

House Calendar

Thursday, May 02, 2019

114th DAY OF THE BIENNIAL SESSION

House Convenes at 1:00 P.M.

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ACTION CALENDAR

Third Reading

S. 40

An act relating to testing and remediation of lead in the drinking water of schools and child care facilities

Amendment to be offered by Rep. Shaw of Pittsford to S. 40

In Sec. 1, 18 V.S.A. § 1244, in subdivision (2), after “performed” and before the “,”, by inserting the following: , provided that if an alternative water source cannot be provided from another outlet in the building or facility, the Department of Health shall pay for the costs of any containerized, bottled, or packaged drinking water provided to the occupants of the building or facility

S. 43

An act relating to prohibiting prior authorization requirements for medication-assisted treatment

S. 133

An act relating to juvenile jurisdiction

J.R.S. 13

Joint resolution authorizing the Commissioner of Forests, Parks and Recreation to amend the Department’s lease with the Okemo Limited Liability Company and to authorize a conveyance of Woodchuck Mountain in Newbury as an alternative to the conveyance authorized in 2002 Acts and Resolves No. 149, Sec. 83(a)(3)

Senate Proposal of Amendment

H. 133

An act relating to miscellaneous energy subjects

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

* * * Report Consolidation * * *

Sec. 1. 30 V.S.A. § 203a is amended to read:

§ 203a. FUEL EFFICIENCY FUND

* * *

~~(c) Report. On or before January 15, 2010, and annually thereafter, the Department of Public Service shall report to the General Assembly on the expenditure of funds from the Fuel Efficiency Fund to meet the public's needs for energy efficiency services. 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. [Repealed.]~~

* * *

Sec. 2. 2012 Act and Resolves No. 165, Sec. 2 is amended to read:

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL
HYDROELECTRIC PROJECTS

* * *

~~(e) No later than January 15, 2014 and annually by each second January 15 thereafter, the commissioner shall submit a written report to the general assembly detailing the progress of the MOU program, including an identification of each hydroelectric project participating in the program. After five hydroelectric projects participating in the program are approved and commence operation, reports filed under this subsection shall evaluate and provide lessons learned from the program, including recommendations, if any, on how to improve procedures for obtaining approval of micro hydroelectric projects (100 kilowatts capacity or less). The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection. [Repealed.]~~

* * *

Sec. 3. 30 V.S.A. § 8105 is amended to read:

§ 8105. REPORTING

~~(a) A host community for which a Vermont village green renewable project has been certified under this chapter shall file a report to the Commission and the Commissioner of Public Service by December 31 of each year following certification. The report shall contain such information as is required by the Commission and the Commissioner. The report shall include at a minimum sufficient information for the Commissioner of Public Service to submit the report required by subsection (b) of this section.~~

~~(b) Beginning on March 1, 2010, and annually thereafter, the Commissioner of Public Service shall submit a report to the Senate Committees on Economic Development, Housing and General Affairs, on Finance, and on Natural Resources and Energy, and the House Committees on~~

~~Ways and Means, on Commerce and Economic Development, and on Energy and Technology, and the Governor, which shall include an update on progress made in the development of the Vermont village green renewable projects authorized under this chapter. The report also shall include an analysis of the costs and benefits of the projects as well as any recommendations consistent with the purposes of this chapter. 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. [Repealed.]~~

Sec. 4. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

* * *

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

* * *

(7) The report shall include any activity that occurs under the Vermont Small Hydropower Assistance Program, the Vermont Village Green Program, and the Fuel Efficiency Fund.

Sec. 5. 30 V.S.A. § 8005b is amended to read:

§ 8005b. RENEWABLE ENERGY PROGRAMS; REPORTS

(a) The Department shall file reports with the General Assembly in accordance with this section.

* * *

(2) The Department shall ~~file the report under~~ include the components of subsection (b) of this section annually each January 15 in its Annual Energy Report required under subsection 202b(e) of this title commencing in 2018 2020 through 2033.

(3) The Department shall ~~file the report under~~ include the components of subsection (c) of this section biennially each March 1 in its Annual Energy Report required under subsection 202b(e) of this title biennially commencing in 2017 2020 through 2033.

* * *

(c) The biennial report under this section shall include at least each of the following:

* * *

(2) Commencing with the report to be filed in 2019, each retail electricity provider's required amount of renewable energy during the two preceding calendar years using the most recent available data for each category of the RES as set forth in section 8005 of this title.

* * *

Sec. 6. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

* * *

~~(d) On or before January 15, 2020 and every third January 15 thereafter~~ Commencing in 2021 and biennially thereafter, the Department shall submit to the Commission ~~a report that evaluates its evaluation of the current state of net metering in Vermont, which shall be included within the Department's Annual Energy Report required under subsection 202b(e) of this title and shall also be submitted to the Committees listed under subdivision 202b(e)(2) of this title. The Department shall make this report publicly available. The report evaluation shall:~~

* * *

* * * Connectivity Fund * * *

Sec. 7. 30 V.S.A. § 202f is amended to read:

§ 202f. TELECOMMUNICATIONS AND CONNECTIVITY ADVISORY BOARD

(a) There is created the Telecommunications and Connectivity Advisory Board for the purpose of making recommendations to the Commissioner of Public Service regarding his or her telecommunications responsibilities and duties as provided in this section. The Connectivity Advisory Board shall consist of eight members, ~~seven voting and one nonvoting~~, selected as follows:

(1) the State Treasurer or designee;

(2) the Secretary of Commerce and Community Development or designee;

(3) five at-large members appointed by the Governor, who shall not be employees or officers of the State at the time of appointment; and

(4) the Secretary of Transportation or designee, ~~who shall be a nonvoting member.~~

* * *

(h) On ~~September 15, 2015~~ November 15, 2019, and annually thereafter, the Commissioner shall submit to the Connectivity Advisory Board an accounting of monies in the Connectivity Fund and anticipated revenue for the next year. ~~On or before January 1 of each year, the Commissioner, after consulting with the Connectivity Advisory Board, shall recommend to the relevant legislative committees of jurisdiction a plan for apportioning such funds to the High-Cost Program and the Connectivity Initiative.~~

* * *

Sec. 8. 30 V.S.A. § 7516 is amended to read:

§ 7516. CONNECTIVITY FUND

There is created a Connectivity Fund for the purpose of providing support to the High-Cost Program established under section 7515 of this chapter and the Connectivity Initiative established under section 7515b of this chapter. The fiscal agent shall determine annually, on or before ~~September~~ November 1, the amount of monies available to the Connectivity Fund. Such funds shall be apportioned as follows: 45 percent to the High-Cost Program and 55 percent to the Connectivity Initiative.

* * * Dig Safe * * *

Sec. 9. 30 V.S.A. § 7001 is amended to read:

§ 7001. DEFINITIONS

In this chapter:

(1) “Commission” means the Public Utility Commission under section 3 of this title.

(2) “Company” means any public utility ~~company which, municipality, or person that~~ supplies gas, electricity, hot water, steam, or telecommunications service and ~~which that~~ maintains underground utility facilities, and any cable television company operating a cable television system as defined in section 501 of this title ~~and which that~~ maintains underground utility facilities.

(3) “Damage” includes the substantial weakening of structural or lateral support of an underground utility facility; penetration or destruction of any underground utility facility’s protective coating, housing, or device; or the partial or complete severance of any underground utility facility.

(4) “Excavation activities” means any activities involving that will disturb the subsurface of the earth or could damage underground utility facilities and that may involve the removal of earth, rock, or other materials in the ground, disturbing the subsurface of the earth, or the demolition of any structure, by the discharge of explosives or the use of powered or mechanized equipment, including digging, trenching, blasting, boring, drilling, hammering, post driving, wrecking, razing, ~~or~~ tunneling, or pavement or concrete slab removal within 100 feet of an underground utility facility. Excavation activities shall not include the tilling of the soil for agricultural purposes, routine home gardening with hand tools outside easement areas and public rights-of-way, activities relating to routine public highway maintenance, or the use of hand tools by a company, or the company’s agent or a contractor working under the agent’s direction, to locate or service the company’s facilities, provided the company has a written damage prevention program.

(5) “Person” means any individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state State, or any interstate body.

(6) “Public agency” means the State or any political subdivision thereof, including any governmental agency.

(7) “Approximate location of underground utility facilities” means a strip of land extending not more than 18 inches on either side of the underground utility facilities.

(8) “System” means the public utility underground facility damage prevention system referred to in section 7002 of this title.

(9) “Underground utility facility” or “facility” means any pipe, conduit, wire, or cable located beneath the surface of the earth and maintained by a company, including the protective covering of the pipe, conduit, wire, or cable, as well as any manhole, vault, ~~or~~ pedestal, or component maintained by a company.

(10) “Premark” means to identify the general scope of excavation activities using white paint, stakes, or other suitable white markings, in a manner that will enable the operators of the underground utility facilities to know the boundaries of the proposed excavation activities.

(11) “Powered or mechanized equipment” means equipment that is powered or energized by any motor, engine, or hydraulic or pneumatic device and that is used for excavation or demolition work.

(12) “Hand tools” means tools powered solely by human energy.

(13) “Verified” means the location and depth have been ~~physically determined by hand digging~~ visually determined using careful and prudent excavating techniques such as hand digging, water excavation, or other safe means.

(14) “Damage prevention program” means a program established to ensure employees involved in excavation activities are aware of and utilize appropriate and safe excavating practices.

Sec. 10. 30 V.S.A. § 7003 is amended to read:

§ 7003. RULEMAKING

The Commission shall adopt rules, pursuant to 3 V.S.A. chapter 25 relative to:

(1) minimum requirements for the operation of the System, including notification procedures and the reporting of underground utility facility locations;

(2) procedures for the investigation of complaints;

(3) emergency situations ~~for which notice of excavation activities is not required;~~

(4) uniform standards for the marking of the approximate location of underground utility facilities;

(5) uniform standards for the future installation of underground utility facilities, including the following:

(A) color coding of facilities;

(B) depth requirements for the laying of facilities;

(C) subsurface marking of facilities;

(D) surface marking of facilities;

(E) the filing of as-built plans of facilities with municipalities; and

(F) capability for location of facilities by sensors; and

(6) standards for the granting of exemptions under section 7002 of this title; and

(7) situations where the premarks cannot be found.

Sec. 11. 30 V.S.A. § 7004 is amended to read:

§ 7004. NOTICE OF EXCAVATION ACTIVITIES

(a) No person or company shall engage in excavation activities, except in an emergency situation as defined by the Commission, without premarking the proposed area of excavation activities and giving notice as required by this section.

(b) Prior to notifying the System, the person shall premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities.

(c) At least 48 hours, excluding Saturdays, Sundays, and legal holidays, but not more than 30 days before commencing excavation activities, each person required to give notice of excavation activities shall notify the System referred to in section 7002 of this title. Such notice shall set forth a reasonably accurate and readily identifiable description of the geographical location of the proposed excavation activities and the premarks.

~~(e)~~(d) Notice to the System may be in writing or by telephone. For purposes of this section, the System shall provide a toll-free telephone number.

~~(d) Prior to notifying the System, the person must premark the area of proposed excavation activities in a manner that will enable operators of underground facilities to identify the boundaries of the proposed excavation activities. Premarking is not required if the actual excavation will be continuous and will exceed 500 feet in length.~~

(e) Notice of excavation activities shall be valid for an excavation site until one of the following occurs:

(1) the excavation is not completed within 30 days of the notification;

(2) the markings become faded, illegible, or destroyed; or

(3) the company installs new underground facilities in a marked area still under excavation.

Sec. 12. 30 V.S.A. § 7006b is amended to read:

§ 7006b. EXCAVATION AREA PRECAUTIONS

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including any substantial weakening of the structural or lateral support of such facilities or penetration, severance, or destruction of such facilities. ~~When excavation activities involve horizontal or directional boring, the~~ The person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work will

cross a facility and at reasonable intervals when paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified.

Sec. 13. 30 V.S.A. § 7007 is amended to read:

§ 7007. NOTICE OF DAMAGE

When any underground utility facility is damaged during excavation activities, the excavator shall immediately notify the affected company. Under no circumstances shall the excavator backfill or conceal the damaged area until the company inspects and repairs the damage, provided that the excavator shall take reasonable and prudent actions to protect the public from serious injury from the damaged facilities until the company or emergency response personnel arrive at the damaged area. An excavator who causes damage to a pipeline that results in a release of natural or other gas or hazardous liquid shall promptly report the release to emergency responders by calling 911.

* * * Thermal Energy Funds * * *

Sec. 14. 30 V.S.A. § 209(e) is amended to read:

(e) Thermal energy and process fuel efficiency funding.

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels. In addition, the Commission may authorize an entity appointed to deliver such services under subdivision (d)(2)(B) of this section to use monies subject to this subsection for the engineering, design, and construction of facilities for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district's energy is from biomass sources, the district's distribution system is highly energy efficient, and such conversion is cost effective.

* * *

* * * Standard Offer Program Small Hydroelectric Power * * *

Sec. 15. 30 V.S.A. § 8005a(p) is amended to read:

(p) Existing hydroelectric plants. Notwithstanding any contrary requirement of this section, no later than January 15, 2013, the Commission shall make a standard offer contract available to existing hydroelectric plants in accordance with this subsection.

(1) In this subsection:

(A) "Existing hydroelectric plant" means a hydroelectric plant of five MW plant capacity or less that is located in the State, that was in service

as of January 1, 2009, that is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, and that does not have an agreement with the Commission's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and Commission rules adopted under subdivision (8). The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement has expired, ~~provided that the expiration date is prior to December 31, 2015.~~

(B) "LIHI" means the Low-Impact Hydropower Institute.

(2) The term of a standard offer contract under this subsection shall be 10 or 20 years, at the election of the plant owner.

(3) Unless inconsistent with applicable federal law, the price of a standard offer contract shall be ~~the lesser of the following~~ the sum of the following elements:

~~(A) \$0.08 per kWh, adjusted for inflation annually commencing January 15, 2013 using the CPI; or~~

~~(B) The sum of the following elements:~~

~~(i)(A)~~ a two-year rolling average of the ISO New England Inc. (ISO-NE) Vermont zone hourly locational marginal price for energy;

~~(ii)(B)~~ a two-year rolling average of the value of the plant's capacity in the ISO-NE forward capacity market;

~~(iii)(C)~~ the value of avoided line losses due to the plant as a fixed increment of the energy and capacity values;

~~(iv)(D)~~ a two-year rolling average of the market value of environmental attributes, including renewable energy credits; and

~~(v)(E)~~ the value of a 10- or 20-year contract.

(4) The Commission shall determine the price to be paid under this subsection (p) ~~no~~ not later than January 15, 2013.

(A)(i) Annually by January 15 commencing in 2014, the Commission shall recalculate and adjust the energy, and capacity, and environmental attribute elements of the price under ~~subdivisions (3)(B)(i) and (ii)~~ subdivision (3) of this subsection (p). The recalculated and adjusted energy, and capacity, and environmental attribute elements shall apply to all contracts executed under this subdivision, whether or not the contracts were executed prior to the adjustments.

(ii) the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.

(B) With respect to the price elements specified in subdivisions ~~(3)(B)(iii)~~(3)(C) (avoided line losses), ~~(iv) (environmental attributes)~~, and ~~(v)(E)~~ (value of long-term contract) of this subsection (p):

(i) These elements shall remain fixed at their values at the time a contract is signed for the duration of the contract, ~~except that the Commission may periodically adjust the value of environmental attributes that are applicable to an executed contract based upon whether the plant becomes certified by LIHI or loses such certification.~~

(ii) The Commission annually may adjust these elements for inclusion in contracts that are executed after the date any such adjustments are made.

~~(5) In addition to the limits specified in subdivision (3) of this subsection (p), in no event shall an existing hydroelectric plant receive a price in one year higher than its price in the previous year, adjusted for inflation using the CPI, except that if a plant becomes certified by LIHI, the Commission may add to the price any incremental increase in the value of the plant's environmental attributes resulting from such certification.~~

~~(6) Once a plant owner has executed a contract for a standard offer under this subsection (p), the plant owner shall continue to receive the pricing terms agreed on in that contract regardless of whether the Commission subsequently changes any pricing terms under this subsection.~~

~~(7)~~(6) Capacity of existing hydroelectric plants executing a standard offer contract under this subsection shall not count toward the cumulative capacity amount of subsection (c) of this section.

* * * Public Records Exemption * * *

Sec. 16. 1 V.S.A. § 317 is amended to read:

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

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(27) Information and records provided to the Department of Public Service or the Public Utility Commission by an individual for the purposes of having the Department or Commission assist that individual in resolving a dispute with a utility regulated by the Department or Commission, or by the utility or any other person in connection with the individual's dispute.

* * *

* * * Certificate of Public Good Hearings * * *

Sec. 17. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

* * *

(4)(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a ~~non~~technical nonevidentiary public hearing on ~~each~~ a petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at ~~the~~ a public hearing, the Commission shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

(B) The Public Utility Commission shall hold ~~technical~~ evidentiary hearings at locations that it selects in any case conducted under this section in which contested issues remain or when any party to a case requests that an evidentiary hearing be held. In the event a case is fully resolved and no party requests a hearing, the Commission may exercise its discretion and determine that an evidentiary hearing is not necessary to protect the interests of the parties or the public, or for the Commission to reach its decision on the matter.

* * *

(i)(1) No company, as defined in sections 201 and 203 of this title, without approval by the Commission, after giving notice of such investment, or filing a copy of that contract, with the Commission and the Department at least 30 days prior to the proposed effective date of that contract or investment:

* * *

(3) The Commission, upon its own motion, or upon the recommendation of the Department, may determine to initiate an investigation. If the Commission does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Commission determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the Department, and such other persons as the Commission determines are appropriate. The Commission shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Commission may hold informal, public, or ~~technical~~ evidentiary hearings on the proposed investment or contract.

* * *

* * * Rate Change Hearings * * *

Sec. 18. 30 V.S.A. § 225 is amended to read:

§ 225. RATE SCHEDULES

* * *

(b) Immediately upon receipt of notice of a change in a rate schedule filed by a company, the Department shall investigate the justness and reasonableness of that change. ~~At least 15 days prior to the date on which the change is to become effective~~ Within 30 days of receipt of this notice, the Department shall either report to the Commission the results of its investigations together with its recommendation for acceptance of the change, or it shall notify the Commission and other parties that it opposes the change. If the Department of Public Service reports its acceptance of the change in rates, the Commission may accept the change, or it may on its own motion conduct an investigation into the justness and reasonableness of the change, or it may order the Department to appear before it to justify its recommendation to accept the change. In no event shall a change go into effect without the approval of the Commission, except when a rate change is suspended and temporary or permanent rates are allowed to go into effect pursuant to subsection 226(a) or 227(a) of this title. The Commission shall consider the Department's recommendation and take action pursuant to sections 226 and 227 of this title ~~before the date on which the changed rate is to become effective~~ within 45 days of receipt of notice of a change in a rate schedule. In the event that the Department opposes the change, the Commission shall hear evidence on the matter and make such orders as justice and law require. In any hearing on a change in rates, whether or not opposed by the Department, the Commission

may request the appearance of the Attorney General or appoint a member of the Vermont bar to represent the public or the State.

Sec. 19. 30 V.S.A. § 226 is amended to read:

§ 226. RATES, HEARINGS, BOND

* * *

(c) If the Department does not oppose the change as provided in section 225 of this title, five persons adversely affected by the change, or, if the change adversely affects ~~less~~ fewer than five persons, any one person so affected may apply at their own expense to the Commission by petition alleging why the change is unreasonable and unjust and asking that the Commission investigate the matter and make such orders as justice and law require. The petition shall be filed ~~at least seven days before the date the rates become effective~~ within 38 days of the date of the notice of rate change that was filed pursuant to section 225 of this title. The Commission may suspend the rates as a result of the petition. The Commission may hold a hearing on the petition. Whether or not a hearing is held, the Commission shall make such orders as justice and law require.

Sec. 20. 30 V.S.A. § 227 is amended to read:

§ 227. SUSPENSION, REFUND

(a) If the Commission orders that a change shall not go into effect until final determination of the proceedings, it shall proceed to hear the matter as promptly as possible and shall make its determination within seven months from the date that ~~the change otherwise would have gone into effect~~ it orders the investigation. If a company files for a change in rate design among classes of ratepayers, and the company has a rate case pending before the Commission, the Commission shall make its determination on the rate design change within seven months after the rate case is decided by the Commission. If the Commission fails to make its determination within the time periods set by this subsection, the changed rate schedules filed by the company shall become effective and final.

* * *

Sec. 21. 30 V.S.A. § 11 is amended to read:

§ 11. PLEADINGS; RULES OF PRACTICE; HEARINGS; FINDINGS OF FACT

(a) The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules which that include, among other things, provisions that:

* * *

(2) A prehearing scheduling conference shall be ordered in every contested rate case. At such conference the Commission may require the State or any person opposing such rate increase to specify what items shown by the filed exhibits are conceded. Further proof of conceded items shall not be required.

* * *

Sec. 22. 30 V.S.A. § 10 is amended to read:

§ 10. SERVICE OF PROCESS; NOTICE OF HEARINGS; TEMPORARY RESTRAINING ORDERS

* * *

(c) A prehearing scheduling or procedural conference may be held upon any reasonable notice.

* * *

Sec. 23. PUBLIC UTILITY COMMISSION; POSITION

Establishment of a new permanent exempt position of one Deputy Clerk within the Public Utility Commission is authorized in fiscal year 2020.

Sec. 24. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

(For text see House Journal March 19, 2019)

H. 526

An act relating to town clerk recording fees and town restoration and preservation reserve funds

The Senate proposes to the House to amend the bill as follows:

First: In Sec. 9, 24 V.S.A. § 1159, subdivision (a)(2), immediately following the words "certificate of the date" by inserting the words and time

Second: In Sec. 9, 24 V.S.A. § 1159, subsection (b), immediately following the words "and the date" by inserting the words and time

(For text see House Journal March 26, 2019)

Action Postponed Until May 7, 2019
Senate Proposal of Amendment

H. 523

An act relating to miscellaneous changes to the State's retirement systems

The Senate proposes to the House to amend the bill as follows:

In Sec. 4, Law Enforcement Retirement Benefits Study Committee; Recommendations; Report, by striking out subsection (e) in its entirety and by relettering the remaining subsections in Sec. 4 to be alphabetically correct.

(For text see House Journal March 20, 2019)

NOTICE CALENDAR

Favorable with Amendment

S. 131

An act relating to insurance and securities

Rep. Jerome of Brandon, for the Committee on Commerce and Economic Development, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Insurance Regulatory Sandbox; Sunset * * *

Sec. 1. 8 V.S.A. § 15a is added to read:

§ 15a. INSURANCE REGULATORY SANDBOX; INNOVATION

WAIVER; SUNSET

(a) Subject to the limitations specified in subsection (g) of this section, the Commissioner may grant a variance or waiver (innovation waiver or waiver) with respect to the specific requirements of any insurance law, regulation, or bulletin if a person subject to that law, regulation, or bulletin demonstrates to the Commissioner's satisfaction that:

(1) the application of the law, regulation, or bulletin would prohibit the introduction of an innovative or more efficient insurance product or service that the applicant intends to offer during the period for which the proposed waiver is granted;

(2) the public policy goals of the law, regulation, or bulletin will be or have been achieved by other means;

(3) the waiver will not substantially or unreasonably increase any risk to consumers; and

(4) the waiver is in the public interest.

(b) An application for an innovation waiver shall include the following information:

(1) the identity of the person applying for the waiver;

(2) a description of the product or service to be offered if the waiver is granted, including how the product or service functions and the manner and terms on which it will be offered;

(3) an explanation of the potential benefits to consumers of the product or service;

(4) an explanation of the potential risks to consumers posed by the product or service and how the applicant proposes to mitigate such risks;

(5) an identification of the statutory or regulatory provision that prohibits the introduction, sale, or offering of the product or service; and

(6) any additional information required by the Commissioner.

(c)(1) An innovation waiver shall be granted for an initial period of up to 12 months, as deemed appropriate by the Commissioner.

(2) Prior to the end of the initial waiver period, the Commissioner may grant a one-time extension for up to an additional 12 months. An extension request shall be made to the Commissioner at least 30 days prior to the end of the initial waiver period and shall include the length of the extension period requested and specific reasons why the extension is necessary. The Commissioner shall grant or deny an extension request before the end of the initial waiver period.

(d) An innovation waiver shall include any terms, conditions, and limitations deemed appropriate by the Commissioner, including limits on the amount of premium that may be written in relation to the underlying product or service and the number of consumers that may purchase or utilize the underlying product or service; provided that in no event shall a product or service subject to an innovation waiver be purchased or utilized by more than 10,000 Vermont consumers.

(e) A product or service offered pursuant to an innovation waiver shall include the following written disclosures to consumers in clear and conspicuous form:

(1) the name and contact information of the person providing the product or service;

(2) that the product or service is authorized pursuant to an innovation

waiver for a temporary period of time and may be discontinued at the end of the waiver period, the date of which shall be specified;

(3) contact information for the Department, including how a consumer may file a complaint with the Department regarding the product or service; and

(4) any additional disclosures required by the Commissioner.

(f) The Commissioner's decision to grant or deny a waiver or extension shall not be subject to the contested-case provisions of the Vermont Administrative Procedures Act.

(g)(1) Pursuant to the authority granted by this section, the Commissioner shall not grant a waiver with respect to any of the following:

(A) Any law, regulation, bulletin, or other provision that is not subject to the Commissioner's jurisdiction under Title 8;

(B) section 3304, 3366, or 6004(a)–(b) of this title or any other requirement as to the minimum amount of paid-in capital or surplus required to be possessed or maintained by any person;

(C) chapter 107 (concerning health insurance), 112 (concerning the Vermont Life and Health Insurance Guaranty Association Act), 117 (concerning workers' compensation insurance), 129 (concerning insurance trade practices), or 131 (concerning licensing requirements), and chapter 154 (concerning long-term care insurance) of this title or any regulations or bulletins directly relating thereto;

(D) section 4211 (concerning volunteer drivers) of this title;

(E) any law, regulation, or bulletin required for the Department to maintain its accreditation by the National Association of Insurance Commissioners unless said law or regulation permits variances or waivers;

(F) the application of any taxes or fees; and

(G) any other law or regulation deemed ineligible by the Commissioner.

(2) The authority granted to the Commissioner under this section shall not be construed to allow the Commissioner to grant or extend a waiver that would abridge the recovery rights of Vermont policyholders.

(h) A person who receives a waiver under this section shall be required to make a deposit of cash or marketable securities with the State Treasurer in an amount subject to such conditions and for such purposes as the Commissioner determines necessary for the protection of consumers.

(i)(1) At least 30 days prior to granting an innovation waiver, the Commissioner shall provide public notice of the draft waiver by publishing the following information:

(A) the specific statute, regulation, or bulletin to which the draft waiver applies;

(B) the proposed terms, conditions, and limitations of the draft waiver;

(C) the proposed duration of the draft waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(j)(1) If a waiver is granted pursuant to this section, the Commissioner shall provide public notice of the existence of the waiver by providing the following information:

(A) the specific statute, regulation, or bulletin to which the waiver applies;

(B) the name of the person who applied for and received the waiver;

(C) the duration of and any other terms, conditions, or limitations of the waiver; and

(D) any additional information deemed appropriate by the Commissioner.

(2) The notice requirement of this subsection may be satisfied by publication on the Department's website.

(k) The Commissioner, by regulation, shall adopt uniform procedures for the submission, granting, denying, monitoring, and revocation of petitions for a waiver pursuant to this section. The procedures shall set forth requirements for the ongoing monitoring, examination, and supervision of, and reporting by, each person granted a waiver under this section and shall permit the Commissioner to attach reasonable conditions or limitations on the conduct permitted pursuant to a waiver. The procedures shall provide for an expedited application process for a product or service that is substantially similar to one for which a waiver has previously been granted by the Commissioner. The procedures shall include an opportunity for public comment on draft waivers under consideration by the Commissioner.

(l) Upon expiration of an innovation waiver, the person who obtained the

waiver shall cease all activities that were permitted only by the waiver and comply with all generally applicable laws and regulations.

(m) The ability to grant a waiver under this section shall not be interpreted to limit or otherwise affect the authority of the Commissioner to exercise discretion to waive or enforce requirements as permitted under any other section of this title or any regulation or bulletin adopted pursuant thereto.

(n)(1) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(A) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(B) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(C) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(D) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(E) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

(2) In the report submitted to the General Assembly on or before January 15, 2020, the Commissioner shall include a recommendation on whether there are any opportunities for the State to monetize its role in developing innovative insurance products and services that are subsequently offered in other jurisdictions. The Commissioner's recommendation shall ensure that any regulatory financial incentives under a monetization proposal would not conflict with the best interests of Vermont policyholders or the public good of the State.

(o) No new waivers or extensions shall be granted after July 1, 2021.

(p) This section shall be repealed on July 1, 2023.

* * * Capital and Surplus Requirements * * *

Sec. 2. [Deleted.]

Sec. 3. 8 V.S.A. § 3366 is amended to read:

§ 3366. ASSETS OF COMPANIES

(a)(1) ~~Such~~ A foreign or alien insurer authorized to do business in this State shall possess and thereafter maintain unimpaired paid-in capital or basic surplus of not less than \$2,000,000.00 and, when first so authorized, shall possess and maintain free surplus of not less than \$3,000,000.00. ~~Such~~

(2) The capital and surplus shall be in the form of cash or marketable securities, a portion of which may be held on deposit with the State Treasurer, such securities as designated by the insurer and approved by the Commissioner, in an amount and subject to ~~such~~ conditions determined by the Commissioner. ~~Such~~ The conditions shall include a requirement that any interest or other earnings attributable to such cash or marketable securities shall inure to the benefit of the insurer until such time as the Commissioner determines that the deposit must be used for the benefit of the policyholders of the insurer or some other authorized public purpose relating to the regulation of the insurer.

(3) The Commissioner may prescribe additional capital or surplus for all insurers authorized to transact the business of insurance based upon the type, volume, and nature of insurance business transacted. The Commissioner may reduce or waive the capital and surplus amounts required by this section pursuant to a plan of dissolution for the company approved by the Commissioner.

(b) The express purpose of subsection (a) of this section and the Commissioner's power to require the deposit of cash or marketable securities set forth therein is to protect the interests of Vermont policyholders in the event of the insolvency of the insurer. Except to the extent it would contravene applicable provisions of 9A V.S.A. Article 9, the State of Vermont shall be deemed to control the funds on deposit and to have a lien on the funds for the benefit of the Vermont policyholders affected by the insolvency. The lien so created shall be superior to any lien filed by a general creditor of the insurer.

* * * Domestic Surplus Lines Insurer; Home State Surplus Lines

Premium Taxation * * *

Sec. 4. 8 V.S.A. § 5022 is amended to read:

§ 5022. DEFINITIONS

* * *

(b) As used in this chapter:

(1) “Admitted insurer” means an insurer possessing a certificate of authority licensed to transact business in this State issued by the Commissioner pursuant to section 3361 of this title. For purposes of this chapter, “admitted insurer” shall not include a domestic surplus lines insurer.

* * *

(3) “Domestic insurer” means any insurer that has been chartered by, incorporated, organized, or constituted within or under the laws of this State.

(4) “Domestic risk” means a subject of insurance which that is resident, located, or to be performed in this State.

(5) “Domestic surplus lines insurer” means a domestic insurer with which insurance coverage may be placed under this chapter.

~~(4)~~(6) “To export” means to place surplus lines insurance with a non-admitted insurer.

~~(5)~~(7) “Home state” means, with respect to an insured:

(A)(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(ii) if 100 percent of the insured risk is located outside the state referred to in subdivision (A)(i) of this subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) If more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term “home state” means the home state, as determined pursuant to subdivision (A) of this subdivision ~~(5)~~(7), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

~~(6)~~(8) “NAIC” means the National Association of Insurance Commissioners.

~~(7)~~(9) “Surplus lines broker” means an individual licensed under this chapter and chapter 131 of this title.

~~(8)~~(10) “Surplus lines insurance” means coverage not procurable from admitted insurers.

~~(9)~~(11) “Surplus lines insurer” means a non-admitted insurer with which insurance coverage may be placed under this chapter.

Sec. 5. 8 V.S.A. § 5023a is added to read:

§ 5023a. DOMESTIC SURPLUS LINES INSURER; AUTHORIZED

(a) Surplus lines insurance may be procured from a domestic surplus lines insurer if all of the following criteria are met:

(1) The board of directors of the insurer has adopted a resolution seeking certification as a domestic surplus lines insurer and the Commissioner has approved such certification.

(2) The insurer is already eligible to offer surplus lines insurance in at least one other state besides Vermont.

(3) The insurer meets the requirements of section 5026 of this title.

(4) All other requirements of this chapter are met.

(b) The requirements of 8 V.S.A. § 80 shall not apply to domestic surplus lines insurers. A domestic surplus lines insurer shall be deemed to be a non-admitted insurer for purposes of chapter 138 of this title.

Sec. 6. 8 V.S.A. § 5024 is amended to read:

§ 5024. CONDITIONS FOR PLACEMENT OF INSURANCE

(a) Insurance coverage, except as described in section 5025 of this chapter, shall not be placed with a ~~non-admitted~~ surplus lines insurer unless the full amount of insurance required is not reasonably procurable from admitted insurers actually transacting that kind and class of insurance in this State; and the amount of insurance exported shall be only the excess over the amount procurable from admitted insurers actually transacting and insuring that kind and class of insurance.

* * *

Sec. 7. 8 V.S.A. § 5026 is amended to read:

§ 5026. SOLVENT INSURERS REQUIRED

(a) Where Vermont is the home state of the insured, surplus lines brokers shall not knowingly place or continue surplus lines insurance with ~~non-admitted~~ surplus lines insurers who are insolvent or unsound financially, and in no event shall any surplus lines broker place any insurance with a non-admitted insurer unless such insurer:

* * *

(b) Notwithstanding the capital and surplus requirements of this section, a ~~non-admitted~~ surplus lines insurer may receive approval upon an affirmative finding of acceptability by the Commissioner. The finding shall be based upon such factors as quality of management, capital, and surplus of any parent company, company underwriting profit and investment-income trends, market

availability, and company record and reputation within the industry. In no event, however, shall the Commissioner make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$4,500,000.00.

* * *

Sec. 8. 8 V.S.A. § 5027 is amended to read:

§ 5027. EVIDENCE OF THE INSURANCE; CHANGES; PENALTY

(a) Where Vermont is the home state of the insured, the surplus lines broker, upon placing a domestic risk with a surplus lines insurer, either domestic or foreign, shall promptly deliver to the insured the policy issued by the surplus lines insurer, or if such policy is not then available, a certificate, cover note, or other confirmation of insurance, showing the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and surplus lines insurer. If the risk is assumed by more than one insurer, the document or documents shall state the name and address and proportion of the entire risk assumed by each insurer.

* * *

Sec. 9. 8 V.S.A. § 5028 is amended to read:

§ 5028. INFORMATION REQUIRED ON CONTRACT

Where Vermont is the home state of the insured, each surplus lines broker through whom a surplus lines insurance coverage is procured shall endorse on the outside of the policy and on any confirmation of the insurance, his or her name, address and license number, and the name and address of the producer, if any, through whom the business originated. Where such coverage is placed with an eligible surplus lines insurer there shall be stamped or written conspicuously in no smaller than 10 point boldface type of a contrasting color upon the first page of the policy and the confirmation of insurance if any, "The company issuing this policy ~~has not been licensed by the State of Vermont~~ is a surplus lines insurer and the rates charged have not been approved by the Commissioner of Financial Regulation. Any default on the part of the insurer is not covered by the Vermont Insurance Guaranty Association."

Sec. 10. 8 V.S.A. § 5029 is amended to read:

§ 5029. SURPLUS LINES INSURANCE VALID

(a) Insurance contracts procured as surplus lines insurance from ~~non-~~admitted surplus lines insurers in accordance with this chapter shall be valid and enforceable to the same extent as insurance contracts procured from

admitted insurers.

(b) The insurance trade practices provisions of sections 4723 and 4724(1)–(7) and (9)–(18) of this title, and the cancellation provisions of sections 3879–3883 (regarding fire and casualty policies) and 4711–4715 (regarding commercial risk policies) of this title shall apply to surplus lines insurers, both domestic and foreign.

(c) Other provisions of this title not specifically applicable to surplus lines insurers shall not apply.

Sec. 11. 8 V.S.A. § 5030 is amended to read:

§ 5030. LIABILITY OF ~~NON-ADMITTED~~ SURPLUS LINES INSURER
FOR LOSSES AND UNEARNED PREMIUMS

If a ~~non-admitted~~ surplus lines insurer has assumed a surplus lines coverage through the intervention of a licensed surplus lines broker of this State, and if the premium for that coverage has been received by that broker, then in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer shall be deemed to have received that premium and the insurer shall be liable to the insured for losses covered by such insurance and for any return premiums due on that insurance to the insured whether or not the broker is indebted to the insurer for such insurance or for any other cause.

Sec. 12. 8 V.S.A. § 5035 is amended to read:

§ 5035. SURPLUS LINES TAX

(a) Where Vermont is the home state of the insured, gross premiums charged, less any return premiums, for surplus lines coverages placed with ~~non-admitted~~ surplus lines insurers are subject to a premium receipts tax of three percent, which shall be collected from the insured by the surplus lines broker at the time of delivery of policy or other confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance shall be returned to the policyholder by the surplus lines broker. Nothing contained in this section will preclude a surplus lines broker from charging a fee to the purchaser of the contract sufficient to recover the amount of this tax. ~~Where the insurance covers properties, risks, or exposures located or to be performed both in and out of this State, the sum payable shall be computed based on gross premiums charged, less any return premiums, as follows:~~

~~(1) An amount equal to three percent on that portion of the premiums applicable to properties, risks, or exposures located or to be performed in Vermont; plus~~

~~(2) An amount equal to a percentage on that portion of the premiums applicable to properties, risks, or exposures located or to be performed outside Vermont. Such percentage shall be determined based on the laws of the jurisdiction within which the property, risk, or exposure is located or to be performed.~~

* * *

Sec. 13. 8 V.S.A. § 5036 is amended to read:

§ 5036. DIRECT PLACEMENT OF INSURANCE

* * *

~~(b) If any such insurance also covers a subject located or to be performed outside this State, a proper pro rata portion of the entire premium shall be allocated to the subjects of insurance located or to be performed in this State.~~

~~(e) Any insurance with a non-admitted insurer procured through negotiations or by application in whole or in part made within this State, where this State is the home state of the insured, or for which premium in whole or in part is remitted directly or indirectly from within this State, shall be deemed insurance subject to subsection (a) of this section.~~

~~(d)(c) A tax at the rate of three percent of the gross amount of premium, less any return premium, in respect of risks located in this State, shall be levied upon an insured who procures insurance subject to subsection (a) of this section. Before March 1 of the year after the year in which the insurance was procured, continued, or renewed, the insured shall remit to the Commissioner the amount of the tax. The Commissioner before June 1 of each year shall certify and transmit to the Commissioner of Taxes the sums so collected.~~

~~(e)(d) The tax shall be collectible from the insured by civil action brought by the Commissioner.~~

Sec. 14. 8 V.S.A. § 5038 is amended to read:

§ 5038. ACTIONS AGAINST INSURER; SERVICE OF PROCESS

* * *

(b) Each ~~non-admitted~~ surplus lines insurer ~~assuming that assumes~~ a surplus lines coverage shall be deemed thereby to have subjected itself to this chapter.

* * *

* * * HIV-Related Tests * * *

Sec. 15. 8 V.S.A. § 4724 is amended to read:

§ 4724. UNFAIR METHODS OF COMPETITION OR UNFAIR OR
DECEPTIVE ACTS OR PRACTICES DEFINED

The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:

* * *

(7) Unfair discrimination; arbitrary underwriting action.

* * *

(C)(i) Inquiring or investigating, directly or indirectly as to an applicant's, an insured's or a beneficiary's sexual orientation, or gender identity in an application for insurance coverage, or in an investigation conducted by an insurer, reinsurer, or insurance support organization in connection with an application for such coverage, or using information about gender, marital status, medical history, occupation, residential living arrangements, beneficiaries, zip codes, or other territorial designations to determine sexual orientation or gender identity;

* * *

(iii) Making adverse underwriting decisions because medical records or a report from an insurance support organization reveal that an applicant or insured has demonstrated ~~AIDS-related~~ HIV-related concerns by seeking counseling from health care professionals;

* * *

(20) HIV-related tests. Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration ~~and the Commissioner~~, included in the current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens, used to determine the existence of HIV antibodies or antigens in the blood, ~~urine, or oral mucosal transudate (OMT)~~.

* * *

(B)(i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be

granted, the individual shall be informed, by means of a printed information statement ~~which that~~ shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:

(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont Department of Health AIDS hotline and the Centers for Disease Control and Prevention; and

(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the State Vermont Department of Health, which shall remain confidential, or to obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and

* * *

~~(ii) In addition, before drawing blood or obtaining a sample of the urine or OMT for the HIV-related test or tests, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. If an OMT test is administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).~~

~~(C)(i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the Commissioner pursuant to section 3541 of this title; and~~

~~(ii) Any testing procedure shall be filed and approved by the Commissioner in consultation with the Commissioner of Health.~~

~~(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont Department of Health. Any requests for approval under this subdivision shall be acted upon within 120 days. The Department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health~~

~~Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~

~~(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the Commissioner and the U.S. Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample, or an OMT sample for that retest. This retest shall be in addition to the opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).~~

~~(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.~~

~~(D) HIV-related tests required by insurers or insurance support organizations must be processed in a laboratory certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a, or that meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.~~

~~(E) The test protocol shall be considered positive only if testing results meet the most current Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm or more reliable confirmatory~~

test or test protocol that has been approved by the United States Food and Drug Administration.

(F) If the HIV-1/2 antibody differentiation test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits, or rates under any separate policy or policies held by the individual shall be based upon such indeterminacy. If the HIV-1 NAT test result is negative, a new application for coverage shall not be denied by the insurer. If the HIV-1 NAT test is invalid, the full testing algorithm shall be repeated. No application for coverage shall be denied based on an indeterminate or invalid result. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing any previous HIV-related testing that had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.

(G)(i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:

* * *

(II) in any event, upon the approval by the Commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens updates to the Centers for Disease Control and Prevention recommended laboratory HIV testing algorithm for serum or plasma specimens.

* * *

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

* * *

(d) Laboratory certification and approval	Annual fee shall be:
Drug laboratory approval	\$500.00
Drug laboratory alternate approval	\$300.00
Drug laboratory approval renewal	\$300.00
HIV laboratory approval	\$300.00
HIV laboratory alternate approval	\$100.00

HIV laboratory approval renewal	\$100.00
HIV laboratory (insurance) approval	\$500.00
HIV laboratory (insurance) alternate approval	\$300.00
HIV laboratory (insurance) approval renewal	\$300.00

* * *

* * * Victim Restitution Fund * * *

Sec. 17. 9 V.S.A. § 5616 is added to read:

§ 5616. VERMONT VICTIM RESTITUTION FUND

(a) Purpose. The purpose of this section is to provide restitution assistance to victims of securities violations who:

(1) were awarded restitution in a final order issued by the Commissioner or were awarded restitution in the final order in a legal action initiated by the Commissioner;

(2) have not received the full amount of restitution ordered before the application for restitution assistance is due; and

(3) demonstrate to the Commissioner's satisfaction that there is no reasonable likelihood that they will receive the full amount of restitution in the future.

(b) Definitions. As used in this section,

(1) "Claimant" means a person who files an application for restitution assistance under this section on behalf of a victim. The claimant and the victim may be the same but do not have to be the same. The term includes the named party in a restitution award in a final order, the executor of a named party in a restitution award in a final order, and the heirs and assigns of a named party in a restitution award in a final order.

(2) "Final order" means a final order issued by the Commissioner or a final order in a legal action initiated by the Commissioner.

(3) "Fund" means the Victim Restitution Special Fund created by this section.

(4) "Securities violation" means a violation of this chapter and any related administrative rules.

(5) "Victim" means a person who was awarded restitution in a final order.

(6) "Vulnerable person" means:

(A) a person who meets the definition of vulnerable person under 33 V.S.A. § 6902(14); or

(B) a person who is at least 60 years of age.

(c) Eligibility.

(1) A natural person who was a resident of Vermont at the time of the alleged fraud is eligible for restitution assistance.

(2) The Commissioner shall not award securities restitution assistance under this section:

(A) to more than one claimant per victim;

(B) unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the fund is due;

(C) if there was no award of restitution in the final order; or

(D) to a claimant who has not exhausted his or her appeal rights.

(d) Denial of Assistance. The Commissioner shall not award restitution assistance if the victim:

(1) sustained the monetary injury as a result of:

(A) participating or assisting in the securities violation; or

(B) attempting to commit or committing the securities violation;

(2) profited or would have profited from the securities violation; or

(3) is an immediate family member of the person who committed the securities violation.

(e) Application for Restitution Assistance and Maximum Amount of Restitution Assistance Award.

(1) The Commissioner may adopt procedures and forms for application for restitution assistance under this section.

(2) An application must be received by the Department within two years after the deadline for payment of restitution established in the final order.

(3) Except as provided in subdivision (4) of this subsection, the maximum award from the fund for each claimant shall be the lesser of \$25,000.00 or 25 percent of the amount of unpaid restitution awarded in a final order.

(4) If the claimant is a vulnerable person, the maximum award from the fund shall be the lesser of \$50,000.00 or 50 percent of the amount of unpaid restitution awarded in the final order

(f) Victim Restitution Fund. The Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section. All monies received by the State by reason of grant or donation for use in providing uncompensated victims restitution shall be deposited into the Victim Restitution Special Fund. Interest earned on the fund shall be retained in the Fund.

(g) Award Not Subject to Execution, Attachment, or Garnishment. An award made by the Commissioner under this section is not subject to execution, attachment, garnishment, or other process.

(h) State's Liability for Award. The Commissioner shall have the discretion to suspend applications and awards based on the solvency of the fund. The State shall not be liable for any determination made under this section.

(i) Subrogation of Rights of State.

(1) The State is subrogated to the rights of the person awarded restitution under this chapter to the extent of the award.

(2) The subrogation rights are against the person who committed the securities violation or a person liable for the pecuniary loss.

(j) Rulemaking Authority. The Commissioner may adopt rules to implement this section.

(k) Bulletin. The Commissioner shall publish a bulletin defining the term "immediate family member" for purposes of this section

* * * New England Equity Crowdfunding * * *

Sec. 18. 9 V.S.A. § 5305 is amended to read:

§ 5305. SECURITIES REGISTRATION FILINGS

* * *

(b) A person filing a registration statement shall pay a filing fee of \$600.00. A person filing a registration statement in connection with the New England Crowdfunding Initiative shall be exempt from the filing fee requirement. Open-end investment companies shall pay a registration fee and an annual renewal fee for each portfolio as long as the registration of those securities remains in effect. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 5306 of this

title, the Commissioner shall retain the fee.

* * *

* * * Surplus Lines Insurance Compact; Repeal * * *

Sec. 19. REPEAL

8 V.S.A. chapter 138A (Surplus Lines Insurance Multi-state Compliance Compact) is repealed.

* * * Insurance Producers; Licensing Requirements; Definitions * * *

Sec. 20. 8 V.S.A. § 4791 is amended to read:

§ 4791. DEFINITIONS

As used in this chapter:

* * *

(3) “Adjuster” means any person who investigates claims and or negotiates settlement of claims arising under policies of insurance in behalf of insurers under such policies, or who advertises or solicits business from insurers as an adjuster. Lawyers settling claims of clients shall not be considered an adjuster. A license as an adjuster shall not be required of an official or employee of a domestic fire or casualty insurance company or of a duly licensed resident insurance producer of a domestic or duly licensed foreign insurer who is authorized by such insurer to appraise losses under policies issued by such insurer.

(4) “Public adjuster” means any person who investigates claims and or negotiates settlement of claims arising under policies of insurance in behalf of the insured under such policies or who advertises or solicits business as such adjuster. Lawyers settling claims of clients shall not be deemed to be insurance public adjusters.

* * *

* * * Fair Credit Reporting; Definition of Credit Report * * *

Sec. 21. 9 V.S.A. § 2480a(3) is amended to read:

(3) “Credit report” means a consumer report, as defined in 15 U.S.C. § 1681a, that is used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer’s eligibility for credit for personal, family, or household purposes any written, oral, or other communication of any information by a credit reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation,

personal characteristics, or mode of living, including an investigative credit report. The term does not include:

(A) a report containing information solely as to transactions or experiences between the consumer and the person making the report; or

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device.

* * * Effective Date * * *

Sec. 22. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

(Committee vote: 10-0-1)

(For text see Senate Journal April 3, 2019)

Rep. Beck of St. Johnsbury, for the Committee on Ways and Means, recommends the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Commerce and Economic Development and when further amended as follows:

First: In Sec. 1, 8 V.S.A. § 15a, by striking out subsection (n) in its entirety and inserting in lieu thereof a new subsection (n) to read as follows:

(n) Biannually, beginning on January 15, 2020, the Commissioner shall submit a report to the General Assembly providing the following information:

(1) the total number of petitions for waivers that have been received, granted, and denied by the Commissioner;

(2) for each waiver granted by the Commissioner, the information specified under subsection (f) of this section;

(3) a list of any regulations or bulletins that have been adopted or amended as a result of or in connection with a waiver granted under this section;

(4) with respect to each statute to which a waiver applies, the Commissioner's recommendation as to whether such statute should be continued, eliminated, or amended in order to promote innovation and establish a uniform regulatory system for all regulated entities; and

(5) a list of any waivers that have lapsed or been revoked and, if revoked, a description of other regulatory or disciplinary actions, if any, that resulted in, accompanied, or resulted from such revocation.

Second: By striking out Sec. 8, 8 V.S.A. § 5027, in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. [Deleted.]

Third: By striking out Sec. 16, 18 V.S.A. § 501b, in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

* * *

(d) Laboratory certification and approval	Annual fee shall be:
Drug laboratory approval	\$500.00
Drug laboratory alternate approval	\$300.00
Drug laboratory approval renewal	\$300.00
HIV laboratory approval	\$300.00
HIV laboratory alternate approval	\$100.00
HIV laboratory approval renewal	\$100.00
HIV laboratory (insurance) approval	\$500.00
HIV laboratory (insurance) alternate approval	\$300.00
HIV laboratory (insurance) approval renewal	\$300.00

* * *

Fourth: In Sec. 17, 9 V.S.A. § 5616, by striking out subsection (f) in its entirety and inserting in lieu thereof a new subsection (f) to read as follows:

(f) Victim Restitution Fund. The Victim Restitution Special Fund, pursuant to 32 V.S.A. chapter 7, subchapter 5, is created to provide funds for the purposes specified in this section. All monies received by the State by reason of grant or donation for use in providing uncompensated victims restitution shall be deposited into the Victim Restitution Special Fund. The Department may direct a party to deposit a sum not to exceed 15 percent of the total settlement amount into the Fund in conjunction with settling a State securities law enforcement matter. Interest earned on the fund shall be retained in the Fund.

(Committee Vote: 10-0-1)

Constitutional Proposal

Prop 5 Declaration of rights; right to personal reproductive liberty

Third Day on the Notice Calendar

Rep. Pugh of South Burlington for Human Services.

SENATE CHAMBER

PROPOSED AMENDMENT TO THE CONSTITUTION
OF THE STATE OF VERMONT

Offered by: Senators Ashe, Balint, Lyons and Sears

Subject: Declaration of rights; right to personal reproductive liberty

PROPOSAL 5

Sec. 1. PURPOSE

(a) This proposal would amend the Constitution of the State of Vermont to ensure that every Vermonter is afforded personal reproductive liberty. The Constitution is our founding legal document stating the overarching values of our society. This amendment is in keeping with the values espoused by the current Vermont Constitution. Chapter I, Article 1 declares “That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights.” Chapter I, Article 7 states “That government is, or ought to be, instituted for the common benefit, protection, and security of the people.” The core value reflected in Article 7 is that all people should be afforded all the benefits and protections bestowed by the government, and that the government should not confer special advantages upon the privileged. This amendment would reassert the principles of equality and personal liberty reflected in Articles 1 and 7 and ensure that government does not create or perpetuate the legal, social, or economic inferiority of any class of people. This proposed constitutional amendment is not intended to limit the scope of rights and protections afforded by Article 7 or any other provision in the Vermont Constitution.

(b) The right to reproductive liberty is central to the exercise of personal autonomy and involves decisions people should be able to make free from compulsion of the State. Enshrining this right in the Constitution is critical to ensuring equal protection and treatment under the law and upholding the right of all people to health, dignity, independence, and freedom.

Sec. 2. Article 22 of Chapter I of the Vermont Constitution is added to read:

Article 22. [Personal reproductive liberty]

That an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.

Sec. 3. EFFECTIVE DATE

The amendment set forth in Sec. 2 shall become a part of the Constitution of the State of Vermont on the first Tuesday after the first Monday of November 2022 when ratified and adopted by the people of this State in accordance with the provisions of 17 V.S.A. chapter 32.

(Committee Vote: 8-3-0)

Consent Calendar

Concurrent Resolutions

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before the end of the session of the next legislative day. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar.

H.C.R. 154

House concurrent resolution honoring former Representative David L. Deen of Westminster

H.C.R. 155

House concurrent resolution honoring Fair Haven Grade School principal Wayne Cooke on his exemplary career in public education

H.C.R. 156

House concurrent resolution in memory of Georgia community leader Harold Edmund Wilcox

H.C.R. 157

House concurrent resolution congratulating the Fairbanks Museum & Planetarium on its 125th anniversary of conducting continuous meteorological services

H.C.R. 158

House concurrent resolution congratulating the 2019 St. Johnsbury Academy Hilltoppers boys' Alpine ski team on winning its second consecutive State championship

H.C.R. 159

House concurrent resolution congratulating the 2019 St. Johnsbury Academy Hilltoppers boys' and girls' Alpine skiing teams on winning the trophy for the highest combined score at the State championship meet

H.C.R. 160

House concurrent resolution congratulating the 2019 St. Johnsbury Academy Division I girls' indoor track team on winning the school's fifth consecutive Division I championship

H.C.R. 161

House concurrent resolution congratulating the 2019 St. Johnsbury Academy Hilltoppers Division I championship boys' basketball team

H.C.R. 162

House concurrent resolution congratulating the 2018 St. Johnsbury Academy Hilltoppers Division III championship field hockey team

H.C.R. 163

House concurrent resolution congratulating the St. Johnsbury Academy girls' basketball team on winning the school's second consecutive Division I championship

H.C.R. 164

House concurrent resolution congratulating the 2018–2019 Colchester High School debate program for its outstanding record and State championship victory

For Informational Purposes

Grants and Positions that have been submitted to the Joint Fiscal Committee by the Administration, under 32 V.S.A. §5(a)(2):

- (1) JFO #2959 - \$50,000 from the National Alcohol Beverage Control Association to the VT Dept. of Liquor and Lottery to hire a consultant to review the Department's training program and recommend improvements.

[JFO received 4/15/19]

- (2) JFO #2960 - \$53,768 from the New Hampshire Charitable Foundation to the VT Dept. of Fish & Wildlife. The funding would be used to build up woody materials along streambanks in five priority watersheds to improve brook trout habitat.

[JFO received 4/23/19]

- (3) JFO #2961 – \$232,407 from the USDA Natural Resources Conservation Service to the VT Agency of Agriculture, Food and Markets. The funding would be used to pay for 50% of the salary and benefits, as well as travel costs, for the limited-service position authorized in JFO #2951.
[JFO received 4/23/19]

Public Hearings

May 8, 2019 - Room 11 - 5:00-7:00 P.M. - Hearing held by House Government Operations Committee on Constitutional Proposal 2- Declaration of Rights; Clarifying the prohibition on slavery and indentured servitude.