to transportation network companies and other vehicle for hire companies;

(3) matters related to passenger safety, including driver background checks, periodic vehicle safety inspections, and signage;

(4) matters related to insurance coverage, including minimum liability coverage, disclosure requirements, and claims procedures, generally, and with consideration of other, similarly situated jurisdictions, other commercial automobile policy requirements, enhanced personal liability coverage for drivers, and the costs and benefits of requiring Med Pay coverage;

(5) matters related to fares, including the provision of fare estimates to riders, restrictions on “surge pricing,” and payment methods;

(6) matters such as the licensing or permitting of companies and drivers; nondiscrimination street hails; the protection of driver and rider information; taxes or fees and, if applicable, recommended amounts; the employment status of drivers; and increased access for people with disabilities;

(7) the extent to which all vehicles for hire, vehicle for hire drivers, and vehicle for hire companies should be treated similarly with respect to statewide regulation; and

(8) any other matter deemed relevant by the Commissioner and the Director.

(b) For purposes of this section, a “vehicle for hire” is a passenger vehicle transporting passengers for compensation of any kind. Vehicles for hire include taxicabs, transportation network company vehicles, limousines, jitneys, car services, contract vehicles, shuttle vans, and other such vehicles transporting passengers for compensation of any kind except:

(1) those which an employer uses to transport employees;

(2) those which are used primarily to transport elderly, special needs and handicapped persons for whom special transportation programs are designed and funded by State, federal, or local authority otherwise exempted pursuant to 23 V.S.A. § 4(15);

(3) buses, trolleys, trains, or similar mass transit vehicles;

(4) courtesy vehicles for which the passenger pays no direct charge, such as hotel or car dealer shuttle vans.

(c) On or before December 15, 2018, the Commissioner shall submit a progress report outlining his or her findings and recommendations to the Chairs of the Senate Committees on Transportation, on Judiciary, and on Finance and the House Committees on Transportation, on Judiciary, and on Commerce and Economic Development.

(d) On or before January 15, 2019, the Commissioner shall submit a final report of his or her findings and recommendations to the Senate Committees on Transportation, on Judiciary, and on Finance and the House Committees on Transportation, on Judiciary, and on Commerce and Economic Development.

#### Sec. 4. TNC INSURANCE REQUIREMENTS; STUDY

(a) The Commissioner of Financial Regulation shall conduct a study regarding the statutory minimum levels of financial responsibility applicable to transportation network companies (TNC) in Vermont, in particular, the minimums required under 23 V.S.A. § 750(b)(2)(A)(i) (the so-called “gap period”). The purpose of the study is to ensure these requirements correlate with potential liability exposure so that persons are made whole in the event of an automobile accident involving a transportation network company driver.

(b) Consistent with the purpose of this section, and in a form and manner prescribed by the Commissioner, each TNC company doing business in Vermont shall submit claims data elements necessary to inform the Commissioner’s determination with respect to the appropriateness of the statutory minimum levels of financial responsibility. Any data disclosed to the Commissioner by a company pursuant to this section are exempt from inspection and copying under the Public Records Act and shall not be released.

(c) On or before January 15, 2019, the Commissioner shall report his or her aggregated findings and recommendations to the House Committees on Commerce and Economic Development and on Judiciary and the Senate Committees on Judiciary and on Finance.

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

An act relating to transportation network companies.

#### **H. 874**

An act relating to inmate access to prescription drugs

The House concurs in the Senate proposal of amendment with further amendments thereto as follows:

First: In Sec. 1, 28 V.S.A. § 801, after the section heading “MEDICAL CARE OF INMATES” by inserting the following:

\* \* \*

(b)(1) Upon admission to a correctional facility for a minimum of 14 consecutive days, each inmate shall be given a physical assessment unless extenuating circumstances exist.

(2) Within 24 hours after admission to a correctional facility, each inmate shall be screened for substance use disorders as part of the initial and ongoing substance use screening and assessment process. This process includes screening and assessment for opioid use disorders.

Second: In Sec. 1, 28 V.S.A. § 801(e)(1), after the words “Except as otherwise provided in this subsection, an” by striking “offender” and inserting in lieu thereof the following: ~~offender~~ inmate

Third: In Sec. 1, 28 V.S.A. § 801(e)(1), after the words “prescription monitoring or information system” by inserting the following: , including buprenorphine, methadone, or other medication prescribed in the course of medication-assisted treatment,

Fourth: In Sec. 1, 28 V.S.A. § 801(e), after subdivision (4), by inserting a subdivision (5) to read as follows:

(5) As used in this subchapter:

(A) “Medically necessary” describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual’s diagnosis or condition, are informed by generally accepted medical or scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition.

(B) “Medication-assisted treatment” shall have the same meaning as in 18 V.S.A. § 4750.

Fifth: By inserting after Sec. 1 a new section to be Sec. 1a to read as follows:

Sec. 1a. 18 V.S.A. § 4750 is added to read:

§ 4750. DEFINITION

As used in this chapter, “medication-assisted treatment” means the use of U.S. Federal Drug Administration-approved medications, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders.

## **NEW BUSINESS**

### **Third Reading**

#### **H. 132.**

An act relating to limiting landowner liability for posting the dangers of swimming holes.

#### **H. 526.**

An act relating to regulating notaries public.

**H. 780.**

An act relating to portable rides at agricultural fairs, field days, and other similar events.

**H. 859.**

An act relating to requiring municipal corporations to affirmatively vote to retain ownership of lease lands.

**H. 894.**

An act relating to pensions, retirement, and setting the contribution rates for municipal employees.

**H. 895.**

An act relating to legislative review of certain report requirements.

**H. 923.**

An act relating to capital construction and State bonding budget adjustment.

**Second Reading**

**Favorable with Proposal of Amendment**

**H. 912.**

An act relating to the health care regulatory duties of the Green Mountain Care Board.

**Reported favorably with recommendation of proposal of amendment by Senator Ayer for the Committee on Health and Welfare.**

The Committee recommends that the Senate propose to the House to amend the bill by striking out Sec. 15 in its entirety and adding six new sections to read as follows:

\* \* \* Medicaid Budget Estimates \* \* \*

Sec. 15. 32 V.S.A. § 305a(c) is amended to read:

(c)(1)(A) The January estimates shall include estimated caseloads and estimated per-member per-month expenditures for the current and next succeeding fiscal years for each Medicaid enrollment group as defined by the Agency and the Joint Fiscal Office for State Health Care Assistance Programs or premium assistance programs supported by the State Health Care Resources and Global Commitment Funds, and for the Programs under any Medicaid Section 1115 waiver.

(B) For Board consideration, there shall be provided two versions of the next succeeding fiscal year's estimated per-member per-month expenditures:

(i) one version shall include an increase in Medicaid provider reimbursements in order to ensure that the expenditure estimates reflect amounts attributable to health care inflation as required by subdivisions 307(d)(5) and (d)(6) of this title inflation trends as set forth in subdivision 307(d)(5) of this title; and

(ii) one version shall be without the inflationary adjustment reflect any additional increase or decrease to Medicaid provider reimbursements that would be necessary to attain Medicare levels as set forth in subdivision 307(d)(6) of this title.

(C) For VPharm, the January estimates shall include estimated caseloads and estimated per-member per-month expenditures for the current and next succeeding fiscal years by income category.

(D) The January estimates shall include the expenditures for the current and next succeeding fiscal years for the Medicare Part D phased-down State contribution payment and for the disproportionate share hospital payments.

(2) In July, the Administration and the Joint Fiscal Office shall make a report to the Emergency Board on the most recently ended fiscal year for all Medicaid and Medicaid-related programs, including caseload and expenditure information for each Medicaid eligibility group. Based on this report, the Emergency Board may adopt revised estimates for the current fiscal year and estimates for the next succeeding fiscal year.

Sec. 16. 32 V.S.A. § 307(d) is amended to read:

(d) The Governor's budget shall include his or her recommendations for an annual budget for Medicaid and all other health care assistance programs administered by the Agency of Human Services. The Governor's proposed Medicaid budget shall include a proposed annual financial plan, and a proposed five-year financial plan, with the following information and analysis:

\* \* \*

(5) health care inflation trends consistent with that reflect consideration of provider reimbursements approved under 18 V.S.A. § 9376 and expenditure trends reported under 18 V.S.A. § 9375a 9383;

\* \* \*

\* \* \* Green Mountain Care Board Billback Formula \* \* \*

Sec. 17. 18 V.S.A. § 9374(h) is amended to read:

(h)(1) The Board may assess and collect from each regulated entity the actual costs incurred by the Board, including staff time and contracts for

professional services, in carrying out its regulatory duties for health insurance rate review under 8 V.S.A. § 4062; hospital budget review under chapter 221, subchapter 7 of this title; and accountable care organization certification and budget review under section 9382 of this title.

(2)(A) Except In addition to the assessment and collection of actual costs pursuant to subdivision (1) of this subsection and except as otherwise provided in ~~subdivision (2)~~ subdivisions (2)(C) and (3) of this subsection, all other expenses incurred to obtain information, analyze expenditures, review hospital budgets, and for any other contracts authorized by of the Board shall be borne as follows:

(A)(i) 40 percent by the State from State monies;

(B)(ii) ~~15~~ 30 percent by the hospitals;

(C)(iii) 15 24 percent by nonprofit hospital and medical service corporations licensed under 8 V.S.A. chapter 123 or 125;

(D) ~~15 percent by,~~ health insurance companies licensed under 8 V.S.A. chapter 101; and

(E) ~~15 percent by,~~ and health maintenance organizations licensed under 8 V.S.A. chapter 139; and

(iv) six percent by accountable care organizations certified under section 9382 of this title.

(B) Expenses under subdivision (A)(iii) of this subdivision (2) shall be allocated to persons licensed under Title 8 based on premiums paid for health care coverage, which for the purposes of this subdivision (2) shall include major medical, comprehensive medical, hospital or surgical coverage, and comprehensive health care services plans, but shall not include long-term care, limited benefits, disability, credit or stop loss, or excess loss insurance coverage.

(C) Expenses incurred by the Board for regulatory duties associated with certificates of need shall be assessed pursuant to the provisions of section 9441 of this title and not in accordance with the formula set forth in subdivision (A) of this subdivision (2).

(2)(3) The Board may determine the scope of the incurred expenses to be allocated pursuant to the formula set forth in subdivision (1)(2) of this subsection if, in the Board's discretion, the expenses to be allocated are in the best interests of the regulated entities and of the State.

(3) Expenses under subdivision (1) of this subsection shall be billed to persons licensed under Title 8 based on premiums paid for health care coverage, which for the purposes of this section shall include major medical,



~~comprehensive medical, hospital or surgical coverage, and comprehensive health care services plans, but shall not include long-term care or limited benefits, disability, credit or stop loss, or excess loss insurance coverage.~~

(4) If the amount of the proportional assessment to any entity calculated in accordance with the formula set forth in subdivision (2)(A) of this subsection would be less than \$150.00, the Board shall assess the entity a minimum fee of \$150.00. The Board shall apply the amounts collected based on the difference between each applicable entity's proportional assessment amount and \$150.00 to reduce the total amount assessed to the regulated entities pursuant to subdivisions (2)(A)(ii)-(iv) of this subsection.

\* \* \* Composition of Green Mountain Care Board and Advisory Group \* \* \*

Sec. 18. 18 V.S.A. § 9374 is amended to read:

§ 9374. BOARD MEMBERSHIP; AUTHORITY

(a)(1) On July 1, 2011, the Green Mountain Care Board is created and shall consist of a chair and four members. The Chair and all of the members shall be State employees and shall be exempt from the State classified system. The Chair shall receive compensation equal to that of a Superior judge, and the compensation for the remaining members shall be two-thirds of the amount received by the Chair.

(2) The Chair and the members of the Board shall be nominated by the Green Mountain Care Board Nominating Committee established in subchapter 2 of this chapter using the qualifications described in section 9392 of this chapter and shall be otherwise appointed and confirmed in the manner of a Superior judge. The Governor shall not appoint a nominee who was denied confirmation by the Senate within the past six years. At least one member of the Board shall be an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as a registered nurse or an advanced practice registered nurse under 26 V.S.A. chapter 28.

\* \* \*

(c)(1) No Board member shall, during his or her term or terms on the Board, be an officer of, director of, organizer of, employee of, consultant to, or attorney for any person subject to supervision or regulation by the Board; provided that for a health care practitioner professional, the employment restriction in this subdivision ~~shall apply only to administrative or managerial employment or affiliation with a hospital or other health care facility, as defined in section 9432 of this title, and shall not be construed to limit generally the ability of the health care practitioner professional to practice his or her profession.~~

\* \* \*

\* \* \* Regulation of Freestanding Health Care Facilities \* \* \*

Sec. 19. REGULATION OF FREESTANDING HEALTH CARE FACILITIES; WORKING GROUP; REPORT

(a) The Secretary of Human Services or designee shall convene a working group to develop recommendations for the regulation of freestanding health care facilities and their role in a coordinated and cohesive health care delivery system. The recommendations shall include:

(1) whether and how the State should license and regulate ambulatory surgical centers, freestanding birth centers, urgent care clinics, retail health clinics, and other freestanding health care facilities; and

(2) whether and to what extent these facilities should participate in Vermont's health care reform initiatives.

(b) The working group shall comprise representatives of ambulatory surgical centers, urgent care clinics, hospitals, the Green Mountain Care Board, the Department of Vermont Health Access, the Department of Health, the Office of the Health Care Advocate, the Vermont Program for Quality in Health Care, Inc., and other interested stakeholders.

(c) On or before February 1, 2019, the working group shall provide its recommendations to the House Committees on Health Care and on Ways and Means, the Senate Committees on Health and Welfare and on Finance, and the Health Reform Oversight Committee.

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

Sec. 20. EFFECTIVE DATES

(a) Secs. 6 (certificate of need) and 17 (billback formula) shall take effect on July 1, 2018, provided that for applications for a certificate of need that are already in process on that date, the rules and procedures in place at the time the application was filed shall continue to apply until a final decision is made on the application.

(b) Sec. 18 shall take effect on passage and shall apply beginning with the first vacancy occurring on the Green Mountain Care Board on or after that date; provided, however, that it shall not apply to the vacancy of a member serving on the Board on the date of passage who seeks to serve more than one term.

(c) The remaining sections of this act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 14, 2018, page 649.)

**Reported favorably with recommendation of proposal of amendment by Senator Sirotkin for the Committee on Finance.**

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare with the following amendments thereto:

First: In Sec. 4, 18 V.S.A. § 9405(b), by striking out subdivision (1) in its entirety and inserting in lieu thereof a new subdivision (1) to read as follows:

(1) ~~The Plan shall include~~ In developing the Plan, the Board shall:

~~(A) A statement of principles reflecting the policies consider the principles in section 9371 of this title, as well as the purposes enumerated in sections 9401 and 9431 of this chapter to be used in allocating resources and in establishing priorities for health services. title;~~

~~(B) Identification of the current supply and distribution of hospital, nursing home, and other inpatient services; home health and mental health services; treatment and prevention services for alcohol and other drug abuse; emergency care; ambulatory care services, including primary care resources, federally qualified health centers, and free clinics; major medical equipment; and health screening and early intervention services.~~

~~(C) Consistent with the principles set forth in subdivision (A) of this subdivision (1), recommendations for the appropriate supply and distribution of resources, programs, and services identified in subdivision (B) of this subdivision (1), options for implementing such recommendations and mechanisms which will encourage the appropriate integration of these services on a local or regional basis. To arrive at such recommendations, the Green Mountain Care Board shall consider at least the following factors:~~

~~(i) the values and goals reflected in the State Health Plan;~~

~~(ii) the needs of the population on a statewide basis;~~

~~(iii) the needs of particular geographic areas of the State, as identified in the State Health Plan;~~

~~(iv) the needs of uninsured and underinsured populations;~~

~~(v) the use of Vermont facilities by out-of-state residents;~~

~~(vi) the use of out-of-state facilities by Vermont residents;~~

~~(vii) the needs of populations with special health care needs;~~

~~(viii) the desirability of providing high quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners;~~

~~(ix) the cost impact of these resource requirements on health care expenditures;~~

~~(x) the overall quality and use of health care services as reported by the Vermont Program for Quality in Health Care and the Vermont Ethics Network;~~

~~(xi) the overall quality and cost of services as reported in the annual hospital community reports;~~

~~(xii) individual hospital four-year capital budget projections; and~~

~~(xiii) the four-year projection of health care expenditures prepared by the Board~~

(B) identify priorities using information from:

(i) the State Health Improvement Plan;

(ii) the community health needs assessments required by section 9405a of this title;

(iii) available health care workforce information;

(iv) materials provided to the Board through its other regulatory processes, including hospital budget review, oversight of accountable care organizations, issuance and denial of certificates of need, and health insurance rate review; and

(v) the public input process set forth in this section;

(C) use existing data sources to identify and analyze the gaps between the supply of health resources and the health needs of Vermont residents and to identify utilization trends to determine areas of underutilization and overutilization; and

(D) consider the cost impacts of fulfilling any gaps between the supply of health resources and the health needs of Vermont residents.

Second: By striking out Sec. 11, 32 V.S.A. § 307(d), in its entirety and inserting in lieu thereof the following:

Sec. 11. [Deleted.]

Third: By inserting a reader assistance heading and a new section to be Sec. 13a to read as follows:

\* \* \* Accountable Care Organizations; Fair and Equitable  
Payment Amounts \* \* \*

Sec. 13a. 18 V.S.A. § 9382 is amended to read:

§ 9382. OVERSIGHT OF ACCOUNTABLE CARE ORGANIZATIONS

(a) In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization shall obtain and maintain certification from the Green Mountain Care Board. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for certifying accountable care organizations. To the extent permitted under federal law, the Board shall ensure these rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation. In order to certify an ACO to operate in this State, the Board shall ensure that the following criteria are met:

\* \* \*

(3) The ACO has established appropriate mechanisms to receive and distribute payments to its participating health care providers in a fair and equitable manner, and any payment differential based on whether a provider is affiliated with a hospital or health care facility or practices independently is disclosed and factually justified.

\* \* \*

(Committee vote: 6-1-0)

**Proposal of amendment to H. 912 to be offered by Senator Sirotkin**

Senator Sirotkin moves that the report of the Committee on Finance be amended by striking out the third instance of amendment in its entirety and inserting in lieu thereof a new third instance of amendment to read as follows:

Third: By inserting a reader assistance heading and a new section to be Sec. 13a to read as follows:

\* \* \* Accountable Care Organizations; Fair and Equitable  
Payment Amounts \* \* \*

Sec. 13a. 18 V.S.A. § 9382 is amended to read:

§ 9382. OVERSIGHT OF ACCOUNTABLE CARE ORGANIZATIONS

(a) In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization shall obtain and maintain certification from the Green Mountain Care Board. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish standards and processes for certifying accountable care organizations. To the extent permitted under federal law, the Board shall ensure these rules anticipate and accommodate a range of ACO models and sizes, balancing oversight with support for innovation. In order to certify an ACO to operate in this State, the Board shall ensure that the following criteria are met:

\* \* \*

(3) The ACO has established appropriate mechanisms to receive and distribute payments to its participating health care providers in a fair and equitable manner. To the extent that the ACO has the authority and ability to establish provider reimbursement rates, the ACO shall minimize differentials in payment methodology and amounts among comparable participating providers across all practice settings, as long as doing so is not inconsistent with the ACO's overall payment reform objectives.

\* \* \*

## NOTICE CALENDAR

### Second Reading

#### Favorable

#### H. 925.

An act relating to approval of amendments to the charter of the City of Barre.

**Reported favorably by Senator Collamore for the Committee on Government Operations.**

(Committee vote: 4-0-1)

(For House amendments, see House Journal of April 6, 2018, page 938)

**Reported favorably by Senator Cummings for the Committee on Finance.**

(Committee vote: 7-0-0)

#### H. 926.

An act relating to approval of amendments to the charter of the Town of Colchester.

**Reported favorably by Senator Collamore for the Committee on Government Operations.**

(Committee vote: 5-0-0)

(No House amendments)

## Favorable with Proposal of Amendment

### H. 614.

An act relating to the sale and use of fireworks.

**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 as follows:

First: In Sec. 1, in 20 V.S.A. § 3132, in subsection (e), after the word “sale” by inserting the words a form to be developed by the State Fire Marshall that shall provide; and by striking out subsection (f) in its entirety.

Second: By striking out Sec. 2 in its entirety.

And by renumbering the remaining section to be numerically correct.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for February 28, 2018, pages 467-469 and March 1, 2018, page 480)

### H. 660.

An act relating to establishing the Commission on Sentencing Disparities and Criminal Code Reclassification.

**Reported favorably with recommendation of proposal of amendment by Senator Benning for the Committee on Judiciary.**

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. 13 V.S.A. § 5451 is amended to read:

§ 5451. CREATION OF COMMISSION

(a) The Vermont ~~sentencing commission~~ Sentencing Commission is established for the purpose of overseeing criminal sentencing practices in the ~~state~~ State, reducing geographical disparities in sentencing, and making recommendations regarding criminal sentencing to the ~~general assembly~~ General Assembly.

(b) The ~~committee~~ Commission shall consist of the following members:

\* \* \*

(2) the ~~administrative judge~~ Chief Superior Judge or designee, provided that the designee is a sitting or retired Vermont judge;

\* \* \*

(16) the ~~executive director~~ Executive Director of the Vermont center for justice research Crime Research Group; and

\* \* \*

Sec. 2. 13 V.S.A. § 5452 is amended to read:

§ 5452. DUTIES

\* \* \*

(c) It shall be a priority for the Sentencing Commission to develop responses to the significant impacts that increased opioid addiction have had on the criminal justice system. The Commission shall consider:

(1) whether and under what circumstances offenses committed as a result of opioid addiction should be classified as civil rather than criminal offenses;

(2) whether the possession or sale of specific, lesser amounts of opioids and other regulated drugs should be classified as civil rather than criminal offenses;

(3) how to maximize treatment for offenders as a response to offenses committed as a result of opioid addiction.

Sec. 3. VERMONT SENTENCING COMMISSION; REPORT ON SENTENCING DISPARITIES AND CRIMINAL CODE RECLASSIFICATION

(a)(1) In order to improve the consistent and uniform application of criminal justice throughout Vermont, the Vermont Sentencing Commission established under 13 V.S.A. § 5451 shall review Vermont's criminal offenses and place each one in a standardized penalty classification system.

(2) The Commission shall develop a classification system that creates categories of criminal offenses on the basis of the maximum potential period of imprisonment and the maximum potential fine. The Commission shall propose legislation that places each of Vermont's criminal statutes into one of the classification offense categories it identifies.

(3) When determining the appropriate category for each offense, the Commission shall consider whether the existing statutory penalties for the offense are appropriate or in need of adjustment better to reflect prevailing average sentencing practices and the effective uses of criminal punishment.



For purposes of this analysis, the Commission shall for each offense consider the average sentence and the average amount of time actually served. If the Commission is unable to determine an appropriate classification for a particular offense, the Commission shall indicate multiple classification possibilities for that offense. Unless there is a compelling rationale, the Commission shall not propose establishing new mandatory minimum sentences or increasing existing minimum or maximum sentences.

(4) For purposes of the classification system developed pursuant to this section, the Commission shall consider the recommendations of the Criminal Code Reclassification Study Committee and shall consider whether to propose:

(A) rules of statutory interpretation specifically for criminal provisions;

(B) the consistent use of mens rea terminology in all criminal provisions;

(C) a comprehensive section of definitions applicable to all criminal provisions;

(D) the decriminalization of some or all fine-only offenses and the transferal of them to the Judicial Bureau for consideration as civil offenses; and

(E) a redefinition of what constitutes an attempt in Vermont criminal law, including whether the Model Penal Code's definition of attempt should be adopted in Vermont.

(b)(1) On or before December 15, 2018, the Commission shall report to the Joint Justice Oversight Committee on its progress toward achieving the goals of this section. The report required by this subdivision may be provided by oral testimony.

(2) On or before November 30, 2019, the Commission shall submit a report consisting of proposed legislation to the House and Senate Committees on Judiciary.

#### Sec. 4. APPROPRIATION

The sum of \$50,000.00 is appropriated from the General Fund to the Judiciary in FY 2019 to carry out the purposes of this act. It is the intent of the General Assembly to fund at least the same amount in FY 2020.

#### Sec. 5. REPEAL

13 V.S.A. §§ 5451 (creation of Vermont Sentencing Commission) and 5452 (creation of Vermont Sentencing Commission) shall be repealed on July 1, 2021.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 13, 2018, pages 607-610)

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

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

In Sec. 4, in the first sentence, after the words “Judiciary in” by inserting the following: FY 2018 to carry forward to

(Committee vote: 7-0-0)

**H. 736.**

An act relating to lead poisoning prevention.

**Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Health and Welfare.**

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: By inserting a new Sec. 1 before the existing Sec. 1 to read as follows:

Sec. 1. LEGISLATIVE INTENT

It is the intent of the General Assembly that the regulatory authority over lead poisoning prevention practices, which is currently divided between the State of Vermont and the U.S. Environmental Protection Agency (EPA), shall be assumed by the State. The Commissioner of Health shall take necessary steps to receive all appropriate authority from the EPA not later than December 2019.

Second: In Sec. 2, in 18 V.S.A. § 1751(b), in subdivision (18), following “or likely exposure to”, by striking out the following: “lead-based paint” and inserting in lieu thereof the following: ~~lead-based paint~~ lead

Third: In Sec. 2, in 18 V.S.A. § 1751(b), in subdivision (22)(B), by striking out the following: “lead-based paint” in the second instance in which it appears and inserting in lieu thereof the following: lead

Fourth: In Sec. 2, in 18 V.S.A. § 1751(b), by renumbering the existing subdivision (24) to appear after the existing subdivision (27) and by renumbering all affected subdivisions to be numerically correct

Fifth: In Sec. 2, in 18 V.S.A. § 1763, in the first sentence, following “subsection 1759(e) of this chapter or”, by striking out the following: “lead-based paint” and inserting in lieu thereof the following: ~~lead-based paint~~ lead

Sixth: In Sec. 2, in 18 V.S.A. § 1764, following “under subsection”, by striking out the following: “1752(d)” and inserting in lieu thereof the following: ~~1752(d)~~ 1752(e)

Seventh: In Sec. 2, in 18 V.S.A. § 1765, in subsection (a), following “determines that”, by striking out the following: “lead-based paint” and inserting in lieu thereof the following: ~~lead-based paint~~ lead and following “rental target”, by striking out the word “property” and inserting in lieu thereof the following: ~~property~~ housing

Eighth: By inserting a new Sec. 3 before the effective date section to read as follows:

### Sec. 3. STATUS UPDATES

On or before February 1 of 2019 and 2020, the Commissioner of Health shall provide a status update regarding the implementation of the lead poisoning prevention program to the House Committee on Human Services and to the Senate Committee on Health and Welfare.

And by renumbering all sections to be numerically correct

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 16, 2018, pages 685-708)

**Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Finance.**

The Committee recommends that the bill be amended as recommended by the Committee on Health and Welfare with the following amendments thereto:

First: In Sec. 2, 18 V.S.A. § 1759(f), by striking out the word “implantation” and inserting in lieu thereof implementation

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

### Sec. 3. STATUS UPDATES

On or before February 1 of 2019 and 2020, the Commissioner of Health shall provide a status update regarding the implementation of the lead

poisoning prevention program and associated fees to the House Committees on Human Services and on Ways and Means and to the Senate Committees on Finance and on Health and Welfare.

(Committee vote: 7-0-0)

### H. 899.

An act relating to fees for records filed in town offices and a town fee report and request.

**Reported favorably with recommendation of proposal of amendment by Senator Collamore 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:

Sec. 1. 32 V.S.A. § 1671 is amended to read:

§ 1671. TOWN CLERK FEES RELATED TO RECORDS; RESERVE FUND

(a) For the purposes of this section, a “page” is defined as a single side of a leaf of paper on which is printed, written, or otherwise placed information to be recorded or filed. The maximum covered area on a page shall be 7 1/2 inches by 14 12 inches. All letters shall be at least one-sixteenth inch in height or in at least eight point type. Unless otherwise provided by law, the fees to town clerks shall be as follows:

(1) For recording a trust mortgage deed as provided in 24 V.S.A. § 1155, ~~\$10.00 per page;~~ \$20.00 for the first page and \$15.00 for each additional page.

(2) For filing or recording a copy of a complaint to foreclose a mortgage as provided in 12 V.S.A. § 4523(b), ~~\$10.00 per page;~~ \$20.00 for the first page and \$15.00 for each additional page.

(3) For examination of records by town clerk, a fee of \$5.00 per hour may be charged but not more than \$25.00 for each examination on any one calendar day;

(4) For examination of records by others, a fee of \$2.00 per hour may be charged;

(5) ~~Town clerks may require fees for all filing, recording, and copying to be paid in advance; [Repealed.]~~

(6)(A) ~~For~~ Except as provided in subdivisions (B) and (C) of this subdivision (6), for the recording or filing, or both, of any document that is to

become a matter of public record in the town clerk's office, ~~or for any certified copy of such document, a fee of \$10.00 per page shall be charged; except that for \$20.00 for the first page and \$15.00 for each additional page.~~

(B) For the recording or filing, or both, of a property transfer return, a flat fee of \$10.00 \$25.00 shall be charged;

(C) For the recording or filing, or both, of documents issued by a municipal officer, employee, or entity, including land use permits, certificates of compliance or occupancy, and notices of violation, a flat fee of \$15.00 shall be charged.

(7) For uncertified copies of records and documents on file, or recorded, a fee of \$1.00 per page shall be charged, with a minimum fee of \$2.00; however, copies of minutes of municipal meetings or meetings of local boards and commissions, copies of grand lists and checklists and copies of any public records that any agency of that political subdivision has deposited with the clerk shall be available to the public at actual cost;

(8) For survey plats filed in accordance with 27 V.S.A. chapter 17, a fee of \$15.00 per 11 inch by 17 inch sheet, \$15.00 per 18 inch by 24 inch sheet, and \$15.00 per 24 inch by 36 inch \$30.00 per sheet shall be charged.

(9) Unless otherwise specified by law, for any certified copy of a document that is a matter of public record in the town clerk's office, a fee of \$10.00 per page shall be charged.

(b)(1) A schedule of all fees shall be posted in the town clerk's office.

(2) A town clerk may require fees for all filing, recording, and copying to be paid in advance.

(c)(1) The legislative body may create shall maintain a Restoration Reserve Fund of no less than \$0.50 per page and no more than \$1.00 per page from recording fees established into which shall be deposited:

(A) an amount equivalent to at least \$10.00 for each record filed under subdivisions (a)(1) and, (a)(2), (a)(6)(A), and (a)(8) of this section; and

(B) any additional fees collected under this section that the legislative body may approve for deposit into the Fund.

(3)(A) The Monies in the Restoration Reserve Fund shall be used solely for restoration, preservation, and conservation of municipal records. Permitted uses of Fund monies may include:

(i) the purchase of hardware or software related to carrying out these activities in a manner that is consistent with legal requirements; and

(ii) the acquisition or maintenance of safes or vaults as required under 24 V.S.A. § 1178.

(B) If a municipality has previously established the Fund, no additional action will be required.

~~(d) A legislative body may establish or abolish a Restoration Reserve Fund only by affirmative vote at a legally warned meeting of the legislative body. Nothing in this section shall preclude the legislative body of a municipality from committing funds to a the municipality's Restoration Reserve Fund in addition to those funds referenced in subsection (c) of this section.~~

Sec. 2. 32 V.S.A. § 606 is amended to read:

§ 606. LEGISLATIVE FEE REVIEW PROCESS; FEE BILL

When the consolidated fee reports and requests are submitted to the General Assembly pursuant to sections 605 and, 605a, and 611 of this title, they shall immediately be forwarded to the House Committee on Ways and Means, which shall consult with other standing legislative committees having jurisdiction of the subject area of a fee contained in the reports and requests. As soon as possible, the Committee on Ways and Means shall prepare and introduce a “consolidated fee bill” proposing:

- (1) The creation, change, reauthorization, or termination of any fee.
- (2) The amount of a newly created fee, or change in amount of an existing or reauthorized fee.
- (3) The designation, or redesignation, of the fund into which revenue from a fee is to be deposited.

Sec. 3. 32 V.S.A. chapter 7, subchapter 6A is added to read:

Subchapter 6A. Town Fee Report and Request

§ 611. CONSOLIDATED TOWN FEE REPORT AND REQUEST

(a) As used in this section:

(1) “Cost” shall be narrowly construed, and may include reasonable and directly related costs of administration, maintenance, and other expenses due to providing the service or product or performing the regulatory function.

(2) “Fee” means a monetary charge collected by or on behalf of a town for a service or product provided to, or the regulation of, specified classes of individuals or entities.

(3) “Town” means a town, city, unorganized town or gore, and the unified towns and gores in Essex County.

(b) On or before the third Tuesday of the legislative session of 2019 and every three years thereafter, the Vermont Municipal Clerks’ and Treasurers’ Association and the Vermont League of Cities and Towns shall jointly submit a

consolidated town fee report and request. The report shall be submitted to the House Committee on Ways and Means, the Senate Committee on Finance, and the House and Senate Committees on Government Operations. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(c) For each fee in existence on the preceding July 1, the report shall specify:

(1) its statutory authorization and termination date, if any;

(2) its current rate or amount and the date it was last set or adjusted by the General Assembly;

(3) the fund into which its revenues are deposited; and

(4) for each town, in each of the two previous fiscal years, the revenues derived from each fee.

(d) A fee request shall contain any proposal to:

(1) Create a new fee, or change, reauthorize, or terminate an existing fee, which shall include a description of the services provided or the function performed.

(2) Set a new or adjust an existing fee rate or amount. Each new or adjusted fee rate shall be accompanied by information justifying the rate, which may include:

(A) the relationship between the revenue to be raised by the fee or change in the fee and the cost or change in the cost of the service, product, or regulatory function supported by the fee;

(B) the inflationary pressures that have arisen since the fee was last set;

(C) the effect on budgetary adequacy if the fee is not increased;

(D) the existence of comparable fees in other jurisdictions;

(E) policies that might affect the acceptance or the viability of the fee amount; and

(F) other considerations.

(3) Designate, or redesignate, the fund into which revenue from a fee is to be deposited.

#### Sec. 4. EFFECTIVE DATE; TRANSITION

(a) This act shall take effect on July 1, 2018.

(b)(1) With regard to requests to file or record a document made through

the mail for which insufficient fees have been tendered, until at least January 1, 2019, in lieu of imposing a requirement to pay fees for a filing or recording in advance under Sec. 1, 32 V.S.A. § 1671(b)(2), the town clerk or designee shall:

(A) file or record the document in the order received; and

(B) attempt to contact the sender to notify the sender of the deficiency in the amount tendered and the requirement to pay in full.

(2) The obligations to file or record the document and to contact a sender under this subsection shall not apply if the mailing does not include contact information in the form of a telephone number, e-mail address, facsimile number, or physical address. If such contact information is not provided, the clerk may impose a requirement to pay fees for a filing or recording in advance pursuant to Sec. 1, 32 V.S.A. § 1671(b)(2).

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 21, 2018, page 785)

**Reported favorably by Senator Campion for the Committee on Finance.**

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

(Committee vote: 6-0-1)

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

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. [Deleted.]

Second: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

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

An act relating to a town fee report and request.

(Committee vote: 6-0-1)



**H. 913.**

An act relating to boards and commissions.

**Reported favorably with recommendation of proposal of amendment  
by Senator Pearson 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:

\* \* \* Merger of Groundwater and Well Water Committees \* \* \*

Sec. 1. 10 V.S.A. § 1392 is amended to read:

§ 1392. DUTIES; POWERS OF SECRETARY

(a) The Secretary shall develop a comprehensive groundwater management program to protect the quality of groundwater resources by:

\* \* \*

(c)(1) The Secretary shall establish a groundwater coordinating committee, with representation from the Division of Drinking Water and Groundwater Protection within the Department, the Division of Geology and Mineral Resources within the Department, the Agency of Agriculture, Food and Markets, and the Departments of Forests, Parks and Recreation and of Health to provide advice in the development of the program and its implementation, on issues concerning groundwater quality and quantity, and on groundwater issues relevant to well-drilling activities and the licensure of well drillers.

(2) In carrying out his or her duties under this subchapter, the Secretary shall give due consideration to the recommendations of the groundwater coordinating committee.

(3) The Secretary may request representatives of other agencies and the private sector, including licensed well drillers, to serve on the groundwater coordinating committee.

\* \* \*

Sec. 2. 10 V.S.A. § 1395b is amended to read:

§ 1395b. ~~WATER WELL ADVISORY COMMITTEE~~

~~(a) The Vermont water well advisory committee is created. The committee shall consist of seven members: the director of the groundwater and water supply division, the state geologist, a representative from the department of health, and four members appointed by the governor. Three of the four public members shall be licensed well drillers, with at least five years of experience. The fourth public member shall be a person not associated with the well-~~

drilling business who has an interest in wells and water quality.

~~(b) The purpose of the committee is to advise and assist agency personnel in the formulation of policy, including recommended statutory and regulatory changes, regarding the proper installation and maintenance of water wells, licensing of well drillers, and groundwater issues impacted by well-drilling activities. The committee shall promote and encourage cooperation and communication between governmental agencies, licensed well drillers, and members of the general public.~~

~~(c) Members shall be appointed for terms of five years, with the initial appointments of the public members made for lesser terms, so that the appointments do not all expire simultaneously. Vacancies shall be filled by the governor for the length of an unexpired term.~~

~~(d) The committee shall elect a chair and a secretary, and shall meet from time to time as may be necessary, but not less than quarterly.~~

~~(e) The public members of the committee shall be volunteers, and will serve without compensation. [Repealed.]~~

### Sec. 3. IMPLEMENTATION

(a) The terms of the members of the Vermont Water Well Advisory Committee shall expire on the effective date of this act.

(b) The Secretary of Natural Resources may provide those members with the opportunity to serve on the groundwater coordinating committee.

\* \* \* Repeal of Valuation Appeal Board \* \* \*

Sec. 4. 32 V.S.A. § 5407 is amended to read:

#### § 5407. VALUATION APPEAL BOARD

~~(a) There is established a Valuation Appeal Board to consist of five members. The members shall be appointed by the Governor with the advice and consent of the Senate, for three-year terms beginning February 1 of the year in which the appointment is made, except that one of the initial appointments shall be for a term of one year and two of the initial appointments shall be for a term of two years. A vacancy in the Board shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.~~

~~(b) Persons serving on the Appeal Board shall be knowledgeable and experienced in at least one of the following fields: agriculture, business management, law, taxation, appraisal and valuation techniques, municipal affairs, or related areas. No member of the Valuation Appeal Board shall be otherwise employed by the State or be a lister. In making appointments,~~

attention shall be given to the desirability of providing geographical balance to the degree reasonably practical.

~~(c) A Chair shall be designated biennially by the Governor from among the members of the Board and any vacancy in the Office of the Chair shall be filled by designation of the Governor.~~

~~(d) Members of the Valuation Appeal Board shall receive a sum not to exceed \$80.00 per diem for each day of official duties of the Board together with reimbursement of reasonable expenses incurred in the performance of their duties, as determined by the Director of Property Valuation and Review.~~

~~(e) The Board shall be attached for administrative purposes to the Division of Property Valuation and Review of the Department of Taxes of the Agency of Administration. [Repealed.]~~

Sec. 5. 32 V.S.A. § 5408 is amended to read:

#### § 5408. PETITION FOR REDETERMINATION

(a) Not later than 35 days after mailing of a notice under section 5406 of this title, a municipality may petition the Director of Property Valuation and Review for a redetermination of the municipality's equalized education property value and coefficient of dispersion. ~~Such~~ The petition shall be in writing and shall be signed by the chair of the legislative body of the municipality or his or her designee.

~~(b)(1)~~ Upon receipt of a petition for redetermination under subsection (a) of this section, the Director shall, after written notice, grant a hearing upon the petition to the aggrieved town.

~~(2)~~ The Director shall thereafter notify the town and the Secretary of Education of his or her redetermination of the equalized education property value and coefficient of dispersion of the town or district, in the manner provided for notices of original determinations under section 5406 of this title.

~~(c)(1)~~ A municipality, within 30 days of after the Director's redetermination, may appeal the redetermination to the ~~Valuation Appeal Board~~. ~~The Board shall notify the appellee of the filing of the appeal. The appeal shall be heard de novo in the manner provided by 3 V.S.A. chapter 25 for the hearing of contested cases.~~

~~(d)~~ A municipality or the Division of Property Valuation and Review may appeal from a decision of the ~~Valuation Appeal Board~~ to the Superior Court of the county in which the municipality is located. The Superior Court shall hear the matter de novo in the manner provided by V.R.C.P. Rule 74 of the Vermont Rules of Civil Procedure.

~~(2)~~ An appeal from the decision of the Superior Court shall be to the

Supreme Court under the Vermont Rules of Appellate Procedure.

\* \* \* Permitting Per Diems Currently Prohibited \* \* \*

Sec. 6. 3 V.S.A. § 22 is amended to read:

§ 22. THE COMMISSION ON WOMEN

(a)(1) The Commission on Women is created as the successor to the Governor's Commission on Women established by Executive Order No. 20-86. The Commission shall be organized and have the duties and responsibilities as provided in this section.

(2) The Commission shall be an independent agency of the government of Vermont and shall not be subject to the control of any other department or agency.

(3) Members of the Commission shall be drawn from throughout the State and from diverse racial, ethnic, religious, age, sexual orientation, and socioeconomic backgrounds, and shall have had experience working toward the improvement of the status of women in society.

(b) The Commission shall consist of 16 members, appointed as follows:

(1) Eight members shall be appointed by the Governor; ~~no~~, not more than four of whom shall be from one political party.

(2)(A) ~~Six~~ Eight members shall be appointed by the legislature General Assembly, ~~three~~ four by the Senate Committee on Committees, and ~~three~~ four by the Speaker of the House; ~~no~~.

(B) Not more than two appointees shall be members of the legislature. ~~Each General Assembly, and each~~ appointing authority shall appoint ~~no~~ not more than two members from the same political party.

~~(3) Two members, one each from the two major political parties.~~

(c) The terms of members shall be four years. ~~Members of the Commission currently appointed and serving pursuant to Executive Order No. 20-86 on July 1, 2002 may continue to serve for the duration of the four year term to which they were appointed. As terms of currently serving members expire, appointments of successors shall be in accord with the provisions of subsection (b) of this section, and made in the following order:~~

~~(1) For terms expiring on June 30, 2002, two shall be made by the Governor, one shall be made by the Committee on Committees and one shall be made by the speaker.~~

~~(2) For terms expiring on June 30, 2003, two shall be made by the Governor, and one each shall be made by the two major political parties.~~

~~(3) For terms expiring on June 30, 2004, two shall be made by the Governor, one shall be made by the Committee on Committees and one shall be made by the speaker.~~

~~(4) For terms expiring on June 30, 2005, two shall be made by the Governor, one shall be made by the Committee on Committees and one shall be made by the Speaker. Thereafter, appointments Appointments of members to fill vacancies or expired terms shall be made by the authority that made the initial appointment to the vacated or expired term.~~

~~(d)(1) Members of the Commission shall elect biennially by majority vote a the Chair of the Commission.~~

~~(2) Members of the Commission shall receive no be entitled to receive per diem compensation for their services, but shall be entitled to and reimbursement for of expenses in the manner and amount provided to employees of the State as permitted under 32 V.S.A. § 1010, which shall be paid by the Commission.~~

\* \* \*

~~(i)(1) No part of any funds appropriated to the Commission by the legislature General Assembly shall, in the absence of express authorization by the Legislature General Assembly, be used directly or indirectly for legislative or administrative advocacy. The Commission shall review and amend as necessary all existing contracts and grants to ensure compliance with this subsection.~~

~~(2) For purposes of As used in this subsection, legislative or administrative advocacy means employment of a lobbyist as defined in 2 V.S.A. chapter 11, or employment of, or establishment of, or maintenance of, a lobbyist position whose primary function is to influence legislators or State officials with respect to pending legislation or regulations rules.~~

#### Sec. 7. COMMISSION ON WOMEN; CURRENT TERMS

A member of the Commission on Women on the effective date of this act whose appointing authority is repealed under the provisions of Sec. 6 of this act may serve the remainder of her or his term.

Sec. 8. 10 V.S.A. § 1372 is amended to read:

§ 1372. MEMBERS<sub>2</sub>; APPOINTMENT<sub>2</sub>; TERM

(a) Within 30 days after he or she has executed the ~~compact~~ Compact with any or all of the states legally joined therein, the ~~governor~~ Governor shall appoint three persons to serve as commissioners to the New England Interstate Water Pollution Control Commission. The ~~commissioner of environmental conservation~~ Commissioner of Environmental Conservation and the

~~commissioner of health~~ Commissioner of Health shall serve as ex officio ~~commissioners thereon~~ on the Commission.

(b) The commissioners so appointed shall hold office for six years. ~~Vacancies~~ A vacancy occurring in the office of ~~the commissioners~~ a commissioner shall be filled by the ~~governor~~ Governor for the unexpired portion of the term.

(c) The commissioners shall ~~serve without~~ be entitled to per diem compensation ~~but shall be paid for their actual~~ and reimbursement of expenses ~~incurred in and incident to the performance of their duties~~ as permitted under 32 V.S.A. § 1010.

(d) The commissioners shall have the powers and duties and be subject to limitations as set forth in the ~~compact~~ Compact.

\* \* \* Joint Information Technology Oversight Committee \* \* \*

Sec. 9. 2 V.S.A. chapter 18 is added to read:

CHAPTER 18. JOINT INFORMATION TECHNOLOGY  
OVERSIGHT COMMITTEE

\* \* \*

§ 614. JOINT INFORMATION TECHNOLOGY OVERSIGHT  
COMMITTEE

(a) Creation. There is created the Joint Information Technology Oversight Committee to oversee investments in and use of information technology in Vermont.

(b) Membership. The Committee shall be composed of six members as follows:

(1) three members of the House of Representatives, not all of whom shall be from the same political party, who shall be appointed by the Speaker of the House; and

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

(c) Powers and duties. The Committee shall oversee, evaluate, and make recommendations on the following:

(1) the State's current deployment, management, and oversight of information technology in the furtherance of State governmental activities, including data processing systems, telecommunications networks, and related technologies, particularly with regard to issues of compatibility among existing and proposed technologies;

(2) issues related to the storage of, maintenance of, access to, privacy of, and restrictions on use of computerized records;

(3) issues of public policy related to the development and promotion of the private, commercial, and nonprofit information infrastructure in the State, its relationship to the State government information infrastructure, and its integration with national and international information networks; and

(4) cybersecurity.

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

(e) Meetings.

(1) The Speaker of the House and the Committee on Committees shall appoint one member from the House and one member of the Senate as co-chairs of the Committee.

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

(3) The Committee may meet when the General Assembly is in session or at the call of the co-chairs.

(f) Reimbursement. For attendance at meetings during adjournment of the General Assembly, members of the Committee shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406.

\* \* \* Sunset Advisory Commission \* \* \*

Sec. 10. 3 V.S.A. § 268 is added to read:

§ 268. BOARDS AND COMMISSIONS; SUNSET ADVISORY COMMISSION

(a) Creation.

(1) There is created the Sunset Advisory Commission to review existing State boards and commissions, to recommend the elimination of any board or commission that it deems no longer necessary or the revision of any of the powers and duties of a board or commission, and to recommend whether members of the boards and commissions should be entitled to receive per diem compensation.

(2) As used in this section, “State boards and commissions” means professional or occupational licensing boards or commissions, advisory boards or commissions, appeals boards, promotional boards, interstate boards, supervisory boards and councils, and any other boards or commissions of the State.

(b) Membership.

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

(A) two current members of the House of Representatives who shall not both be from the same political party and one of whom shall be appointed co-chair, who shall be appointed by the Speaker of the House;

(B) two current members of the Senate, who shall not both be from the same political party and one of whom shall be appointed co-chair, who shall be appointed by the Committee on Committees; and

(C) two persons appointed by the Governor.

(2) Members shall be appointed at the beginning of each biennium. A member shall serve biennially and until his or her successor is appointed, except that a legislative member's term on the Commission shall expire on the date he or she ceases to be a member of the General Assembly.

(c) Powers and duties. The Commission shall have the following powers and duties:

(1) Inventory; group; review schedule.

(A)(i) The Commission shall inventory all of the State boards and commissions, organize them into groups, and establish a schedule to conduct a review of one group each biennium.

(ii) The inventory shall include the names of the members of the State boards and commissions, their term length and expiration, and their appointing authority.

(B) The Commission shall provide its inventory of the State boards and commissions to the Secretary of State for the Secretary to maintain as set forth in section 116a of this title.

(2) Biennial review.

(A) Each biennium, the Commission shall review all of the State boards and commissions within one of its inventoried groups and shall take testimony regarding whether each of those boards and commissions should continue to operate or be eliminated and whether the powers and duties of any of those boards and commissions should be revised.

(B) In its review of each State board and commission, the Commission shall consider:

(i) the purpose of the board or commission and whether that purpose is still needed;

(ii) how well the board or commission performs in executing that



purpose; and

(iii) if the purpose is still needed, whether State government would be more effective and efficient if the purpose were executed in a different manner.

(C) Each board and commission shall have the burden of justifying its continued operation.

(D) For any board or commission that the Commission determines should continue to operate, the Commission shall also determine whether members of that board or commission should be entitled to receive per diem compensation and if so, the amount of that compensation.

(3) Biennial report. On or before the end of the biennium during which it reviews a group, the Commission shall submit to the House and Senate Committees on Government Operations its findings, any recommendation to eliminate a State board or commission within that group or to revise the powers and duties of a board or commission within the group, its recommendations regarding board or commission member per diem compensation, and any other recommendations for legislative action. The Commission shall also specifically recommend whether there should be changes to the information the Secretary of State provides in his or her inventory of the State boards and commissions as set forth in 3 V.S.A. § 116a. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

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

(e) Compensation and expense reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for not more than five meetings per year. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than five meetings per year. These payments shall be made from monies appropriated to the Agency of Administration.

Sec. 11. TRANSITIONAL PROVISION; INITIAL SUNSET ADVISORY COMMISSION

The members of the initial Sunset Advisory Commission established in 3 V.S.A. § 268 in Sec. 10 of this act shall be appointed on or before October 1, 2018 and shall meet prior to the 2019-2020 biennium in order to inventory all of the State boards and commissions and organize them into groups as described in Sec. 10 of this act in 3 V.S.A. § 268(c) so as to be able to review all groups within two bienniums, and during the 2019-2020 biennium those members shall conduct the first biennial review of a group in accordance with that subsection.

Sec. 12. SUNSET OF THE SUNSET ADVISORY COMMISSION

3 V.S.A. § 268 (boards and commissions; Sunset Advisory Commission) is repealed on January 4, 2023.

\* \* \* Secretary of State; Inventory of Boards and Commissions \* \* \*

Sec. 13. 3 V.S.A. § 116a is added to read:

§ 116a. MAINTENANCE OF INVENTORY OF STATE BOARDS AND COMMISSIONS

(a)(1) The Secretary of State shall maintain and make available on his or her official website an inventory of the State boards and commissions, and shall update that inventory when changes are made that affect the information provided in the inventory.

(2)(A) The inventory shall include the names of the members of each State board and commission, their term length and expiration, and their appointing authority.

(B) Each State board and commission shall be responsible for providing to the Secretary of State this inventory information and any updates to it.

(b) As used in this section, “State boards and commissions” means professional or occupational licensing boards or commissions, advisory boards or commissions, appeals boards, promotional boards, interstate boards, supervisory boards and councils, and any other boards or commissions of the State.

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

Sec. 14. EFFECTIVE DATES

This act shall take effect on July 1, 2018, except that Sec. 13, 3 V.S.A. § 116a (Secretary of State; maintenance of inventory of State boards and commissions) shall take effect on January 1, 2019.

(Committee vote: 5-0-0)

(No House amendments)

**Reported favorably by Senator Kitchel for the Committee on Appropriations.**

The Committee recommends that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Government Operations.

(Committee vote: 5-0-2)

**House Proposal of Amendment**

**S. 166**

An act relating to the provision of medication-assisted treatment for inmates.

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. LEGISLATIVE INTENT

It is the intent of the General Assembly that medication-assisted treatment offered at or facilitated by a correctional facility is a medically necessary component of treatment for inmates diagnosed with opioid use disorder.

Sec. 2. 18 V.S.A. § 4750 is added to read:

§ 4750. DEFINITION

As used in this chapter, “medication-assisted treatment” means the use of U.S. Federal Drug Administration-approved medications, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders.

Sec. 3. 28 V.S.A. § 801 is amended to read:

§ 801. MEDICAL CARE OF INMATES

\* \* \*

(b)(1) Upon admission to a correctional facility for a minimum of 14 consecutive days, each inmate shall be given a physical assessment unless extenuating circumstances exist.

(2) Within 24 hours after admission to a correctional facility, each inmate shall be screened for substance use disorders as part of the initial and ongoing substance use screening and assessment process. This process includes screening and assessment for opioid use disorders.

\* \* \*

(e)(1) Except as otherwise provided in this subsection, an offender inmate who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed physician assistant, or a licensed advanced practice registered nurse, or a licensed nurse practitioner and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont Prescription Monitoring System or other prescription monitoring or information system, including buprenorphine, methadone, or other medication prescribed in the course of medication-assisted treatment, shall be entitled to continue that medication and to be provided that medication by the Department pending an evaluation by a licensed physician, a licensed physician assistant, a licensed nurse practitioner, or a licensed advanced practice registered nurse.

(2) However Notwithstanding subdivision (1) of this subsection, the Department may defer provision of a validly prescribed medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician assistant, a nurse practitioner, or an advanced practice registered nurse, it is not in the inmate's best interest medically necessary to continue the medication at that time.

(3) The licensed practitioner who makes the clinical judgment to discontinue a medication shall enter cause the reason for the discontinuance to be entered into the inmate's permanent medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(4) It is not the intent of the General Assembly that this subsection shall create a new or additional private right of action.

(5) As used in this subchapter:

(A) "Medically necessary" describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual's diagnosis or condition, are informed by generally accepted

medical or scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition.

(B) "Medication-assisted treatment" shall have the same meaning as in 18 V.S.A. § 4750.

\* \* \*

Sec. 4. 28 V.S.A. § 801b is added to read:

§ 801b. MEDICATION-ASSISTED TREATMENT IN CORRECTIONAL FACILITIES

(a) If an inmate receiving medication-assisted treatment prior to entering the correctional facility continues to receive medication prescribed in the course of medication-assisted treatment pursuant to section 801 of this title, the inmate shall be authorized to receive that medication for as long as medically necessary.

(b)(1) If at any time an inmate screens positive as having an opioid use disorder, the inmate may elect to commence buprenorphine-specific medication-assisted treatment if it is deemed medically necessary by a provider authorized to prescribe buprenorphine. The inmate shall be authorized to receive the medication as soon as possible and for as long as medically necessary.

(2) Nothing in this subsection shall prevent an inmate who commences medication-assisted treatment while in a correctional facility from transferring from buprenorphine to methadone if:

(A) methadone is deemed medically necessary by a provider authorized to prescribe methadone; and

(B) the inmate elects to commence methadone as recommended by a provider authorized to prescribe methadone.

(c) The licensed practitioner who makes the clinical judgment to discontinue a medication shall cause the reason for the discontinuance to be entered into the inmate's medical record, specifically stating the reason for the discontinuance. The inmate shall be provided, both orally and in writing, with a specific explanation of the decision to discontinue the medication and with notice of the right to have his or her community-based prescriber notified of the decision. If the inmate provides signed authorization, the Department shall notify the community-based prescriber in writing of the decision to discontinue the medication.

(d) As part of reentry planning for an inmate who screens positive for an opioid use disorder and for whom medication assisted treatment is medically necessary, the Department shall commence medication-assisted treatment prior to release. If medication-assisted treatment is indicated and despite best efforts induction is not possible prior to release, the Department shall ensure comprehensive care coordination with a community-based provider.

(e) Any counseling or behavioral therapies provided in conjunction with the use of medication-assisted treatment shall be medically necessary.

\* \* \*

Sec. 5. MEMORANDUM OF UNDERSTANDING; MEDICATION-ASSISTED TREATMENT IN STATE CORRECTIONAL FACILITIES

(a) On or before December 31, 2018, the Departments of Corrections and of Health may enter into a memorandum of understanding with opioid treatment programs throughout the State, certified and accredited pursuant to 42 C.F.R. part 8, that serve regions in which a State correctional facility is located to provide medication-assisted treatment to those inmates for whom a licensed practitioner has determined medication-assisted treatment is medically necessary. Treatment received pursuant to this section shall be coordinated pursuant to 18 V.S.A. § 4753.

(b) As used in this section, “medication-assisted treatment” shall have the same meaning as in 18 V.S.A. § 4750.

Sec. 5a. EVALUATION; MEDICATION-ASSISTED TREATMENT FACILITATED BY CORRECTIONAL FACILITIES

On or before January 15, 2022, the Department of Corrections shall present an evaluation on the effectiveness of the medication-assisted treatment program facilitated by correctional facilities to the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2018.

**Proposal of amendment to House proposal of amendment to S. 166 to be offered by Senator Rodgers**

Senator Rodgers moves that the Senate concur in the House proposal of amendment with a further proposal of amendment as follows:

In Sec. 4, 28 V.S.A. § 801b, by striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d)(1) As part of reentry planning, the Department shall commence medication-assisted treatment prior to an inmate's release if:

(A) the inmate screens positive for an opioid use disorder;

(B) medication-assisted treatment is medically necessary; and

(C) the inmate elects to commence medication-assisted treatment.

(2) If medication-assisted treatment is indicated and despite best efforts induction is not possible prior to release, the Department shall ensure comprehensive care coordination with a community-based provider.

### **House Proposal of Amendment to Senate Proposal of Amendment**

#### **H. 608**

An act relating to creating an Older Vermonters Act working group

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

By striking out Sec. 3, Older Vermonters Act working group; report, in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

#### **Sec. 3. OLDER VERMONTERS ACT WORKING GROUP; REPORT**

(a) Creation. There is created an Older Vermonters Act working group for the purpose of developing recommendations for an Older Vermonters Act that aligns with the federal Older Americans Act, the Vermont State Plan on Aging, and the Choices for Care program.

(b) Membership. The working group shall be composed of the following 18 members:

(1) one current member of the House of Representatives appointed by the Speaker of the House;

(2) one current member of the Senate appointed by the Committee on Committees;

(3) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(4) the Director of Health Promotion and Disease Prevention at the Department of Health or designee;

(5) the Commissioner of Labor or designee;

(6) the Attorney General or designee;

(7) the Executive Director of the Vermont Association of Area Agencies on Aging or designee;

(8) the State Long-Term Care Ombudsman;

(9) the Director of Vermont Associates for Training and Development or designee;

(10) a representative of the Vermont Association of Adult Day Services, appointed by the Association;

(11) a representative of home health agencies, appointed jointly by the VNAs of Vermont and Bayada Home Health Care;

(12) a representative of long-term care facilities, appointed by the Vermont Health Care Association;

(13) the Director of the Center on Aging at the University of Vermont or designee;

(14) a representative of the Vermont Association of Senior Centers and Meal Providers, appointed by the Association;

(15) two older Vermonters from different regions of the State, appointed by the Advisory Board established by 33 V.S.A. § 505; and

(16) two family caregivers of older Vermonters, one of whom is a family member of an older Vermonter and one of whom is an informal provider of in-home and community care, appointed by the Advisory Board established by 33 V.S.A. § 505.

(c) Powers and duties. The working group, in consultation with elder care mental health clinicians, the Vermont Chamber of Commerce, the Community of Vermont Elders, the Alzheimer's Association, Support and Services at Home (SASH), AARP Vermont, the Elder Law Project at Vermont Legal Aid, the Vermont Public Transportation Association, and other interested stakeholders, shall develop recommendations on the following:

(1) the authority and responsibilities of the Vermont Department of Disabilities, Aging, and Independent Living as a State Unit on Aging;

(2) the authority and responsibilities of the Vermont Department of Disabilities, Aging, and Independent Living with respect to the management, approval, and oversight of services provided to eligible older Vermonters through the Choices for Care program;

(3) the roles and responsibilities of the Area Agencies on Aging as the designated regional planning organizations serving older Vermonters and family caregivers;

(4) the roles and responsibilities of the network of providers of services to older Vermonters and family caregivers;



(5) a description of a comprehensive and coordinated system of services and supports for older Vermonters and family caregivers as envisioned by the Older Americans Act and the Choices for Care program, including supportive services, nutrition services, health promotion and disease prevention services, family caregiver services, employment services, and protective services;

(6) a description of how such a system would be coordinated across State agencies, provider networks, and geographic regions;

(7) how to ensure that such a system would target those in greatest economic and social need;

(8) ways to encourage and educate older Vermonters to continue in the workforce and to become or remain involved in their communities through participation in volunteer activities and opportunities for civic engagement; and

(9) ways to educate employers about the value of the older Vermonters talent cohort and the benefits of maintaining a multigenerational workforce, as well as identification of models that may be replicated across sectors and industries.

(d) Assistance. The working group shall have the administrative, technical, and legal assistance of the Department of Disabilities, Aging, and Independent Living.

(e) Report. On or before December 1, 2019, the working group shall submit its recommendations to the House Committee on Human Services and the Senate Committee on Health and Welfare.

(f) Meetings.

(1) The Commissioner of Disabilities, Aging, and Independent Living or designee shall chair the working group and shall call the first meeting of the working group, which shall occur on or before September 15, 2018.

(2) The working group shall meet as often as reasonably necessary to develop its recommendations, but not less frequently than once every two months.

(3) The working group shall cease to exist upon submitting its report to the General Assembly on or before December 1, 2019.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the working group serving in his or her capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for a total of not more than eight meetings.

(2) Other members of the working group who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance at meetings of the working group shall be entitled to reimbursement of expenses pursuant to 32 V.S.A. § 1010.

(3) Payments to members of the working group authorized under subdivision (2) of this subsection shall be made from monies appropriated to the Department of Disabilities, Aging, and Independent Living.

### **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.

Alicia Sacerio Humbert of Northfield – Family Division Magistrate – By Senator Benning for the Committee on Judiciary. (5/3/18)

Megan J. Shafritz of South Burlington – Superior Judge – By Senator Nitka for the Committee on Judiciary. (5/3/18)

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)