

# Journal of the Senate

WEDNESDAY, MARCH 24, 2021

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the House No. 38

A message was received from the House of Representatives by Ms. Melissa Kucserik, its First Assistant Clerk, as follows:

Madam President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 101.** An act relating to the implementation of 2018 Acts and Resolves No. 173 by providing grant funding to build systems-driven, sustainable literacy support for all students with measurable outcomes.

**H. 106.** An act relating to equitable access to a high-quality education through community schools.

**H. 218.** An act relating to the sale of unpasteurized raw milk.

**H. 426.** An act relating to addressing the needs and conditions of public school facilities in the State.

**H. 434.** An act relating to establishing the Agricultural Innovation Board.

In the passage of which the concurrence of the Senate is requested.

## Bill Introduced

Senate bill of the following title was introduced, read the first time and referred:

### S. 128.

By Senator Pearson,

An act relating to the taxation of grid-connected renewable energy plants, energy storage facilities, and energy transformation projects.

To the Committee on Finance.

---

**Bills Referred**

House bills of the following titles were severally read the first time and referred:

**H. 101.**

An act relating to the implementation of 2018 Acts and Resolves No. 173 by providing grant funding to build systems-driven, sustainable literacy support for all students with measurable outcomes.

To the Committee on Education.

**H. 106.**

An act relating to equitable access to a high-quality education through community schools.

To the Committee on Education.

**H. 218.**

An act relating to the sale of unpasteurized raw milk.

To the Committee on Agriculture.

**H. 426.**

An act relating to addressing the needs and conditions of public school facilities in the State.

To the Committee on Education.

**H. 434.**

An act relating to establishing the Agricultural Innovation Board.

To the Committee on Agriculture.

**Third Reading Ordered****S. 102.**

Senate committee bill entitled:

An act relating to the regulation of agricultural inputs for farming.

Having appeared on the Calendar for notice for one day, was taken up.

Senator MacDonald, for the Committee on Natural Resources and Energy, to which the bill was referred, reported that the bill ought to pass.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, pending the question, Shall the bill be read third time?, Senators MacDonald, Bray, Champion, McCormack and Westman moved to amend the bill as follows:

First: In Sec. 3, 6 V.S.A. chapter 218, in section 5133, in subsection (b), by adding two new subdivisions (3) and (4) to read:

(3) The rules shall prohibit a farm from initiating the production of compost on or after July 1, 2021 within a downtown, village center, new town center, neighborhood development area, or growth center designated under 24 V.S.A. chapter 76a, unless the municipality has expressly allowed composting in the designated area under the municipal zoning or subdivision bylaws or in an approved municipal plan.

(4) The rules adopted under this section shall be designed to reduce odor, noise, vectors, and other nuisance conditions on farms and to protect the public health and the environment in a manner that is equal to or better than the rules for compost facilities in the Agency of Natural Resources' Vermont Solid Waste Management Rules, as amended.

Second: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. REPORT ON IMPORTATION OF FOOD RESIDUALS FOR  
FARMING

On or before January 15, 2022 and annually thereafter, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committees on Agriculture and on Natural Resources and Energy and the House Committees on Agriculture and Forestry and on Natural Resources, Fish, and Wildlife a report regarding importation of food residuals for composting under 10 V.S.A. § 6001(22)(H). The report shall include:

(1) an inventory of the operators of farms that are producing compost under 10 V.S.A. § 6001(22)(H), including the estimated volume of food residuals imported onto farms;

(2) a status report on the rulemaking required under 6 V.S.A. § 5133 and any subsequent amendment to those rules;

(3) an accounting of any complaints regarding or enforcement actions brought against a farm producing compost under 10 V.S.A. § 6001(22)(H); and

(4) any additional information that the Secretary determines is relevant to the administration of compost production under 10 V.S.A. § 6001(22)(H).

Third: By adding a new section to be numbered Sec. 8a to read as follows:

Sec. 8a. RULEMAKING; IMPLEMENTATION

The Secretary of Agriculture, Food and Markets shall initiate the rulemaking required under 6 V.S.A. § 5133 on or before January 1, 2022. The Secretary of Agriculture, Food and Markets shall file under 3 V.S.A. § 841 a final proposal of the rules required under 6 V.S.A. § 5133 on or before January 1, 2023.

Fourth: By striking out Sec. 11 in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

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

Sec. 11. EFFECTIVE DATES

(a) This section and Secs. 1–8a (compost foraging; farming) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2021.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**Bill Amended; Bill Passed**

**S. 60.**

Senate bill entitled:

An act relating to allowing municipal and cooperative utilities to offer innovative rates and services.

Was taken up.

Thereupon, pending third reading of the bill, Senator Perchlik moved to amend the bill as follows:

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

Sec. 1. 30 V.S.A. § 218d(n) and (o) are added to read:

Second: In Sec. 1. 30 V.S.A. § 218d subsection (o), in subdivision (1)(C)(i), by striking out the word “plant” immediately preceding the word “additions”

Third: In Sec. 1. 30 V.S.A. § 218d subsection (o), in subdivision (1)(C)(i), by striking out the words “net plant capacity” and inserting in lieu thereof the words net asset

Which was agreed to.

Thereupon, the bill was read the third time and passed.

**Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment**

**H. 315.**

House bill entitled:

An act relating to COVID-19 relief.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 14a to read as follows:

Sec. 14a. 18 V.S.A. § 1129(d) and (e) are amended to read:

(d) The Department may provide confidential registry information to health care provider networks serving Vermont patients, to the Vermont Health Information Exchange, and, with the approval of the Commissioner, to researchers who present evidence of approval from an institutional review board in accordance with 45 C.F.R. § 164.512.

(e) Prior to releasing confidential information pursuant to subsections (c) and (d) of this section, the Commissioner shall obtain from State registries, health care provider networks, the Vermont Health Information Exchange, and researchers a written agreement to keep any identifying information confidential and privileged.

Which was agreed to.

Thereupon, Senator Kitchel moved that the Senate proposal of amendment be amended as follows:

First: By striking out Secs. 23 and 24 (annual link to federal statutes) in their entireties and inserting in lieu thereof new Secs. 23 and 24 to read as follows:

Sec. 23. [Deleted.]

Sec. 24. TAXATION; ANNUAL LINK TO FEDERAL STATUTES;  
TAX YEAR 2020

It is the intent of the General Assembly that this act shall include legislative language conforming the Vermont tax code under 32 V.S.A. §§ 5824 and 7402(8) to the statutes of the United States for taxable year 2020, and further, to make explicit in this act the incorporation or lack thereof of the federal income tax-related changes enacted on March 11, 2021 in the American Recovery Plan Act, Pub. L. No. 117-2.

Second: By striking out Sec. 33 (effective dates) in its entirety and inserting in lieu thereof a new Sec. 33 to read as follows:

Sec. 33. EFFECTIVE DATES

This act shall take effect on passage, except notwithstanding 1 V.S.A. § 214, Sec. 5 (mortgage assistance foreclosure assistance) shall take effect retroactively on January 1, 2021.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment, on a roll call, Yeas 30, Nays 0.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Baruth, Benning, Bray, Brock, Campion, Chittenden, Clarkson, Collamore, Cummings, Hardy, Hooker, Ingalls, Kitchel, Lyons, MacDonald, Mazza, McCormack, Nitka, Parent, Pearson, Perchlik, Pollina, Ram, Sears, Sirotkin, Starr, Terenzini, Westman, White.

**Those Senators who voted in the negative were:** None.

**Bill Passed**

**S. 3.**

Senate bill of the following title was read the third time and passed:

An act relating to competency to stand trial and insanity as a defense.

**Bill Passed**

**S. 51.**

Senate bill of the following title:

An act relating to the persons authorized to make contributions to candidates and political parties and to political committee names.

Was read the third time and passed on a roll call, Yeas 22, Nays 8.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Baruth, Bray, Campion, Chittenden, Clarkson, Cummings, Hardy, Hooker, Kitchel, Lyons, MacDonald, Mazza, McCormack, Pearson, Perchlik, Pollina, Ram, Sears, Sirotkin, Starr, White.

**Those Senators who voted in the negative were:** Benning, Brock, Collamore, Ingalls, Nitka, Parent, Terenzini, Westman.

#### **Bills Passed**

Senate bills of the following titles were severally read the third time and passed:

**S. 62.** An act relating to creating a New Vermont Employee Incentive Program.

**S. 66.** An act relating to electric bicycles.

**S. 97.** An act relating to miscellaneous judiciary procedures.

#### **Third Reading Ordered**

##### **S. 124.**

Senate committee bill entitled:

An act relating to miscellaneous utility subjects.

Having appeared on the Calendar for notice for one day, was taken up.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported the same without recommendation.

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

#### **Bill Amended; Third Reading Ordered**

##### **S. 13.**

Senator Campion, for the Committee on Education, to which was referred Senate bill entitled:

An act relating to the implementation of the Pupil Weighting Factors Report.

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

Sec. 1. FINDINGS

(a) 2018 Acts and Resolves No. 173, Sec. 11 directed the Agency of Education to undertake a study examining and evaluating the current formula used to weigh economically disadvantaged students, English language learners, and secondary-level students in Vermont for purposes of calculating equalized pupils. The study was also to consider whether new cost factors and weights should be included in the equalized pupil calculation.

(b) The findings from the Pupil Weighting Factors Report dated December 24, 2019 (Report), produced by a University of Vermont-led team of researchers, including national experts on student weighting, were stark, stating that “[n]either the factors considered by the [current] formula nor the value of the weights reflect contemporary educational circumstances and costs.” The Report also found that the current “values for the existing weights have weak ties, if any, with evidence describing the difference in the costs of educating students with disparate needs or operating schools in different contexts.”

(c) As a corrective to this situation, the major recommendations of the Report are straightforward, specifically that the General Assembly increase certain of the existing weights and that it add population density (rurality) as a new weighting factor, given the Report’s finding that rural districts pay more to educate a student. However, given the statewide nature of Vermont’s education funding system and the reality that any change in the weighting formula is complex due to its relationship to other educational policies and will produce fluctuations in tax rates across the State, the General Assembly has chosen to develop a phased approach to revising the weighting formula.

Sec. 2. TASK FORCE ON THE IMPLEMENTATION OF THE PUPIL WEIGHTING FACTORS REPORT

(a) Creation. There is created the Task Force on the Implementation of the Pupil Weighting Factors Report. The Task Force shall recommend to the General Assembly an action plan and proposed legislation to ensure that all public school students have equitable access to educational opportunities, taking into account the Pupil Weighting Factors Report dated December 24, 2019 (Report), produced by a University of Vermont-led team of researchers.

(b) Membership. The Task Force shall be composed of the following six members:



(1) a member of the Senate Committee on Finance, appointed by the Chair of the Committee;

(2) a member of the Senate Committee on Education, appointed by the Chair of the Committee;

(3) a member of the House Committee on Ways and Means, appointed by the Chair of the Committee;

(4) a member of the House Committee on Education, appointed by the Chair of the Committee;

(5) the Secretary of Education or designee; and

(6) the Chair of the State Board of Education or designee.

(c) Powers and duties. The Task Force shall recommend to the General Assembly an action plan and proposed legislation to ensure that all public school students have equitable access to educational opportunities, taking into account the Report, and shall:

(1) recommend which weighting factors to modify or create and their associated weights and whether any weights should be eliminated in lieu of categorical aid;

(2) consider use of categorical aid, including whether categorical aid should be used instead of some or all of the weighting factors and, if weighting factors are used, whether small schools grants, transportation aid, and other State grant funding targeted for a specific purpose should be adjusted or terminated;

(3) recommend how to ensure that school districts are using funding to meet education quality standards and improve student outcomes and opportunities;

(4) consider education property tax rates and the taxing capacity of school districts and how the Task Force's recommendations relate to the recommendations of the Vermont Tax Structure Commission Report dated February 8, 2021;

(5) recommend how to transition to the new weights or categorical aid to promote equity and ease the financial impact on school districts during the transition, including the availability and use of federal funding;

(6) recommend how tuition rates for non-operating school districts and career technical centers should be adjusted to account for the cost of educating students as reflected in the recommended weights or categorical aid;

(7) consider school funding formulas in other states and alternative models for school funding;

(8) consider the relationship between the recommended weights or categorical aid and the changes to special education funding under 2018 Acts and Resolves No. 173; and

(9) consider the impact of the recommended weights or categorical aid on the goals and outcomes of 1997 Acts and Resolves No. 60 and 2015 Acts and Resolves No. 46, each as amended.

(d) Consultant. The Task Force shall retain a consultant to assist it with executing its powers and duties. The consultant shall have expertise and experience in providing advice on Vermont's education funding and tax system and shall be nationally recognized in the field of education funding and tax systems.

(e) Collaboration. In performing its duties under this section, the Task Force shall collaborate with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Council of Special Education Administrators, the Vermont Principals' Association, and the Vermont-National Education Association.

(f) Public meetings. The Task Force shall hold one or more meetings to share information and receive input from the public concerning its work, which may be part of or separate from its regular meetings.

(g) Report. On or before January 15, 2022, the Task Force shall submit a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance with its action plan and proposed legislation.

(h) Meetings.

(1) The Secretary of Education shall call the first meeting of the Task Force to occur on or before August 1, 2021.

(2) The Task Force 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 meet not more than 12 times.

(i) Assistance. The Task Force shall have the:

(1) administrative assistance of the Agency of Education, which shall include organizing meetings and taking minutes;

(2) technical assistance of the Joint Fiscal Office, which shall include data analysis and computation;

(3) assistance from the consultant, which shall include assistance with executing its powers and duties as directed by the Task Force and writing the report required under subsection (g) of this section; and

(4) legal assistance from Legislative Counsel, which shall include legal advice and drafting proposed legislation.

(j) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Task Force shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 12 meetings. These payments shall be made from monies appropriated to the General Assembly.

### Sec. 3. REQUIREMENT FOR ADDITIONAL LEGISLATIVE ACTION

During the second year of the 2021–2022 biennium, the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance shall consider the action plan and legislation proposed by the Task Force on the Implementation of the Pupil Weighting Factors Report created under Sec. 2 of this act. It is the intent of the General Assembly that it pass legislation during the second year of the biennium that implements changes to how education is funded to ensure that all public school students have equitable access to educational opportunities. A positive vote of both the House and Senate, and approval by the Governor, would be required to implement these changes.

### Sec. 4. APPROPRIATIONS

(a) The sum of \$10,800.00 is appropriated from the General Fund in fiscal year 2022 to the General Assembly for per diem and reimbursement of expenses for members of the Task Force on the Implementation of the Pupil Weighting Factors Report created under Sec. 2 of this act.

(b) The sum of \$150,000.00 is appropriated from the General Fund in fiscal year 2022 to the General Assembly for consultant expenses of the Task Force on the Implementation of the Pupil Weighting Factors Report created under Sec. 2 of this act.

### Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Baruth, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Education with the following amendments thereto:

First: In Sec. 2, Task Force on the Implementation of the Pupil Weighting Factors Report, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Membership. The Task Force shall be a legislative task force and shall be composed of the following six members:

- (1) the Chair of the Senate Committee on Finance or designee;
- (2) the Chair of the Senate Committee on Education or designee;
- (3) the Chair of the House Committee on Ways and Means or designee;
- (4) the Chair of the House Committee on Education or designee;
- (5) the Secretary of Education or designee; and
- (6) the Chair of the State Board of Education or designee.

Second: In Sec. 2, Task Force on the Implementation of the Pupil Weighting Factors Report, by striking out subsection (i) in its entirety and inserting in lieu thereof the following:

(i) Assistance. The Task Force shall have the:

(1) administrative assistance from the Agency of Education, which shall include organizing meetings and taking minutes;

(2) technical assistance of the Joint Fiscal Office, which shall include contracting with, and overseeing the work of, the consultant and data analysis and computation;

(3) assistance from the consultant, which shall include assistance with executing the Task Force's powers and duties and writing the report required under subsection (g) of this section; and

(4) legal assistance from Office of Legislative Counsel, which shall include legal advice and drafting proposed legislation.

Third: In Sec. 4, appropriations, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) The sum of \$150,000.00 is appropriated from the General Fund in fiscal year 2022 to the Joint Fiscal Office for consultant expenses of the Task Force on the Implementation of the Pupil Weighting Factors Report created under Sec. 2 of this act.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Education was amended as recommended by the Committee on Appropriations.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Education, as amended?, Senator Campion moved to amend the recommendation of the Committee on Education, as amended as follows:

In Sec. 2, Task Force on the Implementation of the Pupil Weighting Factors Report, by striking out subsection (e) in its entirety and inserting in lieu thereof the following:

(e) Collaboration. In performing its duties under this section, the Task Force shall collaborate with the Vermont Superintendents Association, the Vermont School Boards Association, the Vermont Council of Special Education Administrators, the Vermont Principals' Association, the Vermont Independent Schools Association, and the Vermont-National Education Association.

Which was agreed to.

Thereupon, the recommendation of amendment of the Committee on Education, as amended, was agreed to and third reading of the bill was ordered.

### **Bill Amended; Third Reading Ordered**

#### **S. 25.**

Senator White, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to miscellaneous cannabis regulation procedures.

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

\* \* \* Town Vote on Retail Sales \* \* \*

Sec. 1. 7 V.S.A. § 863 is amended to read:

#### **§ 863. REGULATION BY LOCAL GOVERNMENT**

(a)(1) Prior to a cannabis retailer or the retail portion of an integrated licensee operating within a municipality, the municipality shall affirmatively permit the operation of such cannabis establishments by majority vote of those present and voting by Australian ballot at an annual or special meeting warned for that purpose. A municipality may place retailers or integrated licensees, or

both, on the ballot for approval.

\* \* \*

(3) On March 8, 2023, any municipality that has not previously voted on the question of permitting the operation of cannabis establishments pursuant to subdivision (1) of this subsection shall be deemed to permit the operation of both cannabis retailers and integrated licensees.

\* \* \*

\* \* \* Cannabis Control Board Advisory Committee \* \* \*

Sec. 2. 7 V.S.A. § 843 is amended to read:

§ 843. CANNABIS CONTROL BOARD; DUTIES; MEMBERS

\* \* \*

(c) Membership.

\* \* \*

(4) A member may be removed only for cause by either the remaining members of the Commission or a two-thirds vote of the advisory committee in accordance with the Vermont Administrative Procedure Act. The Board shall adopt rules pursuant to 3 V.S.A. chapter 25 to define the basis and process for removal.

\* \* \*

(h) Advisory committee.

(1) There is an advisory committee established within the Board that shall be composed of members with expertise and knowledge relevant to the Board's mission. The Board shall collaborate with the advisory committee on recommendations to the General Assembly. The advisory committee shall be composed of the following ~~12~~ 13 members:

(A) one member with an expertise in public health, appointed by the Governor;

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

(C) one member with an expertise in laboratory science or toxicology, appointed by the Governor;

(D) one member with an expertise in systemic social justice and equity issues, appointed by the Speaker of the House;

(E) one member with an expertise in ~~women~~ women- and minority-owned business ownership, appointed by the Speaker of the House;

(F) one member with an expertise in substance misuse prevention, appointed by the Senate Committee on Committees;

(G) one member with an expertise in the cannabis industry, appointed by the Senate Committee on Committees;

(H) one member with an expertise in business management or regulatory compliance, appointed by the Treasurer;

(I) one member with an expertise in municipal issues, appointed by the Treasurer;

(J) one member with an expertise in public safety, appointed by the Attorney General;

(K) one member with an expertise in criminal justice reform, appointed by the Attorney General; ~~and~~

(L) the Secretary of Natural Resources or designee; and

(M) one member appointed by the Vermont Cannabis Trade Association.

(2) Initial appointments to the advisory committee as provided in subdivision (1) of this subsection (h) shall be made on or before ~~May 1, 2021~~ April 1, 2021, and the Secretary of Agriculture, Food and Markets shall convene the first meeting on or before April 15, 2021.

\* \* \*

\* \* \* Advertising \* \* \*

Sec. 3. 7 V.S.A. § 845 is amended to read:

§ 845. CANNABIS REGULATION FUND

\* \* \*

(b) The Fund shall be composed of:

(1) all State application fees, annual license fees, renewal fees, advertising review fees, and civil penalties collected by the Board pursuant to chapters 33 (cannabis establishments) and 37 (medical cannabis dispensaries) of this title; and

(2) all annual and renewal fees collected by the Board pursuant to chapter 35 (medical cannabis registry) of this title.

\* \* \*

Sec. 4. 2019 Acts and Resolves No. 164, Sec. 5 is amended to read:

Sec. 5. CANNABIS CONTROL BOARD REPORT TO THE GENERAL ASSEMBLY; PROPOSAL FOR POSITIONS, FEES, AND APPROPRIATIONS FOR FISCAL YEARS 2022 AND 2023; LAND USE, ENVIRONMENTAL, ENERGY, AND EFFICIENCY REQUIREMENTS OR STANDARDS; ADVERTISING; OUTREACH, TRAINING, AND EMPLOYMENT PROGRAMS; ONLINE ORDERING AND DELIVERY; ADDITIONAL TYPES OF LICENSES

(a) On or before April 1, 2021, the Executive Director of the Cannabis Control Board shall provide recommendations to the General Assembly on the following :

\* \* \*

(2) State fees to be charged and collected in accordance with the Board's authority pursuant to 7 V.S.A. § 846. The recommendations shall be accompanied by information justifying the recommended rate as required by 32 V.S.A. § 605(d). The State fees submitted in accordance with this subdivision shall be projected to be sufficient to fund the duties of the Cannabis Control Board as provided in 7 V.S.A. § 843. To the extent possible, the recommend fees shall include an amount to repay over a period, not greater than 10 years, to the General Fund any application of excise taxes to the Cannabis Regulation Fund made pursuant to Sec. 6c of this act.

(A) Application fees, initial annual license fees, and annual license renewal fees for each type of cannabis establishment license as provided in 7 V.S.A. § 846: cultivator, product manufacturer, wholesaler, retailer, testing laboratory, and integrated. If the Board establishes tiers within a licensing category, it shall provide a fee recommendation for each tier.

(B) Fee for a cannabis establishment identification card as provided in 7 V.S.A. § 884.

(C) Fee for advertisement review for a cannabis establishment licensee as provided in 7 V.S.A. § 865.

\* \* \*

Sec. 5. 7 V.S.A. § 861 is amended to read:

§ 861. DEFINITIONS

As used in this chapter:

(1) “Advertise” means the publication or dissemination of an advertisement.



(2) “Advertisement” means any written or verbal statement, illustration, or depiction that is calculated to induce sales of cannabis or cannabis products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, other periodical literature, publication, or in a radio or television broadcast, the Internet, or in any other media. The term does not include:

(A) any label affixed to any cannabis or cannabis product, or any individual covering, carton, or other wrapper of that container that constitutes a part of the labeling under provisions of these standards;

(B) any editorial or other reading material, such as a news release, in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any cannabis establishment, and that is not written by or at the direction of the licensee;

(C) any educational, instructional, or otherwise noncommercial material that is not intended to induce sales and that does not propose an economic transaction, but that merely provides information to the public in an unbiased manner; or

(D) a sign attached to the premises of a cannabis establishment that merely identifies the location of the cannabis establishment.

(3) “Affiliate” means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

(2)(4) “Applicant” means a person that applies for a license to operate a cannabis establishment pursuant to this chapter.

(3)(5) “Board” means the Cannabis Control Board.

(4)(6) “Cannabis” shall have the same meaning as provided in section 831 of this title.

(5)(7) “Cannabis cultivator” or “cultivator” means a person licensed by the Board to engage in the cultivation of cannabis in accordance with this chapter.

(6)(8) “Cannabis establishment” means a cannabis cultivator, wholesaler, product manufacturer, retailer, or testing laboratory licensed by the Board to engage in commercial cannabis activity in accordance with this chapter.

(7)(9) “Cannabis product” shall have the same meaning as provided in section 831 of this title.

~~(8)~~(10) “Cannabis product manufacturer” or “product manufacturer” means a person licensed by the Board to manufacture cannabis products in accordance with this chapter.

~~(9)~~(11) “Cannabis retailer” or “retailer” means a person licensed by the Board to sell cannabis and cannabis products to adults 21 years of age and older for off-site consumption in accordance with this chapter.

~~(10)~~(12) “Cannabis testing laboratory” or “testing laboratory” means a person licensed by the Board to test cannabis and cannabis products in accordance with this chapter.

~~(11)~~(13) “Cannabis wholesaler” or “wholesaler” means a person licensed by the Board to purchase, process, transport, and sell cannabis and cannabis products in accordance with this chapter.

~~(12)~~(14) “Chair” means the Chair of the Cannabis Control Board.

~~(13)~~(15) “Characterizing flavor” means a taste or aroma, other than the taste or aroma of cannabis, imparted either prior to or during consumption of a cannabis product. The term includes tastes or aromas relating to any fruit, chocolate, vanilla, honey, maple, candy, cocoa, dessert, alcoholic beverage, mint, menthol, wintergreen, herb or spice, or other food or drink or to any conceptual flavor that imparts a taste or aroma that is distinguishable from cannabis flavor but may not relate to any particular known flavor.

~~(14)~~(16) “Child-resistant packaging” means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance in the container within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging that all children under five years of age cannot open or obtain a toxic or harmful amount of the substance in the container within a reasonable time.

~~(15)~~(17) “Controls,” “is controlled by,” and “under common control” mean the power to direct, or cause the direction or management and policies of a person, whether through the direct or beneficial ownership of voting securities, by contract, or otherwise. A person who directly or beneficially owns 10 percent or more equity interest, or the equivalent thereof, of another person shall be deemed to control the person.

~~(16)~~(18) “Dispensary” means a business organization licensed pursuant to chapter 37 of this title or 18 V.S.A. chapter 86.

~~(17)~~(19) “Enclosed, locked facility” means a building, room, greenhouse, outdoor fenced-in area, or other location that is enclosed on all sides and prevents cannabis from easily being viewed by the public. The

facility shall be equipped with locks or other security devices that permit access only by:

(A) Employees, agents, or owners of the cultivator, all of whom shall be 21 years of age or older.

(B) Government employees performing their official duties.

(C) Contractors performing labor that does not include cannabis cultivation, packaging, or processing. Contractors shall be accompanied by an employee, agent, or owner of the cultivator when they are in areas where cannabis is being grown, processed, packaged, or stored.

(D) Registered employees of other cultivators, members of the media, elected officials, and other individuals 21 years of age or older visiting the facility, provided they are accompanied by an employee, agent, or owner of the cultivator.

~~(18)~~(20) “Flavored oil cannabis product” means any oil cannabis product that contains an additive to give it a characterizing flavor.

~~(19)~~(21) “Integrated licensee” means a person licensed by the Board to engage in the activities of a cultivator, wholesaler, product manufacturer, retailer, and testing laboratory in accordance with this chapter.

~~(20)~~(22) “Municipality” means a town, city, or incorporated village.

~~(21)~~(23) “Person” shall include any natural person; corporation; municipality; the State of Vermont or any department, agency, or subdivision of the State; and any partnership, unincorporated association, or other legal entity.

~~(22)~~(24) “Plant canopy” means the square footage dedicated to live plant production and does not include areas such as office space or areas used for the storage of fertilizers, pesticides, or other products.

~~(23)~~(25) “Principal” means an individual vested with the authority to conduct, manage, or supervise the business affairs of a person, and may include the president, vice president, secretary, treasurer, manager, or similar executive officer of a business; a director of a corporation, nonprofit corporation, or mutual benefit enterprise; a member of a nonprofit corporation, cooperative, or member-managed limited liability company; and a partner of a partnership.

~~(24)~~(26) “Small cultivator” means a cultivator with a plant canopy or space for cultivating plants for breeding stock of not more than 1,000 square feet.

Sec. 6. 7 V.S.A. § 864 is added to read:

§ 864. ADVERTISING

(a) “Advertise” and “advertisement” have the same meaning as in section 861 of this title.

(b) A cannabis establishment advertisement shall not contain any statement or illustration that:

(1) is deceptive, false, or misleading;

(2) promotes overconsumption;

(3) represents that the use of cannabis has curative effects;

(4) offers a prize, award, or inducement for purchasing cannabis or a cannabis product, except that price discounts are allowed;

(5) offers free samples of cannabis or cannabis products;

(6) depicts a person under 21 years of age consuming cannabis or cannabis products; or

(7) is designed to be or has the effect of being particularly appealing to persons under 21 years of age.

(c) Cannabis establishments shall not advertise their products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 years of age.

(d) All advertisements shall contain health warnings adopted by rule by the Board in consultation with the Department of Health.

(e) All advertisements shall be submitted to the Board on a form or in a format prescribed by the Board, prior to the dissemination of the advertisement. The Board may:

(1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the Board determines that the advertisement would be false or misleading without such a disclosure; or

(2) require changes that are necessary to protect the public health, safety, and welfare or consistent with dispensing information for the product under review.

(f) The Board may charge and collect fees for review of advertisements.

Sec. 7. 7 V.S.A. § 866(d) is added to read:

(d) In accordance with section 864 of this title, advertising by a cannabis establishment shall not depict a person under 21 years of age consuming

cannabis or cannabis products or be designed to be or have the effect of being particularly appealing to persons under 21 years of age. Cannabis establishments shall not advertise their products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 years of age.

Sec. 8. 7 V.S.A. § 881 is amended to read:

§ 881. RULEMAKING; CANNABIS ESTABLISHMENTS

(a) The Board shall adopt rules to implement and administer this chapter in accordance with subdivisions (1)-(7) of this subsection.

(1) Rules concerning any cannabis establishment shall include:

\* \* \*

(P) disclosure or eligibility requirements for a financier, its owners and principals, and its affiliates, which may include:

(i) requirements to disclose information to a licensed establishment, the Board, or the Department of Financial Regulation;

(ii) a minimum age requirement and a requirement to conduct a background check for natural persons;

(iii) requirements to ensure that a financier complies with applicable State and federal laws governing financial institutions, licensed lenders, and other financial service providers; and

(iv) any other requirements, conditions, or limitations on the type or amount of loans or capital investments made by a financier or its affiliates, which the Board, in consultation with the Department of Financial Regulation, determines is necessary to protect the public health, safety, and general welfare; and

(Q) policies and procedures for conducting outreach and promoting participation in the regulated cannabis market by diverse groups of individuals, including those who have been disproportionately harmed by cannabis prohibition; and

(R) advertising and marketing.

Sec. 9. 7 V.S.A. § 978 is added to read:

§ 978. ADVERTISING

(a) “Advertise” and “advertisement” have the same meaning as in section 861 of this title.

(b) A dispensary advertisement shall not contain any statement or illustration that:

(1) is deceptive, false, or misleading;

(2) promotes overconsumption;

(3) represents that the use of cannabis has curative effects;

(4) offers a prize, award, or inducement for purchasing cannabis or a cannabis product, except that price discounts are allowed;

(5) offers free samples of cannabis or cannabis products;

(6) depicts a person under 21 years of age consuming cannabis or cannabis products; or

(7) is designed to be or has the effect of being particularly appealing to persons under 21 years of age.

(c) Dispensaries shall not advertise their products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 years of age.

(d) All advertisements shall contain health warnings adopted by rule by the Board in consultation with the Department of Health.

(e) All advertisements shall be submitted to the Board on a form or in a format prescribed by the Board, prior to the dissemination of the advertisement. The Board may:

(1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the Board determines that the advertisement would be false or misleading without such a disclosure; or

(2) require changes that are necessary to protect the public health, safety, and welfare or consistent with dispensing information for the product under review.

(f) The Board may charge and collect fees for review of advertisements.

\* \* \* Cultivation \* \* \*

Sec. 10. 2019 Acts and Resolves No. 164, Sec. 8 is amended to read:

Sec. 8. IMPLEMENTATION OF LICENSING CANNABIS  
ESTABLISHMENTS

(a)(1) The cannabis plant, cannabis product, and useable cannabis possession limits for a registered dispensary set forth in 18 V.S.A. chapter 86 shall no longer apply on and after February 1, 2022. A dispensary shall be permitted to cultivate cannabis and manufacture cannabis products for the

purpose of transferring or selling such products to an integrated licensee on or after April 1, 2022 and engaging in the activities permitted by 7 V.S.A. chapter 33.

(2) On or before April 1, 2022, the Board shall begin accepting applications for integrated licenses.

(3) On or before May 1, 2022, the Board shall begin issuing integrated licenses to qualified applicants. An integrated licensee may begin selling cannabis and cannabis products transferred or purchased from a dispensary immediately. Between August 1, 2022 and October 1, 2022, 25 percent of cannabis flower sold by an integrated licensee shall be obtained from a licensed small cultivator, if available.

(b)(1) On or before April 1, 2022, the Board shall begin accepting applications for small cultivator licenses and testing laboratories. The initial application period shall remain open for 30 days. The Board may reopen the application process for any period of time at its discretion.

(2) On or before May 1, 2022, the Board shall begin issuing small cultivator and testing laboratories licenses to qualified applicants. Upon licensing, small cultivators shall be permitted to sell cannabis legally grown pursuant to the license to an integrated licensee and a dispensary licensed pursuant to 18 V.S.A. chapter 86 prior to other types of cannabis establishment licensees beginning operations.

(c)(1) On or before May 1, 2022, the Board shall begin accepting applications for all cultivator licenses. The initial application period shall remain open for 30 days. The Board may reopen the application process for any period of time at its discretion.

(2) On or before June 1, 2022, the Board shall begin issuing all cultivator licenses to qualified applicants.

(d)(1) On or before July 1, 2022, the Board shall begin accepting applications for product manufacturer licenses and wholesaler licenses. The initial application period shall remain open for 30 days. The Board may reopen the application process for any period of time at its discretion.

(2) On or before August 1, 2022, the Board shall begin issuing product manufacturer and wholesaler licenses to qualified applicants.

(e)(1) On or before September 1, 2022, the Board shall begin accepting applications for retailer licenses. The initial application period shall remain open for 30 days. The Board may reopen the application process for any period of time at its discretion.

(2) On or before October 1, 2022, the Board shall begin issuing retailer licenses to qualified applicants and sales of cannabis and cannabis products by licensed retailers to the public shall be allowed immediately.

\* \* \* Social Equity \* \* \*

#### Sec. 11. FEES; SOCIAL EQUITY

When reporting to the General Assembly regarding recommended fees for licensing cannabis establishments pursuant to Sec. 5 of the 2019 Acts and Resolves No. 164, the Cannabis Control Board shall propose a plan for reducing or eliminating licensing fees for individuals from communities that historically have been disproportionately impacted by cannabis prohibition or individuals directly and personally impacted by cannabis prohibition.

Sec. 12. 7 V.S.A. chapter 39 is added to read:

#### CHAPTER 39. CANNABIS SOCIAL EQUITY PROGRAMS

##### § 986. DEFINITIONS

As used in this chapter:

(1) “Agency” means the Agency of Commerce and Community Development.

(2) “Board” means the Cannabis Control Board.

##### § 987. CANNABIS BUSINESS DEVELOPMENT FUND

(a) There is established the Cannabis Business Development Fund, which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5.

(b) The Fund shall comprise:

(1) three percent of gross sales made by integrated licensees prior to October 15, 2022, with a maximum contribution of \$50,000.00 per integrated licensee; and

(2) monies allocated to the fund by the General Assembly.

(c) The Fund shall be used for the following purposes:

(1) to provide low-interest rate loans and grants to social equity applicants to pay for ordinary and necessary expenses to start and operate a licensed cannabis establishment;

(2) to pay for outreach that may be provided or targeted to attract and support social equity applicants; and

(3) necessary costs incurred in administering the Fund.



(d) Amounts from loans that are repaid shall provide additional funding through the Fund.

#### § 988. SOCIAL EQUITY LOANS AND GRANTS

##### The Agency of Commerce and Community Development

shall establish a program using funds from the Cannabis Business Development Fund for the purpose of providing financial assistance, loans, grants, and outreach to social equity applicants.

#### Sec. 13. SOCIAL EQUITY APPLICANTS; CANNABIS CONTROL BOARD ADVISORY COMMITTEE

The Cannabis Control Board Advisory Committee, in consultation with the Board, shall develop criteria for social equity applicants for the purpose of obtaining social equity loans and grants from the Cannabis Business Development Fund pursuant to 7 V.S.A. chapter 39. The Board shall provide the criteria to the General Assembly not later than October 15, 2021.

#### Sec. 14. APPROPRIATION

In fiscal year 2022, \$500,000.00 is appropriated to the Cannabis Business Development Fund established pursuant to 7 V.S.A. § 987.

\* \* \* Transfer of Medical Cannabis Program \* \* \*

#### Sec. 15. IMPLEMENTATION OF MEDICAL CANNABIS REGISTRY

(a) On July 1, 2021, the following shall transfer from the Department of Public Safety to the Cannabis Control Board.

(1) the authority to administer the Medical Cannabis Registry and the regulation of cannabis dispensaries pursuant to 18 V.S.A. chapter 86;

(2) the cannabis registration fee fund established pursuant to 18 V.S.A. chapter 86; and

(3) the positions dedicated to administering 18 V.S.A. chapter 86.

(b) The Registry shall continue to be governed by 18 V.S.A. chapter 86 and the rules adopted pursuant to that chapter until 7 V.S.A. chapters 35 and 37 and the rules adopted by the Board pursuant to those chapters take effect on March 1, 2022 as provided in 2019 Acts and Resolves No. 164.

#### Sec. 16. REPEAL

Secs. 10 and 13 of 2019 Acts and Resolves No. 164 are repealed.

\* \* \* Highway Safety \* \* \*

Sec. 17. VERMONT CRIMINAL JUSTICE COUNCIL

Not later than July 1, 2021, the Vermont Criminal Justice Council shall report to the Joint Legislative Justice Oversight Committee regarding funding for the requirement that on or before December 31, 2021 all law enforcement officers receive a minimum of 16 hours of Advanced Roadside Impaired Driving Enforcement training as required by Sec. 20 of 2019 Acts and Resolves No. 164.

\* \* \* Substance Misuse Prevention Funding \* \* \*

Sec. 18. 32 V.S.A. § 7909 is added to read:

§ 7909. SUBSTANCE MISUSE PREVENTION FUNDING

(a) Thirty percent of the revenues raised by the cannabis excise tax imposed by section 7902 of this title, not to exceed \$10,000,000.00 per fiscal year, shall be used to fund substance misuse prevention programming.

(b) If any General Fund appropriations for substance misuse prevention programming remain unexpended at the end of a fiscal year, that balance shall be carried forward and shall only be used for the purpose of funding substance misuse prevention programming in the subsequent fiscal year.

(c) Any appropriation balance carried forward pursuant to subsection (b) of this section shall be in addition to revenues allocated for substance misuse prevention programming pursuant to subsection (a) of this section.

Sec. 19. REPEAL

2019 Acts and Resolves No. 164, Sec. 19 (substance misuse prevention funding) is repealed.

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

Sec. 20. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

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

## Sec. 14. TRANSFER AND APPROPRIATION

(a) In fiscal year 2022, \$500,000.00 is transferred from General Fund to the Cannabis Business Development Fund established pursuant to 7 V.S.A. § 987.

(b) In fiscal year 2022, \$500,000.00 is appropriated from the Cannabis Business Development Fund to the Agency of Commerce and Community Development to make grants pursuant to 7 V.S.A. § 987.

And that when so amended the bill ought to pass.

Senator Pearson, for the Committee on Finance, to which the bill was referred, reported that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

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

Sec. 4. 2019 Acts and Resolves No. 164, Sec. 5 is amended to read:

Sec. 5. CANNABIS CONTROL BOARD REPORT TO THE GENERAL ASSEMBLY; PROPOSAL FOR POSITIONS, FEES, AND APPROPRIATIONS FOR FISCAL YEARS 2022 AND 2023; LAND USE, ENVIRONMENTAL, ENERGY, AND EFFICIENCY REQUIREMENTS OR STANDARDS; ADVERTISING; OUTREACH, TRAINING, AND EMPLOYMENT PROGRAMS; ONLINE ORDERING AND DELIVERY; ADDITIONAL TYPES OF LICENSES

(a) On or before April 1, 2021, the Executive Director of the Cannabis Control Board shall provide recommendations to the General Assembly on the following:

~~(1) Resources necessary for implementation of this act for fiscal years 2022 and 2023, including positions and funding. The Board shall consider utilization of current expertise and resources within State government and cooperation with other State departments and agencies where there may be an overlap in duties.~~

~~(2) State fees to be charged and collected in accordance with the Board's authority pursuant to 7 V.S.A. § 846. The recommendations shall be accompanied by information justifying the recommended rate as required by 32 V.S.A. § 605(d). The State fees submitted in accordance with this subdivision shall be projected to be sufficient to fund the duties of the Cannabis Control Board as provided in 7 V.S.A. § 843. To the extent possible, the recommend fees shall include an amount to repay over a period, not greater than 10 years, to the General Fund any application of excise taxes to the~~

~~Cannabis Regulation Fund made pursuant to Sec. 6c of this act.~~

~~(A) Application fees, initial annual license fees, and annual license renewal fees for each type of cannabis establishment license as provided in 7 V.S.A. § 846: cultivator, product manufacturer, wholesaler, retailer, testing laboratory, and integrated. If the Board establishes tiers within a licensing category, it shall provide a fee recommendation for each tier.~~

~~(B) Fee for a cannabis establishment identification card as provided in 7 V.S.A. § 884.~~

~~(3) Whether monies expected to be generated by State fees identified in subdivision (2) of this subsection are sufficient to support the statutory duties of the Board and whether any portion of the tax established pursuant to 32 V.S.A. § 7902 should be allocated to the Cannabis Regulation Fund to ensure these duties are met.~~

~~(4) Local fees to be charged and collected in accordance with the Board's authority pursuant to 7 V.S.A. § 846. The recommendations shall be accompanied by information justifying the recommended rate as required by 32 V.S.A. § 605(d). The Board shall recommend local fees that are designed to help defray the costs incurred by municipalities in which cannabis establishments are located.~~

\* \* \*

Second: By adding a new Sec. 4a to read as follows:

Sec. 4a. CANNABIS CONTROL BOARD REPORT TO THE JOINT  
FISCAL COMMITTEE; FEES

(a) On or before September 1, 2021, the Cannabis Control Board shall provide draft recommendations to the Joint Fiscal Committee for its approval on the following:

(1) State fees to be charged and collected in accordance with the Board's authority pursuant to 7 V.S.A. § 846. The recommendations shall be accompanied by information justifying the recommended rate as required by 32 V.S.A. § 605(d). The State fees submitted in accordance with this subdivision shall be projected to be sufficient to fund the duties of the Cannabis Control Board as provided in 7 V.S.A. § 843. To the extent possible, the recommend fees shall include an amount to repay over a period, not greater than 10 years, to the General Fund any application of excise taxes to the Cannabis Regulation Fund made pursuant to Sec. 6c of the 2019 Acts and Resolves No. 164.

(A) Application fees, initial annual license fees, and annual license renewal fees for each type of cannabis establishment license as provided in

7 V.S.A. § 846: cultivator, product manufacturer, wholesaler, retailer, testing laboratory, and integrated. If the Board establishes tiers within a licensing category, it shall provide a fee recommendation for each tier.

(B) Fee for a cannabis establishment identification card as provided in 7 V.S.A. § 884.

(C) Fee for advertisement review for a cannabis establishment licensee as provided in 7 V.S.A. § 865.

(2) Whether monies expected to be generated by State fees identified in subdivision (1) of this subsection are sufficient to support the statutory duties of the Board and whether any portion of the tax established pursuant to 32 V.S.A. § 7902 should be allocated to the Cannabis Regulation Fund to ensure these duties are met.

(3) Local fees to be charged and collected in accordance with the Board's authority pursuant to 7 V.S.A. § 846. The recommendations shall be accompanied by information justifying the recommended rate as required by 32 V.S.A. § 605(d). The Board shall recommend local fees that are designed to help defray the costs incurred by municipalities in which cannabis establishments are located.

(b) Upon receiving the proposal, the Joint Fiscal Committee shall review the recommendations and provide feedback to the Board for any suggested changes.

(c) The Board shall revise the proposal, if necessary, to incorporate the Committee's recommendations and present a revised draft for approval to the Committee.

(d) Notwithstanding 32 V.S.A. § 603, the fees shall take effect upon approval of the Committee.

(e) Beginning on July 1, 2022, and every three years thereafter, all cannabis regulation fees shall be included in the annual consolidated Executive Branch fee report pursuant to 32 V.S.A. § 605.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Appropriations.

Thereupon, the recommendation of amendment of the Committee on Judiciary, as amended was amended as recommended by the Committee on Finance.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended? was agreed to and third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered**

**S. 33.**

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

An act relating to project-based tax increment financing districts.

Reported recommending 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. 1892(d) is amended to read:

(d) The following municipalities have been authorized to use education tax increment financing for a tax increment financing district:

- (1) the City of Burlington, Downtown;
- (2) the City of Burlington, Waterfront;
- (3) ~~the Town of Milton, North and South~~ Town of Bennington;
- (4) ~~the City of Newport~~ City of Montpelier;
- (5) the City of Winooski;
- (6) ~~the Town of Colchester~~;
- ~~(7) the~~ Town of Hartford;
- ~~(8)(7)~~ the City of St. Albans;
- ~~(9)(8)~~ the City of Barre;
- ~~(10)(9)~~ the Town of Milton, Town Core; and
- ~~(11)(10)~~ the City of South Burlington.

Sec. 2. 32 V.S.A. § 5404a is amended to read:

§ 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT FINANCING DISTRICTS

\* \* \*

(f) A municipality that establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties contained within the district and apply not more than 70 percent of the State education property tax increment, and not less than 85 percent of the municipal property tax increment, to repayment of financing of the improvements and

related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by the Vermont Economic Progress Council pursuant to this section, subject to the following:

(1) In a municipality with one or more approved districts, the Council shall not approve an additional district until the municipality retires the debt incurred for all of the districts in the municipality.

(2) The Council shall not approve more than ~~six~~ four districts in the State, and not more than two per county, provided:

(A) The districts listed in 24 V.S.A. § 1892(d) shall not be counted against the limits imposed in this subdivision (2).

(B) The Council shall consider complete applications in the order they are submitted, except that if during any calendar month the Council receives applications for more districts than are actually available in a county, the Council shall evaluate each application and shall approve the application that, in the Council's discretion, best meets the economic development needs of the county.

(C) If, while the General Assembly is not in session, the Council receives applications for districts that would otherwise qualify for approval but, if approved, would exceed the ~~six-district~~ four-district limit in the State, the Council shall make one or more presentations to the Emergency Board concerning the applications, and the Emergency Board may, in its discretion, increase the six-district limit.

(D) The Council shall not approve more than one district in Bennington County and one district in Washington County.

\* \* \*

### Sec. 3. TAX INCREMENT FINANCING PROJECT DEVELOPMENT; PILOT PROGRAM

(a) Definitions. As used in this section:

(1) “Committed” means pledged and appropriated for the purpose of the current and future payment of tax increment financing and related costs as defined in this section.

(2) “Coordinating agency” means any public or private entity from outside the municipality’s departments or offices and not employing the municipality’s staff, which has been designated by a municipality to administer and coordinate a district during creation, public hearing process, approval process, or administration and operation during the life of the district, including overseeing infrastructure development, real property development

and redevelopment, assisting with reporting, and ensuring compliance with statute and rule.

(3) “Financing” means debt incurred, including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing used by a municipality to pay for improvements and related costs for the approved project, only if authorized by the legal voters of the municipality in accordance with 24 V.S.A. § 1894. Payment for eligible related costs may also include direct payment by the municipality using the district increment. However, such anticipated payments shall be included in the vote by the legal voters of the municipality in accordance with subsection (f) of this section. If interfund loans within the municipality are used as the method of financing, no interest shall be charged. Bond anticipation notes may be used as a method of financing and may qualify as a municipality’s first incurrence of debt. A municipality that uses a bond anticipation note during the third or sixth year that a municipality may incur debt pursuant to subsection (f) of this section shall incur all permanent financing not more than one year after issuing the bond anticipation note.

(4) “Improvements” means the installation, new construction, or reconstruction of infrastructure that will serve a public purpose, including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation. “Improvements” also means the funding of debt service interest payments for a period of up to five years, beginning on the date on which the first debt is incurred.

(5) “Legislative body” means the mayor and alderboard, the city council, the selectboard, and the president and trustees of an incorporated village, as appropriate.

(6) “Municipality” means a city, town, or incorporated village.

(7) “Nexus” means the causal relationship that must exist between the improvements and the expected development and redevelopment in the TIF Project Zone or the expected outcomes in the TIF Project Zone.

(8) “Original taxable value” means the total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the project as of the creation date, provided that no parcel within the project shall be divided or bisected.

(9) “Project” means a public improvement, as defined in subdivision (4) of this subsection (a), with a total debt ceiling, including related costs, and principal and interest payments, of not more than \$5,000,000.00. A project must:



(A) clearly require substantial public investment over and above the normal municipal operating or bonded debt expenditures;

(B) only include public improvements that are integral to the expected private development; and

(C) meet one of the following four criteria:

(i) The development includes new or rehabilitated affordable housing, as defined in 24 V.S.A. § 4303.

(ii) The project will affect the remediation and redevelopment of a brownfield located within the district. As used in this section, “brownfield” means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

(iii) The development will include at least one entirely new business or business operation or expansion of an existing business within the project, and this business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the Department of Labor.

(iv) The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.

(10) “Related costs” means expenses incurred and paid by the municipality, exclusive of the actual cost of constructing and financing improvements, that are directly related to the creation and implementation of the project, including reimbursement of sums previously advanced by the municipality for those purposes. Related costs may not include direct municipal expenses such as departmental or personnel costs.

(11) “TIF project zone” means an area located within one or more active designations approved by the Vermont Downtown Development Board under 24 V.S.A. chapter 76A for the parcels in a municipality that have nexus to the project.

(b) Pilot program. Beginning on January 1, 2022 and ending on December 31, 2026, the Vermont Economic Progress Council is authorized to approve not more than 15 tax increment financing projects, provided that there shall be not more than one project per municipality.

(c) General authority. Under the pilot program established in subsection (b) of this section, a municipality, upon approval of its legislative body, may apply to the Vermont Economic Progress Council pursuant to the process set forth in subsection (e) of this section to use tax

increment financing for a project.

(d) Eligibility.

(1) A municipality is only authorized to apply for a project under this section if:

(A) the project will serve one or more active designations approved by the Vermont Downtown Development Board under 24 V.S.A. chapter 76A; and

(B) the proposed infrastructure improvements and the projected development or redevelopment are compatible with confirmed municipal and regional development plans and the project has clear local and regional significance for employment, housing, or transportation improvements.

(2) A municipality with an approved tax increment financing district as set forth in 24 V.S.A. 1892(d) is not authorized to apply for a project under this section.

(e) Approval process. The Vermont Economic Progress Council shall do all of the following to approve an application submitted pursuant to subsection (c) of this section:

(1)(A) Review each application to determine that the infrastructure improvements proposed to serve the project and the proposed development in the project would not have occurred as proposed in the application, or would have occurred in a significantly different and less desirable manner than as proposed in the application, but for the proposed utilization of the incremental tax revenues.

(B) The review shall take into account:

(i) the amount of additional time, if any, needed to complete the proposed development for the project and the amount of additional cost that might be incurred if the project were to proceed without education property tax increment financing;

(ii) how the proposed project components and size would differ, if at all, including, if applicable to the project, in the number of units of affordable housing, as defined in 24 V.S.A. § 4303, without education property tax increment financing; and

(iii)(I) the amount of additional revenue expected to be generated as a result of the proposed project;

(II) the percentage of that revenue that shall be paid to the Education Fund;

- (III) the percentage that shall be paid to the municipality; and
- (IV) the percentage of the revenue paid to the municipality that shall be used to pay financing incurred for development of the project.

(2) Process requirements. Determine that each application meets all of the following requirements:

(A) The municipality held public hearings and established a project.

(B) The municipality has developed a tax increment financing project plan, including a project description; a development financing plan; a pro forma projection of expected costs; a projection of revenues; a statement and demonstration that the project would not proceed without the allocation of a tax increment; evidence that the municipality is actively seeking or has obtained other sources of funding and investment; and a development schedule that includes a list, a cost estimate, and a schedule for public improvements and projected private development to occur as a result of the improvements.

(f) Incurring indebtedness.

(1) A municipality approved under the process set forth in subsection (e) of this section may incur indebtedness against revenues to provide funding to pay for improvements and related costs for tax increment financing project development.

(2) Notwithstanding any provision of any municipal charter, the municipality shall only require one authorizing vote to incur debt through one instance of borrowing to finance or otherwise pay for the tax increment financing project improvements and related costs; provided, however, that a municipality may present one or more subsequent authorization votes in the event a vote fails. The municipality shall be authorized to incur indebtedness only after the legal voters of the municipality, by a majority vote of all voters present and voting on the question at a special or annual municipal meeting duly warned for the purpose, authorize the legislative body to pledge the credit of the municipality, borrow, or otherwise secure the debt for the specific purposes so warned. The creation of the project shall occur at 12:01 a.m. on April 1 of the calendar year the municipal legislative body votes to approve the tax increment financing project plan.

(3) Any indebtedness shall be incurred within three years from the date of approval by the Vermont Economic Progress Council, unless the Vermont Economic Progress Council grants an extension of an additional three years pursuant to the substantial change process set forth in the 2015 TIF Rule; provided, however, that an updated plan is submitted prior to the three-year termination date of the project.

(g) Original taxable value. As of the date the project is approved by the legislative body of the municipality, the lister or assessor for the municipality shall certify the original taxable value and shall certify to the legislative body in each year thereafter during the life of the project the amount by which the total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the project has increased or decreased relative to the original taxable value.

(h) Tax increments.

(1) In each year following the approval of the project, the lister or assessor shall include no more than the original taxable value of the real property in the assessed valuation upon which the treasurer computes the rates of all taxes levied by the municipality and every other taxing district in which the project is situated, but the treasurer shall extend all rates so determined against the entire assessed valuation of real property for that year. In each year for which the assessed valuation exceeds the original taxable value, the municipality shall hold apart, rather than remit to the taxing districts, that proportion of all taxes paid that year on the real property within the project that the excess valuation bears to the total assessed valuation. The amount held apart each year is the "tax increment" for that year. No more than the percentages established pursuant to subsection (i) of this section of the municipal and State education tax increments received with respect to the project and committed for the payment for financing for improvements and related costs shall be segregated by the municipality in a special tax increment financing project account and in its official books and records until all capital indebtedness of the project has been fully paid. The final payment shall be reported to the treasurer, who shall thereafter include the entire assessed valuation of the project in the assessed valuations upon which municipal and other tax rates are computed and extended and thereafter no taxes from the project shall be deposited in the project's tax increment financing account.

(2) Notwithstanding any charter provision or other provision, all property taxes assessed within a project shall be subject to the provision of subdivision (1) of this subsection. Special assessments levied under 24 V.S.A. chapters 76A or 87 or under a municipal charter shall not be considered property taxes for the purpose of this section if the proceeds are used exclusively for operating expenses related to properties within the project and not for improvements within the district, as defined in subdivision (a)(3) of this section.

(3) Amounts held apart under subdivision (1) of this subsection shall only be used for financing and related costs as defined in subsection (a) of this section.

(i) Use of tax increment.

(1) Education property tax increment. For only debt incurred within the period permitted under subdivision (e)(3) of this section after approval of the project, up to 70 percent of the education tax increment may be retained for up to 20 years, beginning with the education tax increment generated the year in which the first debt incurred for the project financed in whole or in part with incremental education property tax revenue. Upon incurring the first debt, a municipality shall notify the Department of Taxes and the Vermont Economic Progress Council of the beginning of the 20-year retention period of the education tax increment.

(2) Use of the municipal property tax increment. For only debt incurred within the period permitted under subdivision (e)(3) of this section after approval of the project, not less than 85 percent of the municipal tax increment shall be retained to service the debt, beginning the first year in which debt is incurred, pursuant to subdivision (1) of this subsection.

(3) The Vermont Economic Progress Council shall determine there is a nexus between the improvement and the expected development and redevelopment for the project and expected outcomes in the TIF Project Zone.

(j) Distribution. Of the municipal and education tax increments received in any tax year that exceed the amounts committed for the payment of the financing for improvements and related costs for the project, equal portions of each increment may be retained for the following purposes: prepayment of principal and interest on the financing, placed in a special account required by subdivision (g)(1) of this section and used for future financing payments or used for defeasance of the financing. Any remaining portion of the excess municipal tax increment shall be distributed to the city, town, or village budget, in the proportion that each budget bears to the combined total of the budgets, unless otherwise negotiated by the city, town, or village, and any remaining portion of the excess education tax increment shall be distributed to the Education Fund.

(k) Information reporting. Every municipality with an approved project pursuant to this section shall:

(1) Develop a system, segregated for the project, to identify, collect, and maintain all data and information necessary to fulfill the reporting requirements of this section, including performance measures.

(2) Provide, as required by events, notification to the Vermont Economic Progress Council and the Department of Taxes regarding any tax increment financing development project debt obligations, public votes, or votes by the municipal legislative body immediately following such obligation

or vote on a form prescribed by the Council, including copies of public notices, agendas, minutes, vote tally, and a copy of the information provided to the public in accordance with 24 V.S.A. § 1894(i).

(3) Annually:

(A) Ensure that the tax increment financing project account required by subdivision (h)(1) is subject to the annual audit prescribed in subsection (m) of this section. Procedures must include verification of the original taxable value and annual and total municipal and education tax increments generated, expenditures for debt and related costs, and current balance.

(B) On or before February 15 of each year, on a form prescribed by the Council, submit an annual report to the Vermont Economic Progress Council and the Department of Taxes, including the information required by subdivision (2) of this section if not already submitted during the year, all information required by subdivision (A) of this subdivision (3), and the information required by 32 V.S.A. § 5404a(i), including performance measures and any other information required by the Council or the Department of Taxes.

(l) Annual report. The Vermont Economic Progress Council and the Department of Taxes shall submit an annual report to the Senate Committees on Economic Development, Housing and General Affairs and on Finance and the House Committees on Commerce and Economic Development and on Ways and Means on or before April 1 each year. The report shall include the date of approval, a description of the project, the original taxable value of the property subject to the project development, the scope and value of projected and actual improvements and developments in the TIF Project Zone, projected and actual incremental revenue amounts, and division of the increment revenue between project debt, the Education Fund, the special account required by subdivision (h)(1) and the municipal General Fund, projected and actual financing, and a set of performance measures developed by the Vermont Economic Progress Council, which may include outcomes related to the criteria for which the municipality applied and the amount of infrastructure work performed by Vermont firms.

(m) Audit; financial reports. Annually, until the year following the end of the period for retention of education tax increment, a municipality with an approved project under this section shall:

(1) on or before January 1, submit an annual report to the Vermont Economic Progress Council, which shall provide sufficient information for the Vermont Economic Progress Council to prepare its report required by subsection (i) of this section; and

(2) on or before April 1, ensure that the project is subject to the annual audit prescribed in 24 V.S.A. § 1681 or 1690. In the event that the audit is only subject to the audit under 24 V.S.A. § 1681, the Vermont Economic Progress Council shall ensure a process is in place to subject the project to an independent audit. Procedures for the audit must include verification of the original taxable value and annual and total municipal and education tax increments generated, expenditures for debt and related costs, and current balance.

(n) Authority to issue decisions.

(1) The Secretary of Commerce and Community Development, after reasonable notice to a municipality and an opportunity for a hearing, is authorized to issue decisions to a municipality on questions and inquiries concerning the administration of projects, statutes, rules, noncompliance with this section, and any instances of noncompliance identified in audit reports conducted pursuant to subsection (m) of this section.

(2) The Vermont Economic Progress Council shall prepare recommendations for the Secretary prior to the issuance of a decision. As appropriate, the Council may prepare such recommendations in consultation with the Commissioner of Taxes, the Attorney General, and the State Treasurer. In preparing recommendations, the Council shall provide a municipality with a reasonable opportunity to submit written information in support of its position. The Secretary shall review the recommendations of the Council and issue a final written decision on each matter within 60 days of the receipt of the recommendations. The Secretary may permit an appeal to be taken by any party to a Superior Court for determination of questions of law in the same manner as the Supreme Court may by rule provide for appeals before final judgment from a Superior Court before issuing a final decision.

(o) The Vermont Economic Progress Council is authorized to adopt policies that are consistent with the 2015 TIF Rule, as may be modified by subsequent rule, to implement this section.

#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

And that when so amended the bill ought to pass.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs with the following amendments thereto:

First: By striking out Sec. 2, 32 V.S.A. § 5404a, in its entirety and inserting in lieu thereof the following:

§ 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT FINANCING DISTRICTS

(a) A tax agreement or exemption shall affect the education property tax grand list of the municipality in which the property subject to the agreement is located if the agreement or exemption is:

\* \* \*

(b)(1) An agreement affecting the education property tax grand list defined under subsection (a) of this section shall reduce the municipality's education property tax liability under this chapter for the duration of the agreement or exemption without extension or renewal, and for a maximum of 10 years. A municipality's property tax liability under this chapter shall be reduced by any difference between the amount of the education property taxes collected on the subject property and the amount of education property taxes that would have been collected on such property if its fair market value were taxed at the equalized nonhomestead rate for the tax year.

(2) Notwithstanding any other provision of law, if a municipality has entered into an agreement that reduces the municipality's education property tax liability under this chapter and the municipality establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5, the municipality's municipal and education tax increment shall be calculated based on the assessed value of the properties in the municipality's grand list and not on the stabilized value.

\* \* \*

(f) A municipality that establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties contained within the district and apply not more than 70 percent of the State education property tax increment, and not less than 85 percent of the municipal property tax increment, to repayment of financing of the improvements and related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by the Vermont Economic Progress Council pursuant to this section, subject to the following:

(1) In a municipality with one or more approved districts, the Council shall not approve an additional district until the municipality retires the debt incurred for all of the districts in the municipality.

(2) The Council shall not approve more than ~~six~~ four districts in the State, and not more than two per county, provided:



(A) The districts listed in 24 V.S.A. § 1892(d) shall not be counted against the limits imposed in this subdivision (2).

(B) The Council shall consider complete applications in the order they are submitted, except that if during any calendar month the Council receives applications for more districts than are actually available in a county, the Council shall evaluate each application and shall approve the application that, in the Council's discretion, best meets the economic development needs of the county.

(C) If, while the General Assembly is not in session, the Council receives applications for districts that would otherwise qualify for approval but, if approved, would exceed the ~~six-district~~ four-district limit in the State, the Council shall make one or more presentations to the Emergency Board concerning the applications, and the Emergency Board may, in its discretion, increase the six-district limit.

(D) The Council shall not approve more than one district in Bennington County and one district in Washington County.

\* \* \*

(4) In any year that the assessed valuation of real property in a district decreases in comparison to the original taxable value of the real property in a district, a municipality shall pay the amount equal to the tax calculated based on the original taxable value to the Education Fund.

\* \* \*

(h) To approve utilization of incremental revenues pursuant to subsection (f) of this section:

\* \* \*

(4) Project criteria. Determine that the proposed development within a tax increment financing district will accomplish at least three of the following five criteria:

\* \* \*

(C) The project will affect the remediation and redevelopment of a brownfield located within the district. In the case of a brownfield, the Vermont Economic Progress Council is authorized to adopt rules pursuant to subsection (j) of this section to clarify what is a reasonable improvement, as defined in 24 V.S.A. § 1891, to remediate and stimulate the development or redevelopment in the district. As used in this section, "brownfield" means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development,

redevelopment, or reuse of the property.

\* \* \*

Second: In Sec. 3, tax increment financing project development; pilot program, in subsection (a), in subdivision (2), by striking out “district” and inserting in lieu thereof project after “coordinate a” and “the life of a”, and by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) Pilot program. Beginning on January 1, 2022 and ending on December 31, 2026, the Vermont Economic Progress Council is authorized to approve a total of not more than 10 tax increment financing projects, with not more than three projects per year; provided, however, that there shall not be more than one project per municipality.

Third: By adding a new Sec. 4, 24 V.S.A. § 1891, to read as follows:

Sec. 4. 24 V.S.A. § 1891 is amended to read:

§ 1891. DEFINITIONS

When used in this subchapter:

\* \* \*

(4) “Improvements” means the installation, new construction, or reconstruction of infrastructure that will serve a public purpose and fulfill the purpose of tax increment financing districts as stated in section 1893 of this subchapter, including utilities, transportation, public facilities and amenities, land and property acquisition and demolition, and site preparation. “Improvements” also means the funding of debt service interest payments for a period of up to five years, beginning on the date in which the first debt is incurred.

\* \* \*

(7) “Financing” means debt incurred, including principal, interest, and any fees or charges directly related to that debt, or other instruments or borrowing used by a municipality to pay for improvements in a tax increment financing district, only if authorized by the legal voters of the municipality in accordance with section 1894 of this subchapter. Payment for the cost of district improvements and related costs may also include direct payment by the municipality using the district increment. However, such payment is also subject to a vote by the legal voters of the municipality in accordance with section 1894 of this subchapter and, if not included in the tax increment financing plan approved under subsection 1894(d) of this subchapter, is also considered a substantial change and subject to the review process provided by

subdivision 1901(2)(B) of this subchapter. If interfund loans within the municipality are used as the method of financing, no interest shall be charged. Bond anticipation notes may be used as a method of financing and may qualify as a district's first incurrence of debt. A municipality that uses a bond anticipation note during the fifth year or tenth year that a district may incur debt pursuant to section 1894 of this title shall incur all permanent financing not more than one year after issuing the bond anticipation note.

\* \* \*

Fourth: By adding a new Sec. 5, 24 V.S.A. § 1895, to read as follows:

Sec. 5. 24 V.S.A. § 1895 is amended to read:

§ 1895. ORIGINAL TAXABLE VALUE

(a) Certification. As of the date the district is created, the lister or assessor for the municipality shall certify the original taxable value and shall certify to the legislative body in each year thereafter during the life of the district the amount by which the total valuation as determined in accordance with 32 V.S.A. chapter 129 of all taxable real property located within the tax increment financing district has increased or decreased relative to the original taxable value.

(b) Boundary of the district. Any parcel within a district shall be located wholly within the boundaries of a district. No adjustments to the boundary of a district are permitted after the approval of a tax increment financing district plan as described in section 1894 of this title.

And by renumbering the remaining section to be numerically correct.

And that when so amended the bill ought to pass.

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

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

### **Adjournment**

On motion of Senator Balint, the Senate adjourned until one o'clock in the afternoon on Thursday, March 25, 2021.