

Journal of the Senate

TUESDAY, MAY 21, 2019

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Pledge of Allegiance

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

House Proposal of Amendment Concurred In with Amendment

S. 96.

House proposal of amendment to Senate bill entitled:

An act relating to the provision of water quality services.

Was taken up.

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

Sec. 1. 10 V.S.A. chapter 37, subchapter 5 is amended to read:

Subchapter 5. ~~Aquatic Nuisance Control~~ Water Quality Restoration and Improvement

§ 921. DEFINITIONS

As used in this subchapter:

(1) “Administrative cost” means program and project costs incurred by a clean water service provider or a grantee, including costs to conduct procurement, contract preparation, and monitoring, reporting, and invoicing.

(2) “Basin” means a watershed basin designated by the Secretary for use as a planning unit under subsection 1253(d) of this title.

(3) “Best management practice” or “BMP” means a schedule of activities, prohibitions, practices, maintenance procedures, green infrastructure, or other management practices to prevent or reduce water pollution.

(4) “Clean water project” means a best management practice or other program designed to improve water quality to achieve a target established under section 922 of this title that:

(A) is not subject to a permit under chapter 47 of this title, is not subject to the requirements of 6 V.S.A. chapter 215, exceeds the requirements of a permit issued under chapter 47 of this title, or exceeds the requirements of 6 V.S.A chapter 215; and

(B) is within the following activities:

(i) developed lands, sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges;

(ii) natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, and natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration;

(iii) forestry; or

(iv) agriculture.

(5) “Co-benefit” means the additional benefit to local governments and the public provided by or associated with a clean water project, including flood resilience, ecosystem improvement, and local pollution prevention.

(6) “Design life” means the period of time that a clean water project is designed to operate according to its intended purpose.

(7) “Maintenance” means ensuring that a clean water project continues to achieve its designed pollution reduction value for its design life.

(8) “Standard cost” means the projected cost of achieving a pollutant load reduction per unit or per best management practice in a basin.

§ 922. WATER QUALITY IMPLEMENTATION PLANNING AND TARGETS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall include in the implementation plan for the water a strategy for returning the water to compliance with the Vermont Water Quality Standards. With respect to a water that is impaired due to sources outside the State or if there is insufficient data or no data available to quantify reductions required by this subchapter, the Secretary shall not be required to implement the requirements of this subchapter; however, the Secretary shall provide an alternate strategy for attaining water quality

standards in the implementation plan for the water. For waters determined to be subject to this subchapter, the Secretary shall include the following in an implementation plan:

(1) An evaluation of whether implementation of existing regulatory programs will achieve water quality standards in the impaired water. If the Secretary determines that existing regulatory programs will not achieve water quality standards, the Secretary shall determine the amount of additional pollutant reduction necessary to achieve water quality standards in that water. When making this determination, the Secretary may express the pollutant reduction in a numeric reduction or through defining a clean water project that must be implemented to achieve water quality standards.

(2) An allocation of the pollutant reduction identified under subdivision (a)(1) of this section to each basin and the clean water service provider assigned to that basin pursuant to subsection 924(a) of this title. When making this allocation, the Secretary shall consider the sectors contributing to the water quality impairment in the impaired water's boundaries and the contribution of the pollutant from regulated and nonregulated sources within the basin. Those allocations shall be expressed in annual pollution reduction goals and five-year pollution reduction targets as checkpoints to gauge progress and adapt or modify as necessary.

(3) A determination of the standard cost per unit of pollutant reduction. The Secretary shall publish a methodology for determining standard cost pollutant reductions. The standard cost shall include the costs of project identification, project design, and project construction.

(b)(1) The Secretary shall conduct the analysis required by subsection (a) of this section for previously listed waters as follows:

(A) For phosphorous in the Lake Champlain watershed, not later than November 1, 2021.

(B) For phosphorous in the Lake Memphremagog watershed, not later than November 1, 2022.

(2) By not later than November 1, 2023, the Secretary shall adopt a schedule for implementing the requirements of this subchapter in all other previously listed impaired waters, including Lake Carmi, not set forth in subdivision (1) of this subsection.

(c) When implementing the requirements of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

§ 923. QUANTIFICATION OF POLLUTION REDUCTION; CLEAN WATER PROJECTS

(a) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for calculating pollution reduction values associated with a clean water project in that water. When establishing a pollutant reduction value, the Secretary shall consider pollution reduction values established in the TMDL; pollution reduction values established by other jurisdictions; pollution reduction values recommended by organizations that develop pollutant reduction values for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Pollution reduction values established by the Secretary shall be the exclusive method for determining the pollutant reduction value of a clean water project.

(b) After listing a water as impaired on the list of waters required by 33 U.S.C. § 1313(d), the Secretary shall publish a methodology for establishing a design life associated with a clean water project. The design life of a clean water project shall be determined based on a review of values established in other jurisdictions, values recommended by organizations that regularly estimate the design life of clean water projects, actual data documenting the design life of a practice, or a comparison to other similar practices if no other data exists. A design life adopted by the Secretary shall be the exclusive method for determining the design life of a best management practice or other control.

(c)(1) If a person is proposing a clean water project for which no pollution reduction value or design life exists for a listed water, the Secretary shall establish a pollution reduction value or design life for that clean water project within 60 days following a request from the person proposing the clean water project. A pollution reduction value or design life established under this subdivision shall be based on a review of pollution reduction values established in the TMDL; pollution reduction values or design lives established by other jurisdictions; pollution reduction values or design lives recommended by organizations that develop pollutant reduction values or design lives for a clean water project; applicable monitored data with respect to a clean water project, if available; modeled data, if available; actual data documenting the design life of a clean water project; or a comparison to other similar projects or programs if no other data on a pollution reduction value or design life exists. Any estimate developed under this subsection by the Secretary shall be posted on the Agency of Natural Resources' website.

(2) Upon the request of a clean water service provider, the Secretary shall evaluate a proposed clean water project and issue a determination as to whether the proposed clean water project is eligible to receive funding as a part of a Water Quality Restoration Formula Grant awarded by the State pursuant to section 925 of this title.

(d)(1) The Secretary shall conduct the analysis required by subsections (a) and (b) of this section for clean water projects and design lives related to phosphorous not later than November 1, 2021.

(2) By not later than November 1, 2023, the Secretary shall adopt a schedule for implementing the requirements of subsections (a) and (b) of this section for clean water projects and design lives related to all other impairments not listed under subdivision (1) of this subsection.

(e) The Secretary shall periodically review pollution reduction values and design lives established under this section at least every five years to determine the adequacy or accuracy of a pollution reduction value or design life.

(f)(1) When implementing the requirements of subsections (a) and (b) of this section, the Secretary shall follow the type 3 notice process established in section 7714 of this title.

(2) When implementing the requirements of subsection (c) of this section, the Secretary shall follow the type 4 notice process in section 7715 of this title.

§ 924. CLEAN WATER SERVICE PROVIDER; RESPONSIBILITY FOR CLEAN WATER PROJECTS

(a) Clean water service providers; establishment.

(1) On or before November 1, 2020, the Secretary shall adopt rules that assign a clean water service provider to each basin in the Lake Champlain and Lake Memphremagog watersheds for the purposes of achieving pollutant reduction values established by the Secretary for the basin and for identification, design, construction, operation, and maintenance of clean water projects within the basin. For all other impaired waters, the Secretary shall assign clean water service provider no later than six months prior to the implementation of the requirements of this subchapter scheduled by the Secretary under subdivision 922(b)(2) of this title. The rulemaking shall be done in consultation with regional planning commissions, natural resource conservation districts, watershed organizations, and municipalities located within each basin.

(2) An entity designated as a clean water service provider shall be required to identify, prioritize, develop, construct, verify, inspect, operate, and

maintain clean water projects in accordance with the requirements of this subchapter.

(3) The Secretary shall adopt guidance on a clean water service provider's obligation with respect to implementation of this chapter. The Secretary shall provide notice to the public of the proposed guidance and a comment period of not less than 30 days. At a minimum, the guidance shall address the following:

(A) how the clean water service provider integrates prioritizes and selects projects consistent with the applicable basin plan, including how to account for the co-benefits provided by a project;

(B) minimum requirements with respect to selection and agreements with subgrantees;

(C) requirements associated with the distribution of administrative costs to the clean water service provider and subgrantees;

(D) Secretary's assistance to clean water service providers with respect to their maintenance obligations pursuant to subsection (c) of this section; and

(E) the Secretary's strategy with respect to accountability pursuant to subsection (f) of this section.

(4) In carrying out its duties, a clean water service provider shall adopt guidance for subgrants consistent with the guidance from the Secretary developed pursuant to subdivision (a)(3) of this section that establishes a policy for how the clean water service provider will issue subgrants to other organizations in the basin, giving due consideration to the expertise of those organizations and other requirements for the administration of the grant program. The subgrant guidance shall include how the clean water service provider will allocate administrative costs to subgrantees for project implementation and for the administrative costs of the basin water quality council. The subgrant guidance shall be subject to the approval of the Secretary and basin water quality council.

(5) When selecting clean water projects for implementation or funding, a clean water service provider shall prioritize projects identified in the basin plan for the area where the project is located and shall consider the pollutant targets provided by the Secretary and the recommendations of the basin water quality council.

(b) Project identification, prioritization, selection. When identifying, prioritizing, and selecting a clean water project to meet a pollutant reduction value, the clean water service provider shall consider the pollution reduction

value associated with the clean water project, the co-benefits provided by the project, operation, and maintenance of the project, conformance with the tactical basin plan, and other water quality benefits beyond pollution reduction associated with that clean water project. All selected projects shall be entered into the watershed projects database.

(c) Maintenance responsibility. A clean water service provider shall be responsible for maintaining a clean water project or ensuring the maintenance for at least the design life of that clean water project. The Secretary shall provide funding for maintenance consistent with subdivision 1389(e)(1)(A) of this title.

(d) Water quality improvement work. If a clean water service provider achieves a greater level of pollutant reduction than a pollutant reduction goal or five-year target established by the Secretary, the clean water service provider may carry those reductions forward into a future year. If a clean water service provider achieves its pollutant reduction goal or five-year target and has excess grant funding available, a clean water service provider may:

(1) carry those funds forward into the next program year;

(2) use those funds for other eligible project;

(3) use those funds for operation and maintenance responsibilities for existing constructed projects;

(4) use those funds for projects within the basin that are required by federal or State law; or

(5) use those funds for other work that improves water quality within the geographic area of the basin, including protecting river corridors, aquatic species passage, and other similar projects.

(e) Reporting. A clean water service provider shall report annually to the Secretary. The report from clean water service providers shall be integrated into the annual clean water investment report, including outcomes from the work performed by clean water service providers. The report shall contain the following:

(1) a summary of all clean water projects completed that year in the basin;

(2) a summary of any inspections of previously implemented clean water projects and whether those clean water projects continue to operate in accordance with their design;

(3) all administrative costs incurred by the clean water service provider;

(4) a list of all of the subgrants awarded by the clean water service provider in the basin; and

(5) all data necessary for the Secretary to determine the pollutant reduction achieved by the clean water service provider during the prior year.

(f) Accountability for pollution reduction goals. If a clean water service provider fails to meet its allocated pollution reduction goals or its five-year target or fails to maintain previously implemented clean water projects the Secretary shall take appropriate steps to hold the clean water service provider accountable for the failure to meet pollution reduction goals or its five-year target. The Secretary may take the following steps:

(1) enter a plan to ensure that the clean water service provider meets current and future year pollution reduction goals and five-year targets; or

(2) initiate rulemaking to designate an alternate clean water service provider as accountable for the basin.

(g) Basin water quality council.

(1) A clean water service provider designated under this section shall establish a basin water quality council for each assigned basin. The purpose of a basin water quality council is to establish policy and make decisions for the clean water service provider regarding the most significant water quality impairments that exist in the basin and prioritizing the projects that will address those impairments based on the basin plan. A basin water quality council shall also participate in the basin planning process.

(2) A basin water quality council shall include, at a minimum, the following:

(A) two persons representing natural resource conservation districts in that basin, selected by the applicable natural resource conservation districts;

(B) two persons representing regional planning commissions in that basin, selected by the applicable regional planning commission;

(C) two persons representing local watershed protection organizations operating in that basin, selected by the applicable watershed protection organizations;

(D) one representative from an applicable local or statewide land conservation organization selected by the conservation organization in consultation with the clean water service provider; and

(E) two persons representing from each municipality within the basin, selected by the clean water service provider in consultation with municipalities in the basin.

(3) The designated clean water service provider and the Agency of Natural Resources shall provide technical staff support to the basin water quality council. The clean water service provider may invite support from persons with specialized expertise to address matters before a basin water quality council, including support from the University of Vermont Extension, staff of the Agency of Natural Resources, staff of the Agency of Agriculture, Food and Markets, staff of the Agency of Transportation, staff from the Agency of Commerce and Community Development, the Natural Resource Conservation Service, U.S. Department of Fish and Wildlife, and U.S. Forest Service.

§ 925. CLEAN WATER SERVICE PROVIDER; WATER QUALITY RESTORATION FORMULA GRANT PROGRAM

The Secretary shall administer a Water Quality Restoration Formula Grant Program to award grants to clean water service providers to meet the pollutant reduction requirements under this subchapter. The grant amount shall be based on the annual pollutant reduction goal established for the clean water service provider multiplied by the standard cost for pollutant reduction including the costs of administration and reporting. Not more than 15 percent of the total grant amount awarded to a clean water service provider shall be used for administrative costs.

§ 926. WATER QUALITY ENHANCEMENT GRANT PROGRAM

The Secretary shall administer a Water Quality Enhancement Grant Program. This program shall be a competitive grant program to fund projects that protect high quality waters, maintain or improve water quality in all waters, restore degraded or stressed waters, create resilient watersheds and communities, and support the public's use and enjoyment of the State's waters. When making awards under this program, the Secretary shall consider the geographic distribution of these funds. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

§ 927. DEVELOPED LANDS IMPLEMENTATION GRANT PROGRAM

The Secretary shall administer a Developed Lands Implementation Grant Program to provide grants or financing to persons who are required to obtain a permit to implement regulatory requirements that are necessary to achieve water quality standards. The grant or financing program shall only be available in basins where a clean water service provider has met its annual goals or is making sufficient progress, as determined by the Secretary, towards those goals. This grant program shall fund or provide financing for projects related to the permitting of impervious surface of three acres or more under subdivision 1264(g)(3) of this title. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

§ 928. MUNICIPAL STORMWATER IMPLEMENTATION GRANT PROGRAM

The Secretary shall administer a Municipal Stormwater Implementation Grant Program to provide grants to any municipality required under section 1264 of this title to obtain or seek coverage under the municipal roads general permit, the municipal separate storm sewer systems permit, a permit for impervious surface of three acres or more, or a permit required by the Secretary to reduce the adverse impacts to water quality of a discharge or stormwater runoff. The grant program shall only be available in basins where a clean water service provider has met its annual goals or is making sufficient progress, as determined by the Secretary, towards those goals. Not more than 15 percent of the total grant amount awarded shall be used for administrative costs.

§ 929. CLEAN WATER PROJECT TECHNICAL ASSISTANCE

The Secretary shall provide technical assistance upon the request of any person who, under this chapter, receives a grant or is a subgrantee of funds to implement a clean water project.

§ 930. RULEMAKING

The Secretary may adopt rules to implement the requirements of this subchapter.

Sec. 2. 10 V.S.A. § 1253(d)(2) and (3) are amended to read:

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) review the evaluations performed by the Secretary under subdivisions 922(a)(1) and (2) of this title and update those findings based on any new data collected as part of a basin plan;

(E) for projects in the basin that will result in enhancement of resources, including those that protect high quality waters of significant natural resources, the Secretary shall identify the funding needs beyond those currently funded by the Clean Water Fund;

~~(F)~~ ensure that municipal officials, citizens, natural resources conservation districts, regional planning commissions, watershed groups, and other interested groups and individuals are involved in the basin planning process;

~~(E)~~~~(G)~~ ensure regional and local input in State water quality policy development and planning processes;

~~(F)~~~~(H)~~ provide education to municipal officials and citizens regarding the basin planning process;

~~(G)~~~~(I)~~ develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

~~(H)~~~~(J)~~ provide for public notice of a draft basin plan; and

~~(I)~~~~(K)~~ provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee, ~~and~~ the Natural Resources Conservation Council or its designee, and to Watersheds United Vermont or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When negotiating a scope of work with the Vermont Association of Planning and Development Agencies or its designee, ~~and~~ the Natural Resources Conservation Council or its designee, and Watersheds United Vermont or its designee to assist in or produce a basin plan, the Secretary may require the Vermont Association of Planning and Development Agencies, ~~or~~ the Natural Resources Conservation Council, or Watersheds United Vermont to:

(A) conduct any of the activities required under subdivision (2) of this subsection (d);

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations better to meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to ensure cost-effective use of State and federal funds.

Sec. 3. 10 V.S.A. § 1387 is amended to read:

§ 1387. FINDINGS; PURPOSE; CLEAN WATER INITIATIVE

(a)(1) The State has committed to implementing a long-term Clean Water Initiative to provide mechanisms, staffing, and financing necessary to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.

(2) Success in implementing the Clean Water Initiative will depend largely on providing sustained and adequate funding to support the implementation of all of the following:

(A) the requirements of 2015 Acts and Resolves No. 64;

(B) federal or State required cleanup plans for individual waters or water segments, such as total maximum daily load plans;

(C) the Agency of Natural Resources' Combined Sewer Overflow Rule;

(D) the operations of clean water service providers under chapter 37, subchapter 5 of this title; and

(E) the permanent protection of land and waters from future development and impairment through conservation and water quality projects funded by the Vermont Housing and Conservation Trust Fund authorized by chapter 15 of this title.

(3) To ensure success in implementing the Clean Water Initiative, the State should commit to funding the Clean Water Initiative in a manner that ensures the maintenance of effort and that provides an annual appropriation for clean water programs in a range of \$50 million to \$60 million as adjusted for inflation over the duration of the Initiative.

(4) To avoid the future impairment and degradation of the State's waters, the State should commit to continued funding for the protection of land and waters through agricultural and natural resource conservation, including through permanent easements and fee acquisition.

(b) The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

(1) assist the State in ~~complying with water quality requirements and construction or implementation of water quality projects or programs~~ the implementation of the Clean Water Initiative;

(2) fund staff positions at the Agency of Natural Resources, Agency of Agriculture, Food and Markets, or Agency of Transportation when the positions are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate to fund the necessary positions; and

(3) provide funding to ~~nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects~~ clean water service providers to meet the obligations of chapter 37, subchapter 5 of this title.

Sec. 3a. 10 V.S.A. § 1388 is amended to read:

§ 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the Clean Water Fund to be administered by the Secretary of Administration. The Fund shall consist of:

(1) revenues from the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a;

(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration;

(3) the unclaimed beverage container deposits (escheats) remitted to the State under chapter 53 of this title; ~~and~~

(4) four percent of the revenues from the meals and rooms taxes imposed under 32 V.S.A. chapter 225; and

~~(4)(5)~~ other revenues dedicated for deposit into the Fund by the General Assembly.

* * *

Sec. 4. 10 V.S.A. § 1389 is amended to read:

§ 1389. CLEAN WATER BOARD

(a) Creation.

(1) There is created the Clean Water Board that shall:

(A) be responsible and accountable for planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;

(B) recommend to the Secretary of Administration expenditures:

(i) appropriations from the Clean Water Fund according to the priorities established under subsection (e) of this section; and

(ii) clean water water quality programs or projects that provide water quality benefits, reduce pollution, protect natural areas, enhance water quality protections on agricultural land enhance flood and climate resilience, provide wildlife habitat, or promote and enhance outdoor recreation in support of rural community vitality to be funded by capital appropriations.

(2) The Clean Water Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Board shall be composed of:

- (1) the Secretary of Administration or designee;
- (2) the Secretary of Natural Resources or designee;
- (3) the Secretary of Agriculture, Food and Markets or designee;
- (4) the Secretary of Commerce and Community Development or designee;
- (5) the Secretary of Transportation or designee; and
- (6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed by the Governor.

* * *

(d) Powers and duties of the Clean Water Board. The Clean Water Board shall have the following powers and authority:

* * *

(3) The Clean Water Board shall:

(A) ~~establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;~~

~~(B)~~ develop an annual revenue estimate and proposed budget for the Clean Water Fund;

~~(C)~~(B) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(C) if the Board determines that there are insufficient funds in the Clean Water Fund to issue all grants or financing required by sections 925–928 of this title, conduct all of the following:

(i) Direct the Secretary of Natural Resources to prioritize the work needed in every basin, adjust pollution allocations assigned to clean water service providers, and issue grants based on available funding.

(ii) Make recommendations to the Governor and General Assembly on additional revenue to address unmet needs.

(iii) Notify the Secretary of Natural Resources that there are insufficient funds in the Fund. The Secretary of Natural Resources shall consider additional regulatory controls to address water quality improvements that could not be funded.

(D) issue the annual Clean Water Investment Report required under section 1389a of this title; and

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

~~(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund~~ recommend capital appropriations for the permanent protection of land and waters from future development through conservation and water quality projects.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize as follows:

~~(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);~~

~~(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;~~

(1) As a first priority, make recommendations regarding funding for the following grants and programs, which shall each be given equal priority:

(A) grants to clean water service providers to fund the reasonable costs associated with the inspection, verification, operation, and maintenance of clean water projects in a basin;

(B) the Water Quality Restoration Formula Grant under section 925 of this title;

(C) the Agency of Agriculture, Food and Markets' agricultural water quality programs; and

(D) the Water Quality Enhancement Grants under section 926 of this title at a funding level of at least 20 percent of the annual balance of the Clean Water Fund, provided that the maximum amount recommended under this subdivision (D) in any year shall not exceed \$ 5,000,000.00; and

(E) funding to partners for basin planning, basin water quality council participation, education, and outreach as provided in subdivision 1253(d)(3) of this title, provided funding shall be at least \$500,000.00.

(2) As the next priority after reviewing funding requests for programs identified under subdivision (1) of this subsection:

~~(C)(A) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;~~

~~(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;~~

~~(E)(B) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;~~

~~(F)(C) funding for the Municipal Stormwater Implementation Grant as provided in section 928 of this title;~~

~~(D) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy; and~~

~~(G)(E) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices;~~

~~(H) funding to municipalities for the establishment and operation of stormwater utilities; and~~

~~(I) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.~~

~~(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements and to municipalities for the establishment and operation of stormwater utilities.~~

~~(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide investment in all watersheds of the State based on the needs identified in watershed basin plans.~~

(3) As the next priority after reviewing funding requests under subdivisions (1) and (2) of this subsection, funding for the Developed Lands Implementation Grant Program as provided in section 927 of this title.

(f) Assistance. The Clean Water Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

Sec. 4a. 16 V.S.A. § 4025 is amended to read:

§ 4025. EDUCATION FUND

(a) The Education Fund is established to comprise the following:

* * *

(4) ~~25~~ 21 percent of the revenues from the meals and rooms taxes imposed under 32 V.S.A. chapter 225;

* * *

Sec. 4b. REPEAL

Sec. G.8 (pewritten software accessed remotely) of 2015 Acts and Resolves No. 51 is repealed.

Sec. 5. 24 V.S.A. § 4345a is amended to read:

§ 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

A regional planning commission created under this chapter shall:

* * *

(20) If designated as a clean water service provider under 10 V.S.A. § 924, provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in the basin assigned to the regional planning commission in accordance with the requirements of 10 V.S.A. chapter 37, subchapter 5.

Sec. 6. 10 V.S.A. § 704 is amended to read:

§ 704. POWERS OF COUNCIL

The State Natural Resources Conservation Council may employ an administrative officer and such technical experts and such other agents and employees as it may require. The Council may call upon the Attorney General of the State for such legal services as it may require, or may employ its own counsel. It shall have authority to delegate to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. If designated as a clean water service provider under section 924 of this title, provide for the identification, prioritization, development, construction, inspection, verification, operation, and maintenance of clean water projects in the basin assigned to a natural resources conservation district in accordance with the requirements of chapter 37, subchapter 5 of this title.

Sec. 7. RECOMMENDATIONS ON NUTRIENT CREDIT TRADING

On or before July 1, 2022, the Secretary of Natural Resources, after consultation with the Clean Water Board, shall submit to the Senate Committees on Appropriations, on Natural Resources and Energy, and on Finance and the House Committees on Appropriations, on Natural Resources, Fish, and Wildlife, and on Ways and Means recommendations regarding implementation of a market-based mechanism that allows the purchase of water quality credits by permittees under 10 V.S.A. chapter 47, and other entities. The report shall include information on the cost to develop and manage any recommended trading program.

Sec. 8. TRANSITION

(a) Until November 1, 2021, the Secretary shall implement the existing ecosystem restoration funding delivery program and shall not make substantial modifications to the manner in which that program has been implemented. The Secretary may give increased priority to meeting legal obligations pursuant to a total maximum daily load when implementing that funding delivery program.

(b) Until the plan required by 10 V.S.A. § 923(d)(2) has been fully implemented, the Secretary shall provide additional weight to geographic areas of the State not receiving a grant pursuant to 10 V.S.A. § 925 when making funding decisions with respect to grants awarded pursuant to 10 V.S.A. § 926.

Sec. 9. LAND AND WATER CONSERVATION STUDY

(a) The State's success in achieving and maintaining compliance with the Vermont Water Quality Standards for all State waters depends on avoiding the future degradation or impairment of surface waters. An important component of avoiding the future degradation or impairment of surface waters is the permanent protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources, according to priorities for multiple conservation values, including water quality benefits, natural areas, flood and climate resilience, wildlife habitat, and outdoor recreation.

(b) The State's success in achieving and maintaining compliance with the Vermont Water Quality Standards depends in part on strategic land conservation. To assist the State in enhancing the benefit of strategic land conservation, the Secretary of Natural Resources shall convene a Land and Water Conservation Study Stakeholder Group to develop a recommended framework for statewide land conservation. On or before January 15, 2020, the Secretary shall submit the Stakeholder Group's recommended framework for statewide land conservation to the General Assembly. The recommended framework shall include:

(1) recommendations for maximizing both water quality benefits and other state priorities from land conservation projects, including agricultural uses, natural area and headwaters protection, flood and climate resilience, wildlife habitat, outdoor recreation, and rural community development; and

(2) recommended opportunities to leverage federal and other nonstate funds for conservation projects.

(c)(1) The Land and Water Conservation Study Stakeholder Group shall include the following individuals or their designees:

(A) the Secretary of Natural Resources;

(B) the Secretary of Agriculture, Food and Markets;

(C) the Executive Director of the Vermont Housing and Conservation Board;

(D) the President of the Vermont Land Trust;

(E) the Vermont and New Hampshire Director of the Trust for Public Land; and

(F) the Director of the Nature Conservancy for the State of Vermont.

(2) The Secretary of Natural Resources shall invite the participation in the Stakeholder Group by the U.S. Department of Agriculture's Natural

Resources Conservation Service, representatives of farmer's watershed alliances, representatives of landowner organizations, and other interested parties.

Sec. 10. 10 V.S.A. § 1389a is amended to read:

§ 1389a. CLEAN WATER INVESTMENT REPORT

(a) Beginning on January 15, 2017, and annually thereafter, the Secretary of Administration shall publish the Clean Water Investment Report. The Report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Board and other State agencies for clean water restoration over the prior fiscal year. The Report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source.

(b) The Report shall include:

(1) Documentation of progress or shortcomings in meeting established indicators for clean water restoration.

(2) A summary of additional funding sources pursued by the Board, including whether those funding sources were attained; if it was not attained, why it was not attained; and where the money was allocated from the Fund.

(3) A summary of water quality problems or concerns in each watershed basin of the State, a list of water quality projects identified as necessary in each basin of the State, and how identified projects have been prioritized for implementation. The water quality problems and projects identified under this subdivision shall include programs or projects identified across State government and shall not be limited to projects listed by the Agency of Natural Resources in its watershed projects database.

(4) A summary of any changes to applicable federal law or policy related to the State's water quality improvement efforts, including any changes to requirements to implement total maximum daily load plans in the State.

(5) A summary of available federal funding related to or for water quality improvement efforts in the State.

(6) Beginning January 2023, a summary of the administration of the grant programs established under sections 925–928 of this title, including whether these grant programs are adequately funding implementation of the Clean Water Initiative and whether the funding limits for the Water Quality Enhancement Grants under subdivision 1389(e)(1)(D) of this title should be amended to improve State implementation of the Clean Water Initiative.

(c) The Report may also provide an overview of additional funding necessary to meet objectives established for clean water restoration and recommendations for additional revenue to meet those restoration objectives. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

(d)(1) The Secretary of Administration shall develop and use a results-based accountability process in publishing the annual report required by subsection (a) of this section.

(2) The Secretary of Administration shall develop user-friendly issue briefs, tables, or executive summaries that make the information required under subdivision (b)(3) available to the public separately from the report required by this section.

(3) On or before September 1 of each year, the Secretary of Administration shall submit to the Joint Fiscal Committee an interim report regarding the information required under subdivision (b)(5) of this section relating to available federal funding.

Sec. 10a. REPORT OF SECRETARY OF ADMINISTRATION;
WATER QUALITY PROJECTS ON FARMS

On or before January 15, 2020, the Secretary of Administration, as the chair of the Clean Water Board, shall, after consultation with the Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets, submit to the House Committees on Natural Resources, Fish, and Wildlife and on Agriculture and Forestry and the Senate Committees on Natural Resources and Energy and on Agriculture a report regarding the administration and funding of water quality projects on farms as part of the Clean Water Initiative. The report shall include recommendations on:

(1) how farmers can maximize access to funding for water quality projects on farms, including funding available through grants authorized under 10 V.S.A chapter 37, subchapter 5;

(2) how the Agency of Agriculture, Food and Markets should be involved in water quality projects on farms, including how the Agency of Agriculture, Food and Markets would give approval of, be notified of, or participate in water quality projects on farms funded by a clean water service provided under 10 V.S.A. chapter 37, subchapter 5;

(3) how to minimize duplication of effort, administration, and oversight between the Agency of Agriculture, Food and Markets and clean water service providers regarding water quality projects on farms; and

(4) how to most efficiently and effectively fund water quality projects on farms, including how to ensure the continued functionality of projects after construction or implementation.

Sec. 11. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senators Cummings and Bray moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: In Sec. 1, 10 V.S.A. chapter 37, subchapter 5, in section 924, in subsection (f), by adding a new subdivision (1) to read as follows:

(1) include in grant agreements with the clean water service provider requirements, benchmarks, conditions, or penalty provisions to provide for ongoing accountability;

and by renumbering the remaining subdivisions of subsection (f) to be numerically correct

and in subsection (g), in subdivision (2)(E), after the words "two persons representing" by striking out the words "from each municipality" and inserting in lieu thereof municipalities

Second: In Sec. 3a (Clean Water Fund allocation), in 10 V.S.A. § 1388, in subdivision (a)(4) by striking out the word "four" and inserting in lieu thereof the word six

Third: By striking out Secs. 4a (Education Fund) and 4b (repeal) in their entireties and inserting in lieu thereof the following:

Sec. 4a. 32 V.S.A. § 435(b) is amended to read:

(b) The General Fund shall be composed of revenues from the following sources:

* * *

(7) ~~75~~ 69 percent of the meals and rooms taxes levied pursuant to chapter 225 of this title;

* * *

Sec. 4b. [Deleted.]

Fourth: By striking out Sec. 11 (effective dates) in its entirety and inserting in lieu thereof the following:

Sec. 11. EFFECTIVE DATES

This act shall take effect on July 1, 2019, except Secs. 3a (Clean Water Fund allocation) and 4a (General Fund allocation) shall take effect on October 1, 2019.

President Assumes the Chair

Which was agreed to.

Bill Passed in Concurrence**H. 547.**

House bill of the following title was read the third time and passed in concurrence:

An act relating to approval of an amendment to the charter of the City of Montpelier.

Third Reading Ordered**H. 508.**

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

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

Reported that the bill ought to pass in concurrence.

Senator Campion, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

House Proposal of Amendment Concurred In**S. 30.**

House proposal of amendment to Senate bill entitled:

An act relating to the regulation of hydrofluorocarbons.

Was taken up.

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. 10 V.S.A. § 586 is added to read:

§ 586. REGULATION OF HYDROFLUOROCARBONS

(a) As used in this section:

(1) “Class I substance” and “class II substance” mean those substances listed in the 42 U.S.C. § 7671a, as it read on November 15, 1990 and Appendix A or B of Subpart A of 40 C.F.R. Part 82, as those read on January 3, 2017.

(2) “Hydrofluorocarbon” means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

(3) “Residential consumer refrigeration product” has the same meaning as in Section 430.2 of Subpart A of 10 C.F.R. Part 430.

(4) “Retrofit” has the same meaning as in section 152 of Subpart F of 40 C.F.R. Part 82, as that section existed as of January 3, 2017.

(5) “Substitute” means a chemical, product, or alternative manufacturing process, whether new or retrofit, that is used to perform a function previously performed by a class I substance or class II substance and any substitute subsequently adopted to perform that function, including hydrofluorocarbons.

(b)(1) A person may not offer any product or equipment for sale, lease, or rent, or install or otherwise cause any equipment or product to enter into commerce in Vermont if that equipment or product consists of, uses, or will use a substitute, as set forth in Appendix U or V, Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, for the applications or end uses restricted by Appendix U or V, as those read on January 3, 2017, and consistent with the dates established in subdivision (b)(4) of this section.

(2) Except where existing equipment is retrofit, nothing in this subsection requires a person that acquired a restricted product or equipment prior to an effective date of the restrictions in subdivision (b)(4) of this section to cease use of that product or equipment.

(3) Products or equipment manufactured prior to an applicable effective date of the restrictions in subdivision (b)(4) of this section may be sold, imported, exported, distributed, installed, and used after the specified effective date.

(4) The restrictions under subdivision (b)(1) of this section shall take effect beginning:

(A) January 1, 2021, for propellants, rigid polyurethane applications and spray foam, flexible polyurethane, integral skin polyurethane, flexible

polyurethane foam, polystyrene extruded sheet, polyolefin, phenolic insulation board and bunstock, supermarket systems, remote condensing units, stand-alone units, and vending machines;

(B) January 1, 2021, for refrigerated food processing and dispensing equipment, compact residential consumer refrigeration products, and polystyrene extruded boardstock and billet, and rigid polyurethane low-pressure two component-spray foam;

(C) January 1, 2022, for residential consumer refrigeration products other than compact and built-in residential consumer refrigeration products;

(D) January 1, 2023, for cold storage warehouses and built-in residential consumer refrigeration products;

(E) January 1, 2024, for centrifugal chillers and positive displacement chillers; and

(F) January 1, 2020, or the effective date of the restrictions identified in appendix U or V, Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017, whichever comes later, for all other applications and end uses for substitutes not covered by the categories listed in subdivisions (A) through (E) of this subsection (b).

(c) The Secretary may adopt rules that include any of the following:

(1) The modification of the date of a prohibition established pursuant to subsection (b) of this section if the Secretary determines that the modified deadline meets both of the following criteria:

(A) reduces the overall risk to human health or the environment; and

(B) reflects the earliest date that a substitute is currently or potentially available.

(2) The prohibition on the use of any substitute if the Secretary determines that the prohibition meets both of the following criteria:

(A) reduces the overall risk to human health or the environment; and

(B) a lower-risk substitute is currently or potentially available.

(3) The creation of a list of approved substitutes, use conditions, or use limits, if any, and the addition or removal of substitutes, use conditions, or use limits to or from the list of approved substitutes if the Secretary determines those substitutes reduce the overall risk to human health and the environment.

(4) The creation of a list of exemptions from this section for medical uses of hydrofluorocarbons.

(d) If the U.S. Environmental Protection Agency approves a previously prohibited hydrofluorocarbon blend with a global warming potential of 750 or less for foam blowing of polystyrene extruded boardstock and billet and rigid polyurethane low-pressure two-component spray foam pursuant to the Significant New Alternatives Policy Program under section 7671(k) of the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Secretary shall expeditiously propose a rule to conform to the requirements established under this section with that federal action.

Sec. 2. ADOPTION OF RULES AND REPORTING

(a) On or before July 1, 2020, the Secretary of Natural Resources shall file with the Secretary of State proposed rules to establish a schedule to phase down the use of hydrofluorocarbons to meet the goal of a 40 percent reduction from the 2013 level of use by 2030.

(b) On or before January 15, 2020, the Secretary of Natural Resources shall submit a report to the Senate Committee on Natural Resources and Energy and the House Committee on Natural Resources, Fish, and Wildlife on progress in filing proposed rules pursuant to subsection (a) of this section and any delays in such rulemaking.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 105.

House proposal of amendment to Senate bill entitled:

An act relating to miscellaneous judiciary procedures.

Was taken up.

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. 3 V.S.A. § 163 is amended to read:

§ 163. JUVENILE COURT DIVERSION PROJECT

* * *

(c) All diversion projects receiving financial assistance from the Attorney General shall adhere to the following provisions:

* * *

(4) Each State's Attorney, in cooperation with the Attorney General and the diversion project program, shall develop clear criteria for deciding what types of offenses and offenders will be eligible for diversion; however, the State's Attorney shall retain final discretion over the referral of each case for diversion. The provisions of 33 V.S.A. § 5225(c) and § 5280(e) shall apply.

* * *

~~(e) Within 30 days of the two-year anniversary of a successful completion of juvenile diversion, the court shall order the sealing of all court files and records, law enforcement records other than entries in the juvenile court diversion project's centralized filing system, fingerprints, and photographs applicable to a juvenile court diversion proceeding unless, upon motion, the court finds:~~

~~(1) the participant has been convicted of a subsequent felony or misdemeanor during the two-year period, or proceedings are pending seeking such conviction; or~~

~~(2) rehabilitation of the participant has not been attained to the satisfaction of the court.~~

(1) Within 30 days after the two-year anniversary of a successful completion of juvenile diversion, the court shall provide notice to all parties of record of the court's intention to order the expungement of all court files and records, law enforcement records other than entries in the juvenile court diversion program's centralized filing system, fingerprints, and photographs applicable to the proceeding. The court shall give the State's Attorney an opportunity for a hearing to contest the expungement of the records. The court shall expunge the records if it finds:

(A) two years have elapsed since the successful completion of juvenile diversion by the participant and the dismissal of the case by the State's Attorney;

(B) the participant has not been convicted of a subsequent felony or misdemeanor during the two-year period, and no proceedings are pending seeking such conviction;

(C) rehabilitation of the participant has been attained to the satisfaction of the court; and

(D) the participant does not owe restitution related to the case under a contract executed with the Restitution Unit.

(2) The court may expunge any records that were sealed pursuant to this subsection prior to July 1, 2018 unless the State's Attorney's office that prosecuted the case objects. Thirty days prior to expunging a record pursuant

to this subdivision, the court shall provide written notice of its intent to expunge the record to the State's Attorney's office that prosecuted the case.

(3)(A) The court shall keep a special index of cases that have been expunged pursuant to this section together with the expungement order. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(B) The special index and related documents specified in subdivision (A) of this subdivision (3) shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(C) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case. The Chief Superior Judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(D) The Court Administrator shall establish policies for implementing this subsection (e).

(f) Upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this section shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein. Except as otherwise provided in this section, upon the entry of an order expunging files and records under this section, the proceedings in the matter shall be considered never to have occurred, all index references thereto shall be deleted, and the participant, the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such participant inquiry in any matter. Copies of the order shall be sent to each agency or official named therein.

(g) Inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the participant who is the subject of such records and only to those persons named therein. The process of automatically expunging records as provided in this section shall only apply to those persons who completed diversion on or after July 1, 2002. Any person who completed diversion prior to July 1, 2002 must apply to the court to have his or her records expunged. Expungement shall occur if the requirements of subsection (e) of this section are met.

* * *

(j) Notwithstanding subdivision (c)(1) of this section, the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225–5280.

Sec. 2. 3 V.S.A. § 164 is amended to read:

§ 164. ADULT COURT DIVERSION PROGRAM

* * *

(d) The Office of the Attorney General shall develop program outcomes following the designated State of Vermont performance accountability framework and, in consultation with the Department of State's Attorneys and Sheriffs, the Office of the Defender General, the Center for Crime Victim Services, and the Judiciary, report annually on or before December 1 to the General Assembly on services provided and outcome indicators. As a component of the report required by this subsection, the Attorney General shall include data on diversion program referrals in each county and possible causes of any geographical disparities.

(e) All adult court diversion programs receiving financial assistance from the Attorney General shall adhere to the following provisions:

(1) The diversion program shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The prosecuting attorney may refer a person to diversion either before or after arraignment and shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. The matter shall become confidential when notice is provided to the court, except that for persons who are subject to conditions of release imposed pursuant to 13 V.S.A. § 7554 and who are referred to diversion pursuant to subdivision (b)(2) of this section, the matter shall become confidential upon the successful completion of diversion. If a person is charged with a qualifying crime as defined in 13 V.S.A. § 7601(4)(A) and the crime is a misdemeanor, the prosecutor shall provide the person with the opportunity to participate in the court diversion program unless the prosecutor states on the record at arraignment or a subsequent hearing why a referral to the program would not serve the ends of justice. If the prosecuting attorney refers a case to diversion, the prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise, files held by the court, the prosecuting attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

- (A) the diversion program declines to accept the case;
- (B) the person declines to participate in diversion;
- (C) the diversion program accepts the case, but the person does not successfully complete diversion; or
- (D) the prosecuting attorney recalls the referral to diversion.

* * *

(m) Notwithstanding subdivision (e)(1) of this section, the diversion program may accept cases pursuant to 33 V.S.A. §§ 5225 and 5280.

Sec. 3. [Deleted.]

Sec. 4. 4 V.S.A. § 27b is added to read:

§ 27b. ELECTRONICALLY FILED VERIFIED DOCUMENTS

(a) A registered electronic filer in the Judiciary's electronic document filing system may file any document that would otherwise require the approval or verification of a notary by filing the document with the following language inserted above the signature and date:

I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I will be subject to the penalty of perjury.

(b) A document filed pursuant to subsection (a) of this section shall not require the approval or verification of a notary.

(c) This section shall not apply to an affidavit in support of a search warrant application or to an application for a nontestimonial identification order.

Sec. 5. 13 V.S.A. § 2904 is amended to read:

§ 2904. FALSE SWEARING; FALSE DECLARATION

(a) A person of whom an oath is required by law, who willfully swears falsely in regard to any matter or thing respecting which such oath is required, shall be guilty of perjury and punished as provided in section 2901 of this title.

(b) A person who declares, certifies, or verifies in a signed writing that a statement is true and is made under the pains and penalties of perjury, and who willfully makes a false statement in the declaration, certification, or verification, shall be guilty of perjury and punished as provided in section 2901 of this title.

Sec. 6. 13 V.S.A. § 11a is amended to read:

§ 11a. ~~VIOLENT CAREER CRIMINALS~~

~~(a) The State may elect to seek the substitute penalty provided for in this section against a person who, after having been two times convicted within this State of a felony crime of violence, or under the law of any other state, government, or country, of a crime which, if committed in this State would be a felony crime of violence, is convicted of a third felony crime of violence within this State.~~

~~(b) If the State seeks a substitute penalty for one of the offenses enumerated in subsection (d) of this section, it shall give notice to the person by filing an information seeking the penalty contained in this section.~~

~~(c) A person charged under this section shall be sentenced upon conviction of such third or subsequent offense to imprisonment up to and including life.~~

~~(d) As used in this section, "felony crime of violence" shall mean the following crimes:~~

~~(1) arson causing death as defined in section 501 of this title;~~

~~(2) assault and robbery with a dangerous weapon as defined in subsection 608(b) of this title;~~

~~(3) assault and robbery causing bodily injury as defined in subsection 608(c) of this title;~~

~~(4) aggravated assault as defined in section 1024 of this title;~~

~~(5) murder as defined in section 2301 of this title;~~

~~(6) manslaughter as defined in section 2304 of this title;~~

~~(7) kidnapping as defined in section 2405 of this title or its predecessor as it was defined in section 2401 of this title;~~

~~(8) maiming as defined in section 2701 of this title;~~

~~(9) sexual assault as defined in subdivision 3252(a)(1) or (2) of this title or its predecessor as it was defined in section 3201 of this title;~~

~~(10) aggravated sexual assault as defined in section 3253 of this title;~~

~~(11) first degree unlawful restraint as defined in section 2407 of this title;~~

~~(12) first degree aggravated domestic assault as defined in section 1043 of this title where the defendant causes serious bodily injury to another person;~~

~~(13) lewd or lascivious conduct with a child as defined in section 2602 of this title where the child is under the age of 13 years and the defendant is 18 years of age or older.~~

~~(e) Notwithstanding any other provision of law to the contrary, the court shall not place on probation or suspend the sentence of any person sentenced under this section. No person who receives a minimum sentence under this section shall be eligible for early release or furlough until the expiration of the minimum sentence.~~

~~(f) For the purposes of this section, multiple convictions that arise out of the same criminal transaction are to be treated as one conviction. [Repealed.]~~

Sec. 7. 13 V.S.A. § 362 is amended to read:

§ 362. EXPOSING POISON ON THE LAND

A person who deposits any poison or substance poisonous to animals on his or her premises or on the ~~premise~~ premises or buildings of another, with the intent that it be taken by an animal, shall be in violation of subdivision 352(2) of this title. This section shall not apply to control of wild pests, protection of crops from insects, mice, and plant diseases, or the Department of Fish and Wildlife ~~and employees and agents of the State Forest Service~~ in control of destructive wild animals.

Sec. 8. 13 V.S.A. § 397 is amended to read:

§ 397. ADMINISTRATIVE PENALTY

In addition to the forfeiture of any award, premium, or trophy otherwise due, and in addition to other penalties provided by law, a person violating this chapter may be assessed an administrative penalty in an amount not to exceed \$1,000.00 by the Secretary. The Secretary shall utilize the provisions of 6 V.S.A. §§ 16 and 17 for purposes of assessing the penalty.

Sec. 9. 13 V.S.A. § 508 is amended to read:

§ 508. SETTING FIRES

A person who enters upon lands of another and sets a fire that causes damage shall be imprisoned not more than 60 days nor less than 30 days, or fined not more than \$100.00 nor less than \$10.00, or both. The provisions of this section shall not affect the provisions of ~~sections~~ section 507 ~~and 3906~~ of this title.

Sec. 10. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

(a) A person who, while in lawful custody:

(1) escapes or attempts to escape from any correctional facility or a local lockup shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or

(2) escapes or attempts to escape from an officer, if the person was in custody as a result of a felony, shall be imprisoned for not more than 10 years or fined not more than \$5,000.00, or both; or if the person was in custody as a result of a misdemeanor, shall be imprisoned for not more than two years, or fined not more than \$1,000.00, or both.

(b)(1) A person shall not, while in lawful custody:

(A) fail to return from work release to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with 28 V.S.A. § 753;

(B) fail to return from furlough to the correctional facility at the specified time, or visits other than the specified place, as required by the order issued in accordance with ~~28 V.S.A. § 808, 808a, 808b, or 808c~~ 28 V.S.A. § 808(a)(1)–(5);

(C) escape or attempt to escape while on release from a correctional facility to do work in the service of such facility or of the Department of Corrections in accordance with 28 V.S.A. § 758; or

(D) elope or attempt to elope from the Vermont Psychiatric Care Hospital or a participating hospital, when confined by court order pursuant to chapter 157 of this title, or when transferred there pursuant to 28 V.S.A. § 703 and while still serving a sentence.

(2) A person who violates this subsection shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

(3) It shall not be a violation of subdivision (1)(A), (1)(B), or (1)(C) of this subsection (b) if the person is on furlough status pursuant to 28 V.S.A. § 808(a)(6), 808(e), 808(f), 808a, 808b, or 808c.

(c) All sentences imposed under subsection (a) of this section shall be consecutive to any term or sentence being served at the time of the offense.

* * *

Sec. 11. 28 V.S.A. § 808e is added to read:

§ 808e. ABSCONDING FROM FURLOUGH; WARRANT

The Commissioner of Corrections may issue a warrant for the arrest of a person who has absconded from furlough status in violation of 28 V.S.A. § 808(a)(6), 808(e), 808(f), 808a, 808b, or 808c, requiring the person to be

returned to a correctional facility. A person for whom an arrest warrant is issued pursuant to this section shall not earn credit toward service of his or her sentence for any days that the warrant is outstanding.

Sec. 12. 13 V.S.A. § 1504 is amended to read:

§ 1504. ~~PLACE OF CONFINEMENT CONSTRUED~~

~~The words “place of confinement” as used in sections 1502 and 1503 of this title shall not be construed to include the Weeks School. [Repealed.]~~

Sec. 13. 13 V.S.A. § 2901 is amended to read:

§ 2901. PUNISHMENT FOR PERJURY

A person who, being lawfully required to depose the truth in a proceeding in a court of justice or in a contested case before a State agency pursuant to 3 V.S.A. chapter 25, commits perjury shall be imprisoned not more than 15 years ~~and~~ or fined not more than \$10,000.00, or both.

Sec. 14. 13 V.S.A. § 2535 is amended to read;

§ 2535. GUARDIAN

A guardian who embezzles or fraudulently converts to his or her own use, money, obligations, securities, or other effects or property belonging to the ~~ward person under guardianship or the estate of the ward of whom he or she is guardian~~ person under guardianship, shall be guilty of larceny and shall be imprisoned not more than 10 years or fined not more than \$1,000.00, or both.

Sec. 15. 13 V.S.A. § 3403 is amended to read:

§ 3403. MISPRISION OF TREASON

A person owing allegiance to this State, knowing such treason to have been committed, or knowing of the intent of a person to commit such treason, who does not, within 14 days from the time of having such knowledge, give information thereof to the Governor of the State, to one of the Justices of the Supreme Court, a Superior ~~or District~~ judge, or a justice of the peace, shall be guilty of misprision of treason and shall be imprisoned not more than 10 years nor less than five years or fined not more than \$2,000.00, or both.

Sec. 16. 13 V.S.A. § 3485 is amended to read:

§ 3485. PENALTY WHEN OFFENSE IS TREASON

A person who commits an offense punishable under one of sections ~~3481-3484~~ 3482-3485 of this title, and such offense amounts to treason, shall be punished for treason in lieu of the penalty prescribed in such section.

Sec. 17. 13 V.S.A. § 5415 is amended to read:

§ 5415. ENFORCEMENT; SPECIAL INVESTIGATION UNITS

(a) Special investigation units, created pursuant to 24 V.S.A. § 1940, shall be responsible for the investigation of violations of this chapter's Registry requirements and are authorized to conduct in-person Registry compliance checks in a time, place, and manner it deems appropriate in furtherance of the purposes of this chapter. This section shall not be construed to prohibit local law enforcement from enforcing the provisions of this chapter.

(b) On or before November 1, 2019, and annually thereafter, local law enforcement agencies shall report to the Vermont Crime Information Center about any in-person Registry compliance checks that the agency has conducted during the preceding 12 months. The report shall include the total number of in-person compliance checks conducted during the 12-month period, the number of offenders who were in compliance, the number of offenders who were out of compliance, and the reasons for being out of compliance.

(c) ~~The department of public safety~~ Department of Public Safety shall report to the Senate and House Committees on Judiciary on or before December 15, 2009, and annually thereafter, regarding its efforts under this section.

Sec. 18. 13 V.S.A. § 7041 is amended to read:

§ 7041. DEFERRED SENTENCE

(a) Upon an adjudication of guilt and after the filing of a presentence investigation report, the court may defer sentencing and place the respondent on probation upon such terms and conditions as it may require if a written agreement concerning the deferring of sentence is entered into between the State's Attorney and the respondent and filed with the clerk of the court.

(b) Notwithstanding subsection (a) of this section, the court may defer sentencing and place the respondent on probation without a written agreement between the State's Attorney and the respondent if the following conditions are met:

(1) ~~the respondent is 28 years old or younger; [Repealed.]~~

(2) the crime for which the respondent is being sentenced is not a listed crime as defined in subdivision 5301(7) of this title;

(3) the court orders a presentence investigation in accordance with the procedures set forth in V.R.C.P. Rule 32, unless the State's Attorney agrees to waive the presentence investigation;

(4) the court permits the victim to submit a written or oral statement concerning the consideration of deferment of sentence;

(5) the court reviews the presentence investigation and the victim's impact statement with the parties; and

(6) the court determines that deferring sentence is in the interests of justice.

* * *

Sec. 19. 13 V.S.A. § 7554c is amended to read:

§ 7554c. PRETRIAL RISK ASSESSMENTS; NEEDS SCREENINGS

* * *

(b)(6) Any person charged with a criminal offense or who is the subject of a youthful offender petition pursuant to 33 V.S.A. § 5280, except those persons identified in subdivision (2) of this subsection, may choose to engage with a pretrial services coordinator.

* * *

Sec. 20. 14 V.S.A. § 1203 is amended to read:

§ 1203. LIMITATIONS ON PRESENTATION OF CLAIMS

(a) All claims against a decedent's estate ~~which~~ that arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, except claims for the possession of or title to real estate and claims for injury to the person and damage to property suffered by the act or default of the deceased, if not barred earlier by other statute of limitations, are barred against the estate, the executor or administrator, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with the Rules of Probate Procedure; provided, however, that claims barred by the nonclaim statute of the decedent's domicile before the first publication for claims in this State are also barred in this State;

* * *

Sec. 21. 18 V.S.A. § 8840 is amended to read:

§ 8840. JURISDICTION AND VENUE

Proceedings brought under this subchapter for commitment to the Commissioner for custody, care, and habilitation shall be commenced by

petition in the ~~Criminal~~ Family Division of the Superior Court for the unit in which the respondent resides.

Sec. 22. 24 V.S.A. § 1981 is amended to read:

§ 1981. ENFORCEMENT OF ORDER FROM JUDICIAL BUREAU

(a) Upon the filing of the complaint and entry of a judgment after hearing or entry of default by the hearing officer, subject to any appeal pursuant to 4 V.S.A. § 1107, the person found in violation shall have up to 30 days to pay the penalty to the Judicial Bureau. Upon the expiration of the period to pay the penalty, the person found in violation shall be assessed a surcharge of \$10.00 for the benefit of the municipality. All the civil remedies for collection of judgments shall be available to enforce the final judgment of the Judicial Bureau.

* * *

Sec. 23. 33 V.S.A. § 5204a is amended to read:

§ 5204A. JURISDICTION OVER ADULT DEFENDANT FOR CRIME
COMMITTED WHEN DEFENDANT WAS UNDER AGE 18

(a) A proceeding may be commenced in the Family Division against a defendant who has attained ~~the age of 18 years of age~~ if:

(1) the petition alleges that the defendant;

(A) before attaining ~~the age of 18 years of age~~, violated a crime listed in subsection 5204(a) of this title; or

(B) after attaining 14 years of age but before attaining 18 years of age, committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title;

(2) a juvenile petition was never filed based upon the alleged conduct;
and

(3) the statute of limitations has not tolled on the crime which the defendant is alleged to have committed.

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to ~~subsection (a)~~ subdivision (a)(1)(A) of this section to the Criminal Division if the Family Division finds that:

(A) there is probable cause to believe that while the defendant was less than 18 years of age he or she committed an act listed in subsection 5204(a) of this title;

(B) there was good cause for not filing a delinquency petition in the Family Division when the defendant was less than 18 years of age;

(C) there has not been an unreasonable delay in filing the petition; and

(D) transfer would be in the interest of justice and public safety.

(2)(A) The If a petition has been filed pursuant to subdivision (a)(1)(A) of this section, the Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 52A of this title if the defendant is under 23 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the ~~Court~~ court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the ~~Court~~ court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

(3) The Family Division shall in all respects treat a petition filed pursuant to subdivision (a)(1)(B) of this section in the same manner as a petition filed pursuant to section 5201 of this title, except that the Family Division's jurisdiction shall end on or before the defendant's 22nd birthday, if the Family Division:

(A) finds that there is probable cause to believe that, after attaining 14 years of age but before attaining 18 years of age, the defendant committed an offense listed in 13 V.S.A. § 5301(7) but not listed in subsection 5204(a) of this title; and

(B) makes the findings required by subdivisions (b)(1)(B) and (C) of this section.

(4) In making the determination required by subdivision (1)(D) of this subsection, the Court court may consider, among other matters:

(A) the maturity of the defendant as determined by consideration of his or her age; home; environment; emotional, psychological, and physical maturity; and relationship with and adjustment to school and the community;

(B) the extent and nature of the defendant's prior criminal record and record of delinquency;

(C) the nature of past treatment efforts and the nature of the defendant's response to them;

(D) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(E) the nature of any personal injuries resulting from or intended to be caused by the alleged act;

(F) whether the protection of the community would be best served by transferring jurisdiction from the Family Division to the Criminal Division of the Superior Court.

(c) If the Family Division does not transfer the case a petition filed pursuant to subdivision (a)(1)(A) of this section to the Criminal Division or order that the defendant be treated as a youthful offender pursuant to subsection (b) of this section, the petition shall be dismissed.

Sec. 24. TASK FORCE ON CAMPUS SEXUAL HARM; REPORT

(a) Creation. There is created the Task Force on Campus Sexual Harm to examine issues relating to responses to sexual harm, dating and intimate partner violence, and stalking on campuses of postsecondary educational institutions in Vermont.

(b) Membership. The Task Force shall be composed of the following 19 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) two survivors of campus sexual assault, domestic violence, or stalking incidents, appointed by Vermont Center for Crime Victim Services;

(4) the Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee;

(5) one representative of a community-based sexual violence advocacy organization, appointed by the Vermont Network Against Domestic and Sexual Violence;

(6) three Title IX Coordinators, one employed and appointed by the University of Vermont, one employed and appointed by the Vermont State Colleges, and one employed by a Vermont independent postsecondary educational institution, appointed by the President of the Association of Vermont Independent Colleges;

(7) one campus health and wellness educator or sexual violence prevention educator working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(8) one victim advocate working in a Vermont postsecondary educational institution, appointed by the Higher Education Subcommittee of the PreK–16 Council;

(9) two students who are members of campus groups representing traditionally marginalized communities, appointed by the Higher Education Subcommittee of the Prekindergarten–16 Council;

(10) one community-based restorative justice practitioner, appointed by the Community Justice Network of Vermont;

(11) one representative appointed by the Pride Center of Vermont;

(12) one representative appointed by the Vermont Office of the Defender General;

(13) one representative appointed by the Vermont Department of State’s Attorneys and Sheriffs;

(14) one representative appointed by the Vermont Bar Association, with expertise in working with postsecondary educational institutions on the investigation and adjudication of sexual harassment and sexual assault allegations; and

(15) the Executive Director of the Vermont Human Rights Commission or designee.

(c) Powers and duties. The Task Force shall study the following:

(1) The pathways for survivors of sexual harm in postsecondary educational institutional settings to seek healing and justice and recommendations to increase or enhance those pathways.

(2) Issues with Vermont's campus adjudication processes as identified by survivors of sexual harm, dating and intimate partner violence, or stalking in postsecondary educational institutional settings, including the interface between campus adjudication processes and law enforcement.

(3) Issues relating to transparency, safety, affordability, accountability of outcomes, and due process in campus conduct adjudication processes for sexual harm, dating and intimate partner violence, or stalking, including:

(A) current and best practices relating to outcomes conveyed through a student's transcript record;

(B) the effectiveness of acts passed in New York in 2015 to address campus sexual assault and in Virginia in 2015 to include a notation "on the transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence under the institution's code, rules, or set of standards governing student conduct";

(C) the effectiveness of requiring that student transcript records note expulsions or suspensions in order to trigger follow-up conversations between the transferring and receiving schools; and

(D) consideration of concerns raised by the Association of Title IX Administrators with regard to transcript notation, in support of proposed federal legislation known as the Safe Transfer Act (H.R.6523, 114th Congress).

(4) How to improve survivor safety in campus adjudication processes.

(5) Any State policy changes that should be made in response to Title IX changes at the federal level.

(6) How to enhance ties between postsecondary educational institutions and community organizations that focus on domestic and sexual violence.

(d) Assistance. For purposes of scheduling meetings and preparing recommended legislation, the Task Force shall have the assistance of the Office of Legislative Council.

(e) Report. On or before March 15, 2020, the Task Force shall submit a written report to the House and Senate Committees on Education and on Judiciary with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Executive Director of the Vermont Network Against Domestic and Sexual Violence or designee shall call the first meeting of the Task Force to occur on or before July 15, 2019.

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

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

(4) The Task Force shall cease to exist on March 16, 2020.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force 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 not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Task Force who are not otherwise compensated for their service on the Task Force shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 25. REPEAL; EXTENSION

Sec. 2 of 2016 Acts and Resolves No. 167, as amended by Sec. E.204 of 2017 Acts and Resolves No. 185, is amended to read:

Sec. 2. REPEAL

4 V.S.A. § 38 (Judicial Masters) shall be repealed on July 1, ~~2020~~ 2025.

Sec. 26. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 9 and 10 shall take effect on July 1, 2019.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 31.

House proposal of amendment to Senate bill entitled:

An act relating to informed health care financial decision making.

Was taken up.

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

First: In Sec. 5, Vermont Health Information Exchange; opt-out consent policy; implementation, in subsection (a), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3) identify the mechanisms by which Vermonters will be able to easily opt out of having their health information shared through the VHIE and a timeline identifying when each mechanism will be available, which shall begin at least one month prior to the March 1, 2020 change to the consent policy;

Second: In Sec. 6, effective dates, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Sec. 4 (18 V.S.A. § 9351) shall take effect on March 1, 2020.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

House Proposal of Amendment Concurred In

S. 37.

House proposal of amendment to Senate bill entitled:

An act relating to medical monitoring.

Was taken up.

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

* * * Medical Monitoring * * *

Sec. 1. 12 V.S.A. chapter 219 is added to read:

CHAPTER 219. MEDICAL MONITORING

§ 7201. DEFINITIONS

As used in this chapter:

(1) “Disease” means any disease, illness, ailment, or adverse physiological or chemical change linked to exposure to a toxic substance.

(2) “Establishment” means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, or governmental function.

(3) “Exposure” means ingestion, inhalation, or absorption through any body surface.

(4) “Facility” means all contiguous land, structures, other appurtenances, and improvements on the land where toxic substances are manufactured, processed, used, or stored. A facility may consist of several treatment, storage, or disposal operational units. A facility shall not include land, structures, other appurtenances, and improvements on the land owned by a municipality.

(5) “Large facility” means a facility:

(A) where an activity within a Standard Industrial Classification code of 10 through 14, 20 through 39, 40 through 42, 44 through 46, or 49 is conducted or was conducted; and

(B)(i) where 10 or more full-time employees have been employed at any one time; or

(ii) that is owned or operated by a person who, when all facilities or establishments that the person owns or controls are aggregated, has employed 500 employees at any one time.

(6) “Medical monitoring” means a program of medical tests or procedures for the purpose of early detection of signs or symptoms of a latent disease resulting from exposure.

(7) “Operator” means a person who manages, conducts, or directs the operations of a facility.

(8) “Owner” means a person who owns or controls a facility. “Owner” shall not mean a person who without participating in the management of the facility holds indicia of ownership primarily to protect a security interest.

(9) “Person” means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; federal agency; or any other legal or commercial entity.

(10) “Release” means any act or omission that allows a toxic substance to enter the air, land, surface water, or groundwater.

(11) “Tortious conduct” or “tortious” means negligence, trespass, nuisance, product liability, or common law liability for ultra-hazardous or abnormally dangerous activity.

(12)(A) “Toxic substance” means any substance, mixture, or compound that may cause personal injury or disease to humans through ingestion,

inhalation, or absorption through any body surface and that satisfies one or more of the following:

(i) the substance, mixture, or compound is listed on the U.S. Environmental Protection Agency Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act, Comprehensive Environmental Response, Compensation and Liability Act, and Section 112(r) of the Clean Air Act;

(ii) the substance, mixture, or compound is defined as a "hazardous material" under 10 V.S.A. § 6602 or under rules adopted under 10 V.S.A. chapter 159;

(iii) testing has produced evidence, recognized by the National Institute for Occupational Safety and Health or the U.S. Environmental Protection Agency, that the substance, mixture, or compound poses acute or chronic health hazards;

(iv) the Department of Health has issued a public health advisory for the substance, mixture, or compound;

(v) the Secretary of Natural Resources has designated the substance, mixture, or compound as a hazardous waste under 10 V.S.A. chapter 159; or

(vi) exposure to the substance is shown by expert testimony to increase the risk of developing a latent disease.

(B) "Toxic substance" shall not mean:

(i) a pesticide when applied consistent with good practice; in conformity with federal, State, and local laws, rules, and regulations; and according to the manufacturer's instructions; or

(ii) ammunition or components thereof, firearms, air rifles, discharge of firearms or air rifles, or hunting or fishing equipment or components thereof.

§ 7202. MEDICAL MONITORING FOR EXPOSURE TO TOXIC SUBSTANCES

(a) A person without a present injury or disease shall have a cause of action for the remedy of medical monitoring against a person who is the owner or operator of a large facility from which a toxic substance was released if all of the following are demonstrated by a preponderance of the evidence:

(1) The person was exposed to the toxic substance as a result of tortious conduct by the owner or operator, or persons under the control of the owner or operator, who released the toxic substance.

(2) As a proximate result of the tortious exposure, the person has a greater risk of contracting a latent disease.

(3) Diagnostic testing is reasonably necessary. Testing is reasonably necessary if, shown by expert testimony, a physician would prescribe diagnostic testing because the person's increased risk of contracting the disease due to the exposure makes it reasonably necessary to undergo diagnostic testing different from what would normally be prescribed in the absence of the exposure.

(4) Medical tests or procedures exist to detect the latent disease.

(b) If the cost of medical monitoring is awarded, a court shall order the defendant found liable to pay the award to a court-supervised medical monitoring program administered by one or more appropriate health professionals, including professionals with expertise in exposure to toxic substances or expertise with treating or monitoring the relevant latent disease or diseases.

(c) Upon an award of medical monitoring under subsection (b) of this section, the court shall award to the plaintiff reasonable attorney's fees and other litigation costs reasonably incurred.

(d)(1) This chapter shall be the exclusive remedy for a person without a present injury to bring a cause of action to seek medical monitoring due to exposure to toxic substance.

(2) Except as provided under subdivision (1) of this subsection, nothing in this chapter shall be deemed to preclude the pursuit of any other civil or injunctive remedy or defense available under statute or common law, including the right of any person to seek to recover for damages related to the manifestation of a latent disease. The remedies and defenses in this chapter are in addition to those provided by existing statutory or common law.

(e) This section shall not increase the rights and remedies available under 21 V.S.A. chapter 9 to an employee who suffers a personal injury by accident arising out of and in the course of employment, provided that 21 V.S.A. chapter 9 shall not limit the right of a person who has not suffered a personal injury by accident arising out of and in the course of employment to bring a cause of action for medical monitoring.

Sec. 2. [Deleted.]

* * * Hazardous Material Releases * * *

Sec. 3. 10 V.S.A. § 6615 is amended to read:

§ 6615. LIABILITY

(a) Subject only to the defenses set forth in subsections (d) and (e) of this section, the following persons shall be liable for abating a release or threatened release of hazardous material and the costs of investigation, removal, and remedial actions incurred by the State that are necessary to protect the public health or the environment:

(1) the owner or operator of a facility, or both;

(2) any person who at the time of release or threatened release of any hazardous material owned or operated any facility at which such hazardous materials were disposed of;

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous materials owned or possessed by such person, by any other person or entity, at any facility owned or operated by another person or entity and containing such hazardous materials; ~~and~~

(4) any person who accepts or accepted any hazardous materials for transport to disposal or treatment facilities selected by such persons, from which there is a release, or a threatened release of hazardous materials ~~shall be liable for;~~ and

~~(A) abating such release or threatened release; and~~

~~(B) costs of investigation, removal, and remedial actions incurred by the State which are necessary to protect the public health or the environment.~~

(5) any person who manufactured for commercial sale a hazardous material and who knew or should have known that the material presented a threat of harm to human health or the natural environment.

* * *

(d)(1) There shall be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of hazardous material and the resulting damages were caused solely by any of the following:

(A) An act of God.

(B) An act of war.

(C) An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in

connection with a contractual relationship, existing directly or indirectly, with the defendant. If the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, for purposes of this section, there shall be considered to be no contractual relationship at all. This subdivision (d)(1)(C) shall only serve as a defense if the defendant establishes by a preponderance of the evidence:

(i) that the defendant exercised due care with respect to the hazardous material concerned, taking into consideration the characteristics of that hazardous material, in light of all relevant facts and circumstances; and

(ii) that the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(D) Any combination of subdivisions (A)-(C) of this subdivision (1).

* * *

(5) A person shall not be liable under subdivision (a)(5) of this section provided that the person demonstrates that he or she provided an adequate warning of the harm posed by the hazardous material known or which should have been known at the time the hazardous material was manufactured.

* * *

(i) In an action brought by the Secretary under this section, a responsible person may implead, or in a separate action a responsible person may sue, another responsible person or persons and may obtain contribution or indemnification, except that a person who is solely liable pursuant to subdivision (a)(5) of this section shall not be able to implead or to sue a person pursuant to this subsection. A responsible person who has resolved its liability to the State under this section through a judicially approved settlement and a secured lender or fiduciary with whom the Secretary has entered into an agreement under subsection (h) of this section shall not be liable for claims for contribution or indemnification regarding matters addressed in the judicially approved settlement or in the agreement. Likewise, a person who has obtained a certificate of completion pursuant to subchapter 3 of this chapter shall not be liable for claims for contribution or indemnification regarding releases or threatened releases described in the approved corrective action plan, as amended. Such a settlement or agreement or certificate of completion does not discharge any other potentially responsible person unless its terms so provide, but it reduces the potential liability of other potentially responsible persons by the relief agreed upon. A secured lender or fiduciary with whom the Secretary has entered into an agreement under subsection (h) of this section may not seek contribution or indemnification on the basis of such agreement from any

other potentially responsible person. In any action for contribution or indemnification, the rights of any person who has resolved its liability to the State shall be subordinate to the rights of the State.

Sec. 4. APPLICATION OF LIABILITY

Notwithstanding any contrary provision of 1 V.S.A. § 214, the amendment contained in 10 V.S.A. § 6615(a)(5) shall apply to any relevant release of a hazardous material regardless of the date of the relevant release, including releases that occurred prior to the effective date of 10 V.S.A. § 6615(a)(5).

* * * Effective Date * * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative on a roll call, Yeas 19, Nays 11.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Bray, Champion, Clarkson, Cummings, Hardy, Hooker, Ingram, Lyons, MacDonald, McCormack, Pearson, Perchlik, Pollina, Sears, Sirotkin, White.

Those Senators who voted in the negative were: Benning, Brock, Collamore, Kitchel, Mazza, McNeil, Nitka, Parent, Rodgers, Starr, Westman.

****During debate of the measure, Senator Sears addressed the Chair and on motion of Senator Champion, his remarks were ordered enter in the Journal, and are as follows:

“Mr. President:

“S.37 as passed by the Senate contained two important sections. The first section held a large facility strictly liable for the harm caused from the release of toxic chemicals. The second section allowed a Vermonter to seek the costs of medical monitoring when there is an increased risk of contracting a disease as a result of exposure to a toxic chemical.

”Both of these provisions were designed to create fairness for Vermonters harmed by toxic chemicals through no fault of their own. At its core, S.37 recognized that when toxic chemicals cause harm to peoples’ health or property someone must pay. The bill, as passed by the Senate ensures that polluters, and not innocent victims, are held responsible for the costs associated with the release of toxic chemicals.

“Unfortunately the version of S.37 that passed the House removed the strict liability section from the bill. I, and others, are extremely disappointed that S.37 no longer includes the strict liability provisions that we passed. I view the removal of the strict liability section as a major concession to polluter. I believe holding polluters strict liable for the harm they caused is the right thing to do and a policy I hope is ultimately adopted in Vermont.

”I am grateful that the House was able to defeat an amendment that would have weakened the medical monitoring section of the bill to the point that it would have protected industry rather than helping Vermonters. The amendment would have added the words significant and serious to test that a person must prove to be awarded medical monitoring. Under the amendment, a person would have been required to show they have a "significant" risk of developing a "serious" disease in order to obtain medical monitoring.

“If added, these terms would have created real obstacles in litigation. For example, adding the term significant would allow a polluter to argue that medical monitoring should not be awarded unless the victim can quantify the risk. Because it is virtually impossible to quantify the risk, a polluter would have been able to use the term “significant” to delay and in some instances deny victims medical monitoring.

“Similarly, there is no definition of "serious." Accordingly, it would have created confusion and an opportunity to drag out litigation if this term was included in the bill.

“The idea in crafting S.37 is to create a fair medical monitoring test for Vermonters that avoids terms like “significant” and “serious” that can just be used by polluters to avoid responsibility. I believe that the House version of the bill meets this goal.

“It is important to note that the medical monitoring section passed by the House is more restrictive than the bill passed by the Senate. The House has limited the applicability of the medical monitoring provision to facilities with ten or more full time employees AND under certain federally designated industrial codes. Our version of the bill would have applied medical monitoring to any facility with ten or more employees. This is a significant narrowing of this section of the bill that further address industry concerns.

“Finally, the House also added a provision that will allow the State of Vermont to sue chemical manufacturers for the cost of clean-up resulting from the release of a chemical they produced when the manufacturer failed to issue a proper warning about the risks associated with that chemical. I support this provision that will add another tool that the state can use to hold polluters accountable. Despite the fact that the bill is not as strong as it was when it

passed the Senate, it will still help Vermonters and should be supported and Senate Judiciary urges the Senate to concur with the House proposal of amendment.”

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

S. 95.

Senator MacDonald, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon Senate bill entitled:

An act relating to municipal utility capital investment.

Respectfully report that they have met and considered the same and recommend that the House recede from its proposals of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. § 1822 is amended to read:

§ 1822. POWERS; APPROVAL OF VOTERS

(a) In addition to the powers it may now or hereafter have, a municipal corporation otherwise authorized to own, acquire, improve, control, operate, or manage a public utility or project and to issue bonds pursuant to this subchapter, may also, by action of its legislative branch, exercise any of the following powers:

(1) to borrow money and issue bonds for the purposes of acquiring, improving, maintaining, financing, controlling, or operating the public utility or project, or for the purpose of selling, furnishing, or distributing the services, facilities, products, or commodities of such utility or project;

(2) to enter into contracts in connection with the issuance of bonds for any of the purposes enumerated in subdivision (1) of this subsection;

(3) to purchase, hold, and dispose of any of its bonds;

(4) to pledge or assign all or part of any net revenues of the public utility or project, to provide for or to secure the payment of the principal of and the interest on bonds issued in connection with such public utility or project;

(5) to do any and all things necessary or prudent to carry out the powers expressly granted or necessarily implied in this subchapter, including without limitation those powers enumerated in section 1824 of this title.

(b)(1) The bonds authorized under this section shall be in such form, shall contain such provisions, and shall be executed as may be determined by the legislative branch of the municipal corporation, but shall not be executed, issued, or made, and shall not be valid and binding, unless and until at least a majority of the legal voters of such municipal corporation present and voting at a duly warned annual or special meeting called for that purpose shall have first voted to authorize the same.

(2) The warning calling such a meeting shall state the purpose for which it is proposed to issue bonds, the estimated cost of the project, the amount of bonds proposed to be issued under this subchapter therefor, that such bonds are to be payable solely from net revenues, and shall fix the place where and the date on which such meetings shall be held and the hours of opening and closing the polls.

(3) The notice of the meeting shall be published and posted as provided in section 1756 of this title.

(4) When a majority of all the voters voting on the question at such meeting vote to authorize the issuance of bonds under this subchapter to pay for such project, the legislative body shall be authorized to issue bonds or enter into contracts, pledges, and assignments as provided in this subchapter.

(5) Sections 1757 and 1758 of this title shall apply to the proceedings taken hereunder, except that the form of ballot to be used shall be substantially as follows:

Shall bonds of the (name of municipality) to the amount of \$ _____ be issued under subchapter 2 of chapter 53 of Title 24, Vermont Statutes Annotated, payable only from net revenues derived from the (type) public utility system, for the purpose of paying for the following public utility project?

If in favor of the bond issue, make a cross (x) in this square .

If opposed to the bond issue, make a cross (x) in this square .

(c) The bonds authorized by this subchapter shall be sold at par, premium, or discount by negotiated sale, competitive bid, or to the Vermont Municipal Bond Bank.

(d) Notwithstanding the provisions of subsection (b) of this section, the legislative branch of a municipal corporation owning a municipal plant as defined in 30 V.S.A. § 2901 may authorize by resolution the issuance of bonds

in an amount not to exceed 50 percent of the total assets of said municipal plant without the need for voter approval. Nothing in this subsection shall be interpreted as eliminating the requirement for approval from the Public Utility Commission pursuant to 30 V.S.A. § 108, where applicable.

Sec. 2. 30 V.S.A. § 108 is amended to read:

§ 108. ISSUE OF BONDS OR OTHER SECURITIES

* * *

(b) The provisions of this section shall not apply to the Vermont Public Power Supply Authority or to a public utility which that meets each and all of the following four conditions:

(1) is incorporated in some state other than Vermont;

(2) is conducting an interstate and intrastate telephone business ~~which that~~ is subject to regulation by the Federal Communications Commission in some respects;

(3) is conducting telephone operations in four or more states; and

(4) has less than 10 percent of its total investment in property used or useful in rendering service located within this State to the extent that such public utility may issue stock, bonds, notes, debentures, or other evidences of indebtedness not directly or indirectly constituting or creating a lien on any property used or useful in rendering service ~~which that~~ is located within this State.

(c)(1) A municipality shall not issue bonds or notes or pledge its net revenues under 24 V.S.A. chapter 53, respecting the ownership or operation of a gas or electric utility, unless the Public Utility Commission first finds, upon petition of the municipality and after notice and an opportunity for hearing, that the proposed action will be consistent with the general good of the State.

(2) If the Public Utility Commission does not issue its ruling within 90 days of the filing of the petition, as may be extended by consent of the municipality, the issuance of the proposed bonds or notes or pledge of net revenues shall be deemed to be consistent with the general good of the State.

(3) If the Public Utility Commission issues a ruling in accordance with subdivision (1) of this subsection, or does not rule within the period specified in subdivision (2) of this subsection, a municipality must ~~subsequently obtain~~ also have obtained voter approval in accordance with 24 V.S.A. chapter 53, if required, prior to issuing bonds or notes or pledging its net revenues.

(d) Notwithstanding the provisions of subsection (c) of this section, a municipality may:

(1) issue bonds or notes or pledge its net revenues payable within three years from the date of issue without such consent, provided such borrowing is necessary in an emergency to restore service immediately after damage by disaster; ~~or~~

(2) issue bonds or notes or pledge its net revenues payable within one year of the date of issuance without the consent otherwise required by this subdivision, provided its total bonds, notes, or evidences of indebtedness so payable within one year do not exceed 20 percent of its total assets; or

(3) issue bonds or notes without the consent otherwise required by this subdivision, provided:

(A) the amount of the issuance plus the amount of any bond or note issuances during the previous 12 calendar months does not exceed 20 percent of the municipality's total assets; and

(B) after the proposed issuance, the total amount of the municipality's outstanding bonds, notes, or evidences of indebtedness would not exceed 50 percent of its total assets.

Sec. 3. 30 V.S.A. § 5031(a)(4) is amended to read:

(4) Bonds and notes may be issued in accordance with this chapter, ~~subject to~~ without the need to obtain the consent and approval of the Public Utility Commission as provided in this title.

Sec. 4. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(10) "Group net metering system" means a net metering system serving more than one customer, or a single customer with multiple electric meters, located within the service area of the same retail electricity provider. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility ~~shall~~ may be considered in the same group net metering system with buildings of its member ~~municipalities schools~~ that are located within the service area of the same retail electricity provider ~~that serves the facility.~~

* * *

Sec. 5. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

* * *

(f) Except for net metering systems for which the Commission has established a registration process, the Commission shall issue a final determination as to an uncontested application within 90 days of the date of the last substantive filing by a party.

Sec. 6. NET METERING; CUMULATIVE CUSTOMER CAPACITY;
SCHOOLS AND SCHOOL DISTRICTS

(a) Legislative intent. Public Utility Commission Rule 5.129(D) establishes a 500 kW single customer limit and states that the cumulative capacity of net metering systems allocated to a single customer may not exceed 500 kW. It is the intent of the General Assembly that schools and school districts shall not be included in this 500 kW customer limit or cap. Specifically, it is the intent of the General Assembly that:

(1) Customers that are a school or school district shall have a cumulative capacity limit of 1 MW. This means that a school or school district may have multiple accounts as long as the allocated share of those multiple accounts does not exceed 1 MW in total.

(2) School districts that have been or may be created as a result of consolidation should not be penalized by the fact that the consolidation resulted in a cumulative capacity that exceeds the 1 MW limit. As a result, customers that are school districts that have been or may be created as a result of school district consolidation or merger shall have a cumulative capacity of the larger of 1 MW, or the cumulative capacity of the net metering systems the schools or school districts were participating in, or had agreed to participate in, prior to the consolidation that created the new district.

(b) Cumulative capacity of school net metering systems. Notwithstanding any provision of law to the contrary, the cumulative capacity of net metering systems allocated to a single customer:

(1) That is a public school, as defined in 16 V.S.A. § 11(7); an independent school, as defined in 16 V.S.A. § 11(8); a supervisory union, as defined in 16 V.S.A. § 11(23); or a school district, as defined in 16 V.S.A. § 11(10) shall not exceed 1 MW.

(2) That is a school district, as defined in 16 V.S.A. § 11(10), or a supervisory union, as defined in 16 V.S.A. § 11(23), created as a result of school district consolidation under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46, each as amended, shall not exceed the greater of:

(A) the cumulative capacity of the net metering systems that the school districts were participating in, or had agreed to participate in, prior to consolidation; or

(B) 1 MW.

(c) Public Utility Commission rules. The Public Utility Commission shall amend Rule 5.129(D), or adopt a new rule, as necessary to implement this section. The amended, or new, rule shall clearly state that the 500 kW customer limit is no longer applicable to schools and school districts, that customers that are schools or school districts shall have a customer limit of 1 MW, unless, pursuant to subsection (b)(2)(A) of this section, the customer limit is greater than 1 MW.

Sec. 7. PUBLIC UTILITY COMMISSION; RULES

(a) The Public Utility Commission shall update its applicable rules for consistency with this act.

(b) The provisions of this act shall supersede any provisions to the contrary contained in the Public Utility Commission's rules as they existed immediately prior to the effective date of this act.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

*MARK A. MACDONALD
CHRISTOPHER A. PEARSON
REBECCA A. BALINT*

Committee on the part of the Senate

*LAURA H. SIBILIA
TIMOTHY C. BRIGLIN
MICHAEL I. YANTACHKA*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

Rules Suspended; Bills Messaged

On motion of Senator Ashe, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

S. 30, S. 31, S. 37, S. 95, S. 96, S. 105, H. 547.

Adjournment

On motion of Senator Ashe, the Senate adjourned until two o'clock and in the afternoon.

Afternoon

The Senate was called to order by the President.

House Proposals of Amendment to Senate Proposal of Amendment Concurred In

H. 543.

House proposals of amendment to Senate proposal of amendment to House bill entitled:

An act relating to capital construction and State bonding.

Were taken up.

The House proposes to the Senate to amend the Senate proposal of amendment recommending that the bill be amended as follows:

First: In Sec. 1, legislative intent, in subsection (a), by striking out the following: “\$62,125,628.00” and inserting in lieu thereof the following \$62,488,128.00

Second: In Sec. 2, State buildings, in subdivision (b)(4), by striking out the following: “\$500,000.00” and inserting in lieu thereof the following: \$700,000.00 in subdivision (c)(3), by striking out the following “\$7,328,313.00” and inserting in lieu thereof the following: \$6,790,813.00 and by striking out all after subsection (c) and inserting in lieu thereof the following:

(d) For the amount appropriated in subdivision (b)(4) of this section, the Commissioner of Buildings and General Services is authorized to use up to \$200,000.00 to assess relative costs and resource requirements for potential construction of a correctional facility that ranges in scale in order to accommodate the results of the Council of State Governments’ study described in Sec. 28 of this act; provided, however, that the funds shall only become available after approval by the Joint Fiscal Committee and the Joint Legislative Justice Oversight Committee. On or before March 15, 2020, the Commissioner shall submit a copy of the assessment to the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

<u>Appropriation – FY 2020</u>	<u>\$20,323,423.00</u>
<u>Appropriation – FY 2021</u>	<u>\$21,325,813.00</u>
<u>Total Appropriation – Section 2</u>	<u>\$41,649,236.00</u>

Third: In Sec. 5, commerce and community development, in subdivision (a)(2), by striking out the following: “\$50,000.00” and inserting in lieu thereof the following: \$37,500.00 and by striking out all after subsection (d) and inserting in lieu thereof the following:

(e) The funds shall become available after the Agency notifies the Department that the remaining funds to complete the project have been secured.

<u>Appropriation – FY 2020</u>	<u>\$487,500.00</u>
<u>Appropriation – FY 2021</u>	<u>\$300,000.00</u>
<u>Total Appropriation – Section 5</u>	<u>\$787,500.00</u>

Fourth: In Sec. 11, clean water initiatives, in subdivision (f)(1), by striking out the following: “10 V.S.A. § 1389(a)(B)(ii)” and inserting in lieu thereof the following: 10 V.S.A. § 1389(a)(1)(B)(ii)

Fifth: By striking out Sec. 17, Sergeant at Arms, in its entirety and inserting in lieu thereof the following:

Sec. 17. SERGEANT AT ARMS

(a) The following sums are appropriated in FY 2020 to the Sergeant at Arms for the following projects:

<u>(1) stand-alone digital public address system:</u>	<u>\$175,000.00</u>
<u>(2) chairs for Committee rooms:</u>	<u>\$30,000.00</u>

(b) The sum of \$175,000.00 is appropriated in FY 2021 to the Sergeant at Arms for a stand-alone digital public address system.

(c) The Sergeant at Arms shall issue a request for proposal for the project described in subdivisions (a)(1) and subsection (b) of this section.

<u>Appropriation – FY 2020</u>	<u>\$205,000.00</u>
<u>Appropriation – FY 2021</u>	<u>\$175,000.00</u>
<u>Total Appropriation – Section 17</u>	<u>\$380,000.00</u>

Sixth: In Sec. 27, State House space; short-term; assessment, in subsection (a), after the word “needs” by inserting the words in the State House

Seventh: By striking out Sec. 28, Council on State Governments; corrections; study, and inserting in lieu thereof the following:

Sec. 28. COUNCIL OF STATE GOVERNMENTS; CORRECTIONS;
STUDY

(a) Intent. It is the intent of the General Assembly to work with the Council of State Governments (CSG) to assess the population trends and programming in the State's corrections system and that the State consider criminal justice reform strategies as part of the Justice Reinvestment II initiative. It is also the intent of the General Assembly that this assessment and initiative shall inform infrastructure needs for State correctional facilities.

(b) Study. The Legislative Branch shall contract with the Council of State Governments to work with the Executive, Legislative, and Judicial Branches and conduct a review of programming, transitional services, and population trends in Vermont's correctional facilities. The review may include an evaluation of the women's population in Vermont and the programming and services needed to meet their needs, the detention population, and barriers that exist to reducing the population.

Eighth: By striking out Sec. 29a, Woodside Juvenile Rehabilitation Center; report, in its entirety.

Ninth: By striking out Sec. 30, replacement of Middlesex secure residential recovery facility; intent, in its entirety and inserting in lieu thereof the following:

Sec. 30. REPLACEMENT OF MIDDLESEX SECURE RESIDENTIAL
RECOVERY FACILITY

(a) Intent. To the extent that the Department of Disabilities, Aging, and Independent Living amends its rules pertaining to therapeutic community residences to allow secure residential recovery facilities to utilize emergency involuntary procedures and that these rules are identical to the rules adopted by the Department of Mental Health governing the use of emergency involuntary procedures in psychiatric inpatient units, it is the intent of the General Assembly that the State shall replace the Middlesex Secure Residential Recovery Facility by:

(1) constructing a physically secure State-owned secure residential recovery facility for up to an additional 16 beds that meets the security standards currently used at the Middlesex Secure Residential Recovery Facility; and

(2) exploring the placement of interim secure residential recovery beds or permanent beds that could be flexible to meet other potential therapeutic community residential uses as determined by the Department of Mental Health.

(b) State-owned Secure Residential Recovery Facility Proposal.

(1) On or before October 15, 2019, the Secretary of Human Services and the Commissioner of Buildings and General Services shall develop a proposal that expedites the closure of the Middlesex Secure Residential Recovery Facility and provides for construction of a 16-bed State-owned secure residential recovery facility described in subsection (a) of this section and shall present this proposal to the House Committee on Corrections and Institutions and the Senate Committee on Institutions.

(2) With approval of the Speaker of the House and the President Pro Tempore, as appropriate, the House Committee on Corrections and Institutions and the Senate Committee on Institutions may meet up to one time when the General Assembly is not in session to evaluate the proposal described in subdivision (1) of this subsection and make a recommendation on the site location to the Joint Fiscal Committee. The Committees shall notify the Commissioner of Buildings and General Services and the Secretary of Human Services prior to holding a meeting pursuant to this subsection. Committee members shall be entitled to receive a per diem and expenses as provided in 2 V.S.A. § 406.

(3) The Joint Fiscal Committee shall review the recommendation of the Committees described in subdivision (2) of this section at its September or November 2019 meeting. If the Joint Fiscal Committee so determines, it shall approve the proposal as recommended by the Committees.

(c) Interim Secure Residential Recovery Beds.

(1) Interim bed negotiations. On or before the August 15, 2019, the Commissioner of Mental Health shall conduct an analysis of mental health bed needs in residential programs at secure residential recovery facilities across the State. Based on this analysis, the Secretary of Human Services may commence negotiations for placement of eight interim beds in a secure residential recovery facility or permanent beds that could be flexible to meet other potential therapeutic community residential uses with a target a completion date for negotiations of December 1, 2019. The Secretary shall not execute an agreement without legislative approval.

(2) Report. On or before December 15, 2019, the Agency shall submit a report to the House Committees on Appropriations, on Corrections and Institutions, and on Health Care and to the Senate Committees on Appropriations, on Institutions, and on Health and Welfare on the status of negotiations based on the Department of Mental Health's analysis of bed needs. To the extent the Agency determines it is an appropriate location for an alternative to the Middlesex Secure Residential Recovery Facility, the

report shall include an analysis of operating secure residential recovery beds at Rutland Regional Medical Center and Rutland Mental Health Services.

Tenth: In Sec. 33, amending 2018 Acts and Resolves No. 190, Sec. 21, in Sec. 33a, in subsection (b), in the second sentence, by striking out the words “a State correctional facility” and inserting in lieu thereof the words the Department of Corrections

Eleventh: In Sec. 38, amending 2017 Acts and Resolves No. 84, as amended by 2018 Acts and Resolves No. 190, Sec. 26, in Sec. 36b, by striking out the following: “June 30, 2020” and inserting in lieu thereof the following: January 1, 2020

Thereupon, the question, Shall the Senate concur in the House proposals of amendment to the Senate proposal of amendment?, was decided in the affirmative.

Proposal of Amendment; Consideration Interrupted by Recess

H. 351.

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

An act relating to workers’ compensation, unemployment insurance, and ski tramway amendments.

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

By striking out Secs. 1 through 6 and their reader assistance headings in their entireties and inserting in lieu thereof new Secs. 1 through 6 and their reader assistance heading to read as follows:

* * * Deleted Sections * * *

Sec. 1. [Deleted.]

Sec. 2. [Deleted.]

Sec. 3. [Deleted.]

Sec. 4. [Deleted.]

Sec. 5. [Deleted.]

Sec. 6. [Deleted.]

And that the bill ought to pass in concurrence with such proposal of amendment.

Senator McCormack, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendment thereto:

In Sec. 8, 21 V.S.A. § 707, by striking out “ski lift mechanic education, job training, and apprenticeship programs” and inserting in lieu thereof the following: mechanic education, job training, and apprenticeship programs, related to the maintenance and operation of ski lifts

And that the bill ought to pass in concurrence with such proposal of amendment.

Thereupon, pending the question, Shall the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs be amended as recommended by the Committee on Appropriations?, Senator McCormack requested and was granted leave to withdraw the recommendation of amendment of the Committee on Appropriations.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs?, Senators Sirotkin, Balint, Clarkson and Hooker moved to substitute a proposal of amendment for the report of the Committee on Economic, Development Housing and General Affairs as follows:

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

Sec. 1. 21 V.S.A. § 384(a) is amended to read:

(a)(1) An employer shall not employ any employee at a rate of less than ~~\$9.15. Beginning on January 1, 2016, an employer shall not employ any employee at a rate of less than \$9.60. Beginning on January 1, 2017, an employer shall not employ any employee at a rate of less than \$10.00. Beginning on January 1, 2018, an employer shall not employ any employee at a rate of less than \$10.50, and beginning \$10.78. Beginning on January 1, 2019 2020, an employer shall not employ any employee at a rate of less than \$11.50. Beginning on January 1, 2021, an employer shall not employ any employee at a rate of less than \$12.50, and on each subsequent January 1, the minimum wage rate shall be increased by five percent or the percentage increase of the Consumer Price Index, CPI-U, U.S. city average, not seasonally adjusted, or successor index, as calculated by the U.S. Department of Labor or successor agency for the 12 months preceding the previous~~

September 1, whichever is smaller, but in no event shall the minimum wage be decreased. The minimum wage shall be rounded off to the nearest \$0.01.

(2) An employer in the hotel, motel, tourist place, and restaurant industry shall not employ a service or tipped employee at a basic wage rate less than one-half the minimum wage. As used in this subsection, "a service or tipped employee" means an employee of a hotel, motel, tourist place, or restaurant who customarily and regularly receives more than \$120.00 per month in tips for direct and personal customer service.

(3) If the minimum wage rate established by the U.S. government is greater than the rate established for Vermont for any year, the minimum wage rate for that year shall be the rate established by the U.S. government.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2019.

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

An act relating to increasing the minimum wage to \$12.50 per hour.

Thereupon, pending the question, Shall the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs be substituted as moved by Senators Sirotkin, Balint, Clarkson and Hooker? Senator Sirotkin moved that the Senate recess until three o'clock and thirty minutes.

Which was agreed to.

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Bill Amended; Third Reading Ordered; Rules Suspended; Bill Passed in Concurrence with Proposal of Amendment

H. 351.

Consideration was resumed on House bill entitled:

An act relating to workers' compensation, unemployment insurance, and ski tramway amendments.

Thereupon, pending the question, Shall the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs be substituted as moved by Senators Sirotkin, Balint, Clarkson and Hooker? Senator Brock moved that the bill be postponed until the next legislative day, which was disagreed to.

Thereupon, the question, Shall the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs be substituted as moved by Senators Sirotkin, Balint, Clarkson and Hooker? was agreed to.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of proposal of amendment of the Committee on Economic Development, Housing and General Affairs, as substituted was agreed to.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative on a roll call, Yeas 22, Nay 8.

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

Roll Call

Those Senators who voted in the affirmative were: Ashe, Balint, Baruth, Bray, Campion, Clarkson, Cummings, Hardy, Hooker, Ingram, Kitchel, Lyons, MacDonald, McCormack, Nitka, Pearson, Perchlik, Pollina, Sears, Sirotkin, Westman, White.

Those Senators who voted in the negative were: Benning, Brock, Collamore, Mazza, McNeil, Parent, Rodgers, Starr.

Thereupon, on motion of Senator Ashe, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

Thereupon, the bill was read the third time and passed and in concurrence with proposal of amendment.

Rules Suspended; Bills Messaged

On motion of Senator Ashe, the rules were suspended, and the following bills were severally ordered messaged to the House forthwith:

H. 351, H. 543.

Adjournment

On motion of Senator Ashe, the Senate adjourned until eleven o'clock in the morning.