

Journal of the Senate

THURSDAY, MAY 5, 2022

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. 66

A message was received from the House of Representatives by Ms. Alona Tate, its Second 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. 742. An act relating to approval of amendments to the charter of the Town of Milton.

H. 745. An act relating to the approval of the adoption of the charter of the Town of Montgomery.

H. 746. An act relating to an amendment to the charter of the City of Burlington.

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

The House has considered a bill originating in the Senate of the following title:

S. 122. An act relating to the required votes of presidential electors.

And has passed the same in concurrence.

The House has considered bills originating in the Senate of the following titles:

S. 90. An act relating to establishing an amyotrophic lateral sclerosis registry.

S. 148. An act relating to environmental justice in Vermont.

S. 161. An act relating to extending the baseload renewable power portfolio requirement.

S. 188. An act relating to regulating licensed small cannabis cultivation as farming.

S. 258. An act relating to agricultural water quality, enforcement, and dairy farming.

S. 261. An act relating to municipal retention of property tax collections.

S. 269. An act relating to extending the Energy Savings Account Partnership Pilot Program.

S. 283. An act relating to miscellaneous changes to education laws.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the Senate is requested.

The House has considered Senate proposals of amendment to the following House bills:

H. 553. An act relating to eligibility of domestic partners for reimbursement from the Victims Compensation Program.

H. 661. An act relating to licensure of mental health professionals.

H. 715. An act relating to the Clean Heat Standard.

And has severally concurred therein.

Message from the Governor Appointments Referred

A message was received from the Governor, by Brittney L. Wilson, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

The nomination of

Ogorzalek, Ed of Rutland - Member of the Vermont Educational and Health Buildings Financing Agency - from March 28, 2022 to January 31, 2026.

To the Committee on Finance.

The nomination of

Winters, Debbie of Swanton - Member of the Vermont Municipal Bond Bank - from March 28, 2022 to January 31, 2024.

To the Committee on Finance.

The nomination of

Foley, Mark, Jr. of Rutland - Member of the Vermont Municipal Bond Bank - from March 28, 2022 to January 31, 2024.

To the Committee on Finance.

The nomination of

Bourgeois, Anita of Middlesex - Member of the Vermont Educational and Health Buildings Financing Agency - from March 28, 2022 to January 31, 2027.

To the Committee on Finance.

The nomination of

Boyde, Glenn of Colchester - Member of the State Police Advisory Commission - from March 28, 2022 to February 28, 2025.

To the Committee on Government Operations.

The nomination of

Filipek, John of Jericho - Member of the State Police Advisory Commission - from March 28, 2022 to February 28, 2026.

To the Committee on Government Operations.

The nomination of

Dengler, Wayne of Isle La Monte - Member of the Parole Board - from March 28, 2022 to February 28, 2025.

To the Committee on Institutions.

The nomination of

Giffin, Tom of Rutland - Member of the Parole Board - from March 28, 2022 to February 28, 2025.

To the Committee on Institutions.

The nomination of

Larrabee, Steve of West Danville - Member of the Natural Resources Board - from March 28, 2022 to January 31, 2024.

To the Committee on Natural Resources and Energy.

The nomination of

Aldrich, Brad of Shelburne - Member of the Natural Resources Board - from March 28, 2022 to January 31, 2025.

To the Committee on Natural Resources and Energy.

The nomination of

Wolcott, Julie of Enosburg - Aternate Member of the Natural Resources Board - from March 28, 2022 to January 31, 2024.

To the Committee on Natural Resources and Energy.

The nomination of

Courtney, Elizabeth of Montpelier - Aternate Member of the Natural Resources Board - from March 28, 2022 to January 31, 2024.

To the Committee on Natural Resources and Energy.

The nomination of

Ferland, Brad of Hardwick - Chair of the Fish and Wildlife Board - from May 2, 2022 to February 28, 2026.

To the Committee on Natural Resources and Energy.

The nomination of

Patterson, Robert of Lincoln - Member of the Fish and Wildlife Board - from May 2, 2022 to February 29, 2028.

To the Committee on Natural Resources and Energy.

The nomination of

Hogan, Neal of Bennington - Member of the Fish and Wildlife Board - from May 2, 2022 to February 29, 2028.

To the Committee on Natural Resources and Energy.

The nomination of

Lukaski, Christopher of Brattleboro - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 28, 2026.

To the Committee on Health and Welfare.

The nomination of

Mazza, MacKenzie of Colchester - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 28, 2025.

To the Committee on Health and Welfare.

The nomination of

Sheil, Bob of Montpelier - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 28, 2023.

To the Committee on Health and Welfare.

The nomination of

Loner, Michael of Hinesburg - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 29, 2024.

To the Committee on Health and Welfare.

The nomination of

Johnson, Linda of Montpelier - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 29, 2024.

To the Committee on Health and Welfare.

The nomination of

Burris, Laurey of Shelburne - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 29, 2024.

To the Committee on Health and Welfare.

The nomination of

Wolf, Matt of East Montpelier - Member of the Children and Family Council for Prevention Programs - from March 28, 2022 to February 28, 2023.

To the Committee on Health and Welfare.

Bills Referred

Pursuant to Temporary Rule 44A the following bills having failed to meet cross-over and being released by the Committee on Rules were referred to their respective committees of jurisdictions:

H. 742.

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

To the Committee on Government Operations.

H. 745.

An act relating to the approval of the adoption of the charter of the Town of Montgomery.

To the Committee on Government Operations.

H. 746.

An act relating to an amendment to the charter of the City of Burlington.

To the Committee on Government Operations.

Bill Passed in Concurrence**H. 606.**

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

An act relating to community resilience and biodiversity protection.

House Proposal of Amendment Concurred In**S. 287.**

House proposal of amendment to Senate bill entitled:

An act relating to improving student equity by adjusting the school funding formula and providing education quality and funding oversight.

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:

* * * Findings and Goals * * *

Sec. 1. FINDINGS

(a) The Vermont Supreme Court, in *Brigham v. State*, 166 Vt. 246 (1997), held that education in Vermont is “a constitutionally mandated right” and that to “keep a democracy competitive and thriving, students must be afforded equal access to all that our educational system has to offer.” Therefore, the Court held that in order to “fulfill its constitutional obligation the [S]tate must ensure substantial equality of educational opportunity throughout Vermont.”

(b) The General Assembly reflected this holding in statute, 16 V.S.A. § 1, stating that “the right to education is fundamental for the success of Vermont’s children in a rapidly-changing society and global marketplace as well as for the State’s own economic and social prosperity. To keep Vermont’s democracy competitive and thriving, Vermont students must be afforded substantially equal access to a quality basic education...it is the policy of the State that all Vermont children will be afforded educational opportunities that are substantially equal although educational programs may vary from district to district.”

(c) Students come to school with needs that may require different types and levels of educational support for them to achieve common standards or outcomes. Similarly, schools may also require different levels of resources. Therefore, school districts with similar education property tax rates may achieve significantly different student outcomes.

(d) 2018 Acts and Resolves No. 173, Sec. 11 directed the Agency of Education to study the efficacy of the current pupil weights, which are used in Vermont's school funding formula to provide equitable tax capacity to local school districts for spending on various student needs, and to consider whether increased or additional weights should be included in the equalized pupil count.

(e) On December 24, 2019, the Agency issued its Pupil Weighting Factors Report, which was produced by a University of Vermont-Rutgers University team of researchers. The Report found that neither the cost factors incorporated in the weighting formula nor the values of the current weights reflect contemporary educational circumstances and costs and that stakeholders viewed the existing approach as "outdated." The Report found that values for the existing weights have weak ties, if any, with evidence describing differences in the costs for educating students with disparate needs or operating schools in different contexts and recommended that the General Assembly increase certain existing weights and add certain new weights.

(f) 2021 Acts and Resolves No. 59 created the Task Force on the Implementation of the Pupil Weighting Factors Report composed of eight members of the General Assembly, four Senators and four Representatives, to 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 Weighting Report. The Task Force unanimously recommended two systemic change options and a series of related provisions for either updating the weights or adopting a cost adjustment approach to providing direct aid to school districts as set out in its "Report Prepared in Accordance with Act No. 59 of the 2021 Legislative Session" dated December 17, 2021.

(g) Under current law, 16 V.S.A. § 4010, a weight of 0.46 is applied to a student enrolled in a prekindergarten program. The Pupil Weighting Factors Report did not review whether this weight reflected the actual cost of providing prekindergarten educational services because that review was not within the scope of the authors' mandate. That review is now being undertaken pursuant to 2021 Acts and Resolves No. 45. Therefore, although the 0.46 prekindergarten weight is in current law, its status should be viewed as transitional pending the outcome of this review.

Sec. 2. GOALS

By enacting this legislation, the General Assembly intends to fulfill Vermont's constitutional mandate to ensure that all students receive substantial equality of educational opportunity throughout the State. The legislation is designed to:

(1) increase educational equity by ensuring that the financial resources available to local school districts for educating students living in poverty, English learners, students in small rural schools, students in sparsely populated school districts, and students in middle and high schools are sufficient to meet the cost of educating these students;

(2) improve educational outcomes of publicly funded students throughout Vermont;

(3) improve transparency in the distribution of financial resources to school districts by simplifying the school funding formula and better tying educational expenditures to student needs; and

(4) enhance educational and financial accountability by ensuring that equitable resources are budgeted and expended for the education of students in these circumstances or categories and that regular evaluation mechanisms are utilized to assess educational equity and outcomes.

* * * Updated Weights; Implementation * * *

Sec. 3. INTENT OF ACT

This act updates and adds new pupil weights for fiscal year 2025 and thereafter. Because this change will affect homestead property tax rates, this act limits the degree to which these rates can increase over fiscal years 2025–2029.

Sec. 4. 16 V.S.A. § 4010 is amended to read:

§ 4010. DETERMINATION OF WEIGHTED LONG-TERM MEMBERSHIP AND PER PUPIL EDUCATION SPENDING

~~(a) On or before the first day of December during each school year, the Secretary shall determine the average daily membership of each school district for the current school year. The determination shall list separately:~~

~~(1) resident prekindergarten children;~~

~~(2) resident students being provided elementary or kindergarten education; and~~

~~(3) resident students being provided secondary education.~~

~~(b) The Secretary shall determine the long-term membership for each school district for each student group described in subsection (a) of this section. The Secretary shall use the actual average daily membership over two consecutive years, the latter of which is the current school year.~~

~~(c) The Secretary shall determine the weighted long-term membership for each school district using the long-term membership from subsection (b) of~~

~~this section and the following weights for each class:~~

~~Prekindergarten 0.46~~

~~Elementary or kindergarten 1.0~~

~~Secondary 1.13~~

~~(d) The weighted long-term membership calculated under subsection (c) of this section shall be increased for each school district to compensate for additional costs imposed by students from economically deprived backgrounds. The adjustment shall be equal to the total from subsection (c) of this section, multiplied by 25 percent, and further multiplied by the poverty ratio of the district.~~

~~(e) The weighted long-term membership calculated under subsection (c) of this section shall be further increased by 0.2 for each student in average daily membership for whom English is not the primary language.~~

~~(f) For purposes of determining weighted membership under this section, a district's equalized pupils shall in no case be less than 96 and one-half percent of the actual number of equalized pupils in the district in the previous year, prior to making any adjustment under this section.~~

~~(g) The Secretary shall develop guidelines to enable clear and consistent identification of students to be counted under this section.~~

~~(h) On December 1 each year, the Secretary shall determine the equalized pupil count for the next fiscal year for district review. The Secretary shall make any necessary corrections on or before December 15, on which date the count shall become final for that year.~~

~~(i) The Secretary shall evaluate the accuracy of the weights established in subsection (c) of this section and, at the beginning of each biennium, shall propose to the House and Senate Committees on Education whether the weights should stay the same or be adjusted. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.~~

(a) Definitions. As used in this section:

(1) "EL pupils" means pupils described under section 4013 of this title.

(2) "FPL" means the Federal Poverty Level.

(3) "Weighting categories" means the categories listed under subsection (b) of this section.

(b) Determination of average daily membership and weighting categories. On or before the first day of December during each school year, the Secretary

shall determine the average daily membership, as defined in subdivision 4001(1) of this title, of each school district for the current school year and shall perform the following tasks.

(1) Using average daily membership, list for each school district the number of:

(A) pupils in prekindergarten;

(B) pupils in kindergarten through grade five;

(C) pupils in grades six through eight;

(D) pupils in grades nine through 12;

(E) pupils whose families are at or below 185 percent of FPL, using the highest number of pupils in the district:

(i) that meet this definition under the universal income declaration form; or

(ii) who are directly certified for free and reduced-priced meals; and

(F) EL pupils.

(2)(A) Identify all school districts that have low population density, measured by the number of persons per square mile residing within the land area of the geographic boundaries of the district as of July 1 of the year of determination, equaling:

(i) fewer than 36 persons per square mile;

(ii) 36 or more persons per square mile but fewer than 55 persons per square mile; or

(iii) 55 or more persons per square mile but fewer than 100 persons per square mile.

(B) Population density data shall be based on the best available U.S. Census data as provided to the Agency of Education by the Vermont Center for Geographic Information.

(C) Using average daily membership, list for each school district that has low population density the number of pupils in each of subdivisions (A)(i)–(iii) of this subdivision (2).

(3)(A) Identify all school districts that have one or more small schools, which are schools that have an average two-year enrollment of:

(i) fewer than 100 pupils; or

(ii) 100 or more pupils but fewer than 250 pupils.

(B) As used in subdivision (A) of this subdivision (3), “average two-year enrollment” means the average enrollment of the two most recently completed school years, and “enrollment” means the number of pupils who are enrolled in a school operated by the district on October 1. A pupil shall be counted as one whether the pupil is enrolled as a full-time or part-time student.

(C) Using average two-year enrollment, list for each school district that has a small school the number of pupils in each of subdivisions (A)(i)–(ii) of this subdivision (3).

(c) Reporting on weighting categories to the Agency of Education. Each school district shall annually report to the Agency of Education by a date established by the Agency the information needed in order for the Agency to compute the weighting categories under subsection (b) of this section for that district. In order to fulfill this obligation, a school district that pays public tuition on behalf of a resident student (sending district) to a public school in another school district, an approved independent school, or an out-of-state school (each a receiving school) may request the receiving school to collect this information on the sending district’s resident student, and if requested, the receiving school shall provide this information to the sending district in a timely manner.

(d) Determination of weighted long-term membership. For each weighting category except the small schools weighting category under subdivision (b)(3) of this section, the Secretary shall compute the weighting count by using the long-term membership, as defined in subdivision 4001(7) of this title, in that category.

(1) The Secretary shall first apply grade level weights. Each pupil included in long-term membership from subsection (b) of this section shall count as one, multiplied by the following amounts:

(A) prekindergarten—negative 0.54;

(B) grades six through eight—0.36; and

(C) grades nine through 12—0.39.

(2) The Secretary shall next apply a weight for pupils whose family is at or below 185 percent of FPL. Each pupil included in long-term membership whose family is at or below 185 percent of FPL shall receive an additional weighting amount of 1.03.

(3) The Secretary shall next apply a weight for EL pupils. Each EL pupil included in long-term membership shall receive an additional weighting amount of 2.49.

(4) The Secretary shall then apply a weight for pupils living in low population density school districts. Each pupil included in long-term membership residing in a low population density school district, measured by the number of persons per square mile residing within the land area of the geographic boundaries of the district as of July 1 of the year of determination, shall receive an additional weighting amount of:

(A) 0.15, where the number of persons per square mile is fewer than 36 persons;

(B) 0.12, where the number of persons per square mile is 36 or more but fewer than 55 persons; or

(C) 0.07, where the number of persons per square mile is 55 or more but fewer than 100.

(5) The Secretary shall lastly apply a weight for pupils who attend a small school. If the number of persons per square mile residing within the land area of the geographic boundaries of a school district as of July 1 of the year of determination is 55 or fewer, then, for each pupil listed under subdivision (b)(3)(C) of this section (pupils who attend small schools):

(A) where the school has fewer than 100 pupils in average two-year enrollment, the school district shall receive an additional weighting amount of 0.21 for each pupil included in the small school's average two-year enrollment; or

(B) where the small school has 100 or more but fewer than 250 pupils, the school district shall receive an additional weighting amount of 0.07 for each pupil included in the small school's average two-year enrollment.

(6) A school district's weighted long-term membership shall equal long-term membership plus the cumulation of the weights assigned by the Secretary under this subsection.

(e) Hold harmless. A district's weighted long-term membership shall in no case be less than 96 and one-half percent of its actual weighted long-term membership the previous year prior to making any adjustment under this subsection.

(f) Determination of per pupil education spending. As soon as reasonably possible after a school district budget is approved by voters, the Secretary shall determine the per pupil education spending for the next fiscal year for the school district. Per pupil education spending shall equal a school district's education spending divided by its weighted long-term membership.

(g) Guidelines. The Secretary shall develop guidelines to enable clear and consistent identification of pupils to be counted under this section.

(h) Updates to weights. On or before January 1, 2027 and on or before January 1 of every fifth year thereafter, the Agency of Education and the Joint Fiscal Office shall calculate, based on their consensus view, updates to the weights to account for cost changes underlying those weights and shall issue a written report on their work to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance. The General Assembly shall update the weights under this section and transportation reimbursement under section 4016 of this title not less than every five years and the implementation date for the updated weights and transportation reimbursement shall be delayed by a year in order to provide school districts with time to prepare their budgets. Updates to the weights may include recalibration, recalculation, adding or eliminating weights, or any combination of these actions.

Sec. 5. COLLABORATION BY THE AGENCY OF EDUCATION AND
JOINT FISCAL OFFICE

The Agency of Education and the Joint Fiscal Office shall:

(1) on or before August 1, 2022, enter into a memorandum of understanding to share data, models, and other information that is needed to update the weights; and

(2) each host the statistical model used to provide modeling for the Weighting Report dated December 24, 2019 and for ensuing memos and ensure that this model is updated and maintained on both systems in parallel.

Sec. 6. VERMONT CENTER FOR GEOGRAPHIC INFORMATION

The Vermont Center for Geographic Information created under 3 V.S.A. § 2475 shall assist the Agency of Education in determining the number of persons per square mile residing within the land area of the geographic boundaries of each school district in the State.

Sec. 7. CALCULATION OF TAX RATES; TAX RATE REVIEW;
FISCAL YEARS 2025–2029

(a) Notwithstanding 16 V.S.A. chapter 133, 32 V.S.A. chapter 135, and any other provision of law to the contrary, if, in fiscal year 2025 when applying the funding formula created under this act, a school district's homestead property tax rate increases by five percent or more over the school district's homestead property tax rate in fiscal year 2024, then the school district's homestead property tax rate shall be increased by not more than five percent over the prior fiscal year in each fiscal year for five fiscal years, from fiscal year 2025 through fiscal year 2029. In fiscal years 2026–2029, this subsection shall only apply if the school district's property tax rate increase was limited pursuant to this subsection in the prior fiscal year.

(b)(1) In order to determine which school districts shall be subject to a Tax Rate Review, the Secretary of Education shall calculate the fiscal year 2024 per pupil education spending of each school district subject to subsection (a) of this section as though the funding formula created under this act applied to fiscal year 2024. In fiscal year 2025, if a school district's per pupil education spending calculated using the funding formula created under this act increases by 10 percent or more over the school district's fiscal year 2024 per pupil education spending as calculated by the Secretary under this subsection, then the school district shall be subject to a Tax Rate Review. In fiscal years 2026–2029, if a school district's per pupil education spending calculated using the funding formula created under this act increases by 10 percent or more over the school district's prior fiscal year per pupil education spending, then the school district shall be subject to a Tax Rate Review. Upon request of the Secretary, a school district shall submit its budget to a Tax Rate Review to determine whether its increase in per pupil education spending was beyond the school district's control or for other good cause. In conducting the Review, the Secretary shall select three business managers and three superintendents to serve in an advisory role in the Review. The Review shall consider at least the following factors:

(A) the extent to which the increase in per pupil education spending is caused by declining enrollment in the school district; and

(B) the extent to which the increase in per pupil education spending is caused by increases in tuition paid by the school district.

(2) If, at the conclusion of the Review, the Secretary determines that the school district's budget contains excessive increases in per pupil education spending that are within the school district's control and are not supported by good cause, then the homestead property tax rate of the school district that would otherwise be increased by not more than five percent in each fiscal year pursuant to subsection (a) of this section shall be increased to the actual homestead property tax rate calculated pursuant to this act.

Sec. 8. SUSPENSION OF LAWS

(a) Suspension of excess spending penalty. Notwithstanding any provision of law to the contrary, the excess spending penalty under 16 V.S.A. § 4001(6)(B) and 32 V.S.A. § 5401(12) is suspended during fiscal years 2024–2029.

(b) Suspension of hold harmless provision. Notwithstanding any provision of law to the contrary, the hold harmless provision under 16 V.S.A. § 4010(e) is suspended during fiscal years 2025–2029.

(c) Suspension of ballot language requirement. Notwithstanding 16 V.S.A. § 563(11)(D), which requires specified language for a school budget ballot, this requirement is suspended during fiscal years 2025–2029.

* * * Universal Income Declaration Form * * *

Sec. 9. UNIVERSAL INCOME DECLARATION FORM

(a) It is the intention of the General Assembly that, beginning with the 2023–24 school year and thereafter, the determination of whether a pupil is from an economically deprived background be changed from qualification for nutrition benefits to eligibility based upon family income of 185 percent or less of the current year Federal Poverty Level, with data collected from a universal income declaration form.

(b) A universal income declaration form is used by some other states and school districts in Vermont with universal school meals programs to collect household size and income information. A universal income declaration form is used to collect income bracket information from all families, reducing stigma and resulting in the collection of more accurate pupil eligibility counts throughout a school district.

(c) On or before October 1, 2022, the Agency of Education shall convene a working group that includes school staff and hunger and nutrition experts to develop the universal income declaration form that shall be fully accessible to all Vermont families both in paper form and electronically. On or before July 1, 2023, the new form shall be implemented statewide for the 2023–24 school year and thereafter.

(d) The Agency of Education shall establish a process for verifying the accuracy of data collected through the universal income declaration form on a community level, which may include using other sources of income data available to the Agency, including census and direct certification for free and reduced-priced meals.

(e) The sum of \$200,000.00 is appropriated from the General Fund to the Agency of Education for fiscal year 2023 to fund operating expenses associated with the creation of the electronic universal income declaration form.

* * * English Learners * * *

Sec. 10. 16 V.S.A. § 4013 is added to read:

§ 4013. ENGLISH LEARNERS SERVICES; STATE AID

(a) Definitions. As used in this section:

(1) “Applicable federal laws” mean the Equal Education Opportunities Act (20 U.S.C. § 1703), Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.), and Titles I and III of the Elementary and Secondary Education Act of 1965 (20 U.S.C. §§ 6301 et seq. and 20 U.S.C. §§ 6801 et seq.), each as amended.

(2) “EL services” mean instructional and support personnel and services that are required under applicable federal laws for EL students and their families.

(3) “EL students” or “EL pupils” mean students who have been identified as English learners through the screening protocols required under 20 U.S.C. § 6823(b)(2).

(b) Required EL services. Each school district shall:

(1) screen students to determine which students are EL students and therefore qualify for EL services;

(2) assess and monitor the progress of EL students;

(3) provide EL services;

(4) budget sufficient resources through a combination of State and federal categorical aid and local education spending to provide EL services;

(5) report expenditures on EL services annually to the Agency of Education through the financial reporting system as required by the Agency; and

(6) evaluate the effectiveness of their EL programs and report educational outcomes of EL students as required by the Agency and applicable federal laws.

(c) Agency of Education support and quality assurance. The Agency of Education shall:

(1) provide guidance and program support to all school districts with EL students as required under applicable federal law, including:

(A) professional development resources for EL teachers and support personnel; and

(B) information on best practices and nationally recognized language development standards; and

(2) prescribe, collect, and analyze financial and student outcome data from school districts to ensure that districts are providing high-quality EL services and expending sufficient resources to provide these services.

(d) Categorical aid. In addition to the EL weight under section 4010 of this title, a school district that has, as determined annually on October 1 of the year:

(1) one to five EL students enrolled shall receive State aid of \$25,000.00 for that school year; or

(2) six to 25 EL students enrolled shall receive State aid of \$50,000.00 for that school year.

(e) Annual appropriation. Annually, the General Assembly shall include in its appropriation for statewide education spending under subsection 4011(a) of this title an appropriation to provide aid to school districts for EL services under this section.

(f) Payment. On or before November 1 of each year, the State Treasurer shall withdraw from the Education Fund, based on warrant of the Commissioner of Finance and Management, and shall forward to each school district the aid amount it is owed under this section.

Sec. 11. JOINT FISCAL OFFICE REPORT; ENGLISH LEARNERS
SERVICES; CATEGORICAL AID

(a) On or before December 15, 2022, the Joint Fiscal Office shall issue a written report to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance on the advantages and disadvantages of:

(1) changing the weight for EL students under 16 V.S.A. § 4010, as amended by this act, to reflect the cost of providing different levels of required EL services, such as different services levels based on the degree of English proficiency of EL students; and

(2) changing the amount or eligibility, or both, for the categorical aid provided to school districts with 25 or fewer EL students under 16 V.S.A. § 4013(d) as added by this act.

(b) The Joint Fiscal Office shall consult with the Agency of Education in drafting its report under subsection (a) of this section. On or before September 1, 2022, the Agency of Education shall provide the Joint Fiscal Office with information on the different levels of required EL services and the number of EL students in each service-level category and shall assist the Joint Fiscal Office in estimating the cost of providing EL services for each service level category.

(c) The Joint Fiscal Office may contract with a third party to perform the work required of it under this section.

* * * Agency of Education; Staffing * * *

Sec. 12. AGENCY OF EDUCATION; STAFFING

(a) The following five positions are created in the Agency of Education:

(1) one full-time, classified position to provide guidance and support to school districts for English learner students;

(2) two full-time, classified positions to develop and maintain the universal income declaration form and provide guidance to school districts on its use; and

(3) two full-time, classified positions to provide financial and data analysis for the Agency of Education.

(b) There is appropriated to the Agency of Education from the General Fund for fiscal year 2023 the amount of \$200,000.00 for salaries, benefits, and operating expenses for the positions created under subdivision (a)(2) of this section.

(c) On or before December 15, 2022, the Agency of Education shall submit a plan as part of the budget process to the House and Senate Committees on Education and on Appropriations, House Committee on Ways and Means, and Senate Committee on Finance that sets out the duties of each position under subdivisions (a)(1) and (3) of this section and identifies the funding source or sources for these positions in the transition to the new pupil weights under this act.

* * * Education Quality Standards; Evaluation and Reporting * * *

Sec. 13. 16 V.S.A. § 165 is amended to read:

* * *

(g) In addition to the education quality standards provided in section (a) of this section, each Vermont school district shall meet the school district quality standards adopted by rule of the Agency of Education regarding the business, facilities management, and governance practices of school districts. These standards shall include a process for school district quality reviews to be conducted by the Agency of Education. Annually, the Secretary shall publish metrics regarding the outcomes of school district quality reviews.

Sec. 14. EDUCATION QUALITY STANDARDS; RULEMAKING

On or before February 1, 2023, the Agency of Education shall initiate rulemaking to update education quality standards as required under 16 V.S.A. § 165. Prior to the filing of the draft updated rules with the Interagency Committee on Administrative Rules, the Agency of Education shall engage

stakeholders for input on the draft rules in accordance with a written plan approved by the State Board of Education.

Sec. 15. EVALUATION AND REPORTING ON IMPLEMENTATION OF
ACT

The Joint Fiscal Office shall design and contract for an evaluation of the impact of the changes required under this act in achieving the goals under Sec. 2 of this act. On or before December 15, 2029, the Joint Fiscal Office shall submit to the House and Senate Committees on Education, the House Committee on Ways and Means, and the Senate Committee on Finance its written evaluation report.

* * * Career Technical Education * * *

Sec. 16. [Deleted.]

Sec. 17. FUNDING AND GOVERNANCE STRUCTURES OF
CAREER TECHNICAL EDUCATION IN VERMONT

(a) The Joint Fiscal Office shall contract for services to:

(1) complete a systematic examination of the existing funding structures of career technical education (CTE) in Vermont and how these structures impede or promote the State's educational and workforce development goals;

(2) examine CTE governance structures in relationship to those funding structures;

(3) examine the funding and alignment of early college and dual enrollment as they relate to CTE;

(4) examine the barriers to enrollment in CTE, early college, and dual enrollment and provide recommendations for addressing these barriers; and

(5) identify and prioritize potential new models of CTE funding and governance structures to reduce barriers to enrollment and to improve the quality, duration, impact, and access to CTE statewide.

(b) The contractor shall work with the consultant, the Agency of Education, and any other stakeholders who were involved in completing the report on the design, implementation, and costs of an integrated and coherent adult basic education, adult secondary education, and postsecondary career and technical education system pursuant to 2021 Acts and Resolves No. 74, Sec. H.3.

(c) On or before March 1, 2023, the Joint Fiscal Office shall issue a written report to the House and Senate Committees on Education, the House Committee on Commerce and Economic Development, the Senate Committee

on Economic Development, Housing and General Affairs, the House Committee on Ways and Means, and the Senate Committee on Finance on the work performed pursuant to subsection (a) of this section.

(d)(1) The Agency of Education shall consider the work performed and report issued pursuant to subsection (c) of this section and shall develop an implementation plan, including recommended steps to design and implement new funding and governance models.

(2) On or before July 1, 2023, the Agency shall issue a written report to the House and Senate Committees on Education, the House Committee on Commerce and Economic Development, the Senate Committee on Economic Development, Housing and General Affairs, the House Committee on Ways and Means, and the Senate Committee on Finance that describes the results of its work under this subsection and the implementation plan and makes recommendations for legislative action.

* * * Education Tax-Related Reports * * *

Sec. 18. REPORT; INCOME-BASED EDUCATION TAX SYSTEM;
DEPARTMENT OF TAXES

On or before January 1, 2023, the Department of Taxes, in consultation with the Agency of Education and the Joint Fiscal Office, shall submit a written report to the House Committees on Education and on Ways and Means and the Senate Committees on Education and on Finance that makes recommendations regarding the implementation of an income-based education tax system to replace the homestead property tax system, including:

(1) restructuring the renter credit under 32 V.S.A. chapter 154 or creating a new credit or other mechanisms to ensure that Vermonters who rent a primary residence participate fairly in the education income tax system;

(2) transitioning from the current homestead property tax system to the new income-based education tax system;

(3) accurate modelling, given the differences between household income for homestead property tax purposes and adjusted gross income for income tax purposes; and

(4) administering a new proposed education income tax system.

Sec. 19. REPORTS; PROPERTY TAX RATES; JOINT FISCAL OFFICE

Vermont's system of equalized pupils within a shared education fund creates significant opportunities to meet the needs of schools and students. However, certain aspects of the current system distort or prevent a fully equitable and progressive education finance system. Therefore, the Joint

Fiscal Office shall explore the issues set forth in this section. On or before January 15, 2023, the Joint Fiscal Office shall examine and provide options to the House Committees on Education and on Ways and Means and the Senate Committees on Education and on Finance for structuring the following:

(1) methods for cost containment that create equity in school districts' ability to spend sufficiently on education to meet student needs;

(2) in collaboration with the Department of Taxes and the Agency of Education, the mechanics for setting the yields in a manner that creates a constitutionally adequate education spending amount for school districts at a level that is determined by education funding experts to be sufficient to meet student needs; and

(3) funding similar school districts in an equitable manner regardless of their per pupil education spending decisions.

* * * Joint Fiscal Office; Appropriation * * *

Sec. 20. JOINT FISCAL OFFICE; APPROPRIATION

There is appropriated to the Joint Fiscal Office from the General Fund for fiscal year 2023 the amount of \$205,000.00 for the studies and reports required by the Joint Fiscal Office under this act.

* * * Conforming and Technical Changes to Titles 16 and 32 * * *

Sec. 21. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

A school district shall not pay the tuition of a student except to a public school, an approved independent school, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, that complies with the reporting requirement under subsection 4010(c) of this title, nor shall payment of tuition on behalf of a person be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school board relating to eligibility for tuition payments, the amount of tuition payable, or the school ~~he or she~~ the person may attend, may appeal to the State Board and its decision shall be final.

Sec. 22. 16 V.S.A. § 1531 is amended to read:

§ 1531. RESPONSIBILITY OF STATE BOARD

* * *

(c) For a school district that is geographically isolated from a Vermont career technical center, the State Board may approve a career technical center in another state as the career technical center that district students may attend. In this case, the school district shall receive transportation assistance pursuant to section 1563 of this title and tuition assistance pursuant to ~~section~~ subsection 1561(c) of this title. Any student who is a resident in the Windham Southwest Supervisory Union and who is enrolled at public expense in the Charles H. McCann Technical School or the Franklin County Technical School shall be considered to be attending an approved career technical center in another state pursuant to this subsection, and, if the student is from a school district eligible for a ~~small schools merger~~ support grant pursuant to section 4015 of this title or a small school weight pursuant to section 4010 of this title, the student's full-time equivalency shall be computed according to time attending the school.

Sec. 23. 16 V.S.A. § 1546 is amended to read:

§ 1546. COMPREHENSIVE HIGH SCHOOLS

* * *

(c) Two or more comprehensive high schools for which the State Board has designated a service region shall be a career technical center for the purposes of accountability to the State Board under subchapter 2 of this chapter, responsibilities of the career technical center under subchapter 3 of this chapter, and receiving State financial assistance under subchapter 5 of this chapter, excluding the ~~per equalized pupil~~ general State support grant under subsection 1561(b) of this title. The regional advisory board shall determine how funds received under subchapter 5 shall be distributed. A comprehensive high school aggrieved by a decision of the regional advisory board may appeal to the Secretary who, after opportunity for hearing, may affirm or modify the decision.

Sec. 24. 16 V.S.A. § 4001 is amended to read:

§ 4001. DEFINITIONS

As used in this chapter:

* * *

(3) ~~“Equalized pupils” means the long-term weighted average daily membership multiplied by the ratio of the statewide long-term average daily membership to the statewide long-term weighted average daily membership.~~
[Repealed.]

* * *

(7) “Long-term membership” of a school district in any school year means the:

(A) ~~mean~~ average of the district’s average daily membership, excluding full-time equivalent enrollment of State-placed students, over two school years, the latter of which is the current school year, plus

(B) full-time equivalent enrollment of State-placed students for the most recent of the two years.

* * *

(8) ~~“Poverty ratio” means the number of persons in the school district who are aged six through 17 and who are from economically deprived backgrounds, divided by the long-term membership of the school district. A person from an economically deprived background means a person who resides with a family unit receiving nutrition benefits. A person who does not reside with a family unit receiving nutrition benefits but for whom English is not the primary language shall also be counted in the numerator of the ratio. The Secretary shall use a method of measuring the nutrition benefits population that produces data reasonably representative of long-term trends. Persons for whom English is not the primary language shall be identified pursuant to subsection 4010(e) of this title. [Repealed.]~~

* * *

(14) ~~“Adjusted education payment” means the district’s education spending per equalized pupil “Per pupil education spending” of a school district in any school year means the per pupil education spending of that school district as determined under subsection 4010(f) of this title.~~

* * *

Sec. 25. 16 V.S.A. § 4011 is amended to read:

§ 4011. EDUCATION PAYMENTS

* * *

(c) Annually, each school district shall receive an education spending payment for support of education costs. An unorganized town or gore shall receive an amount equal to its ~~adjusted education payment~~ per pupil education spending for that year for each student ~~based on the weighted average daily membership count, which shall not be equalized. In fiscal years 2007 and after,~~ no No district shall receive more than its education spending amount.

* * *

(i) Annually, by on or before October 1, the Secretary shall send to school boards for inclusion in town reports and publish on the Agency website the following information:

(1) ~~the statewide average district spending per equalized pupil per pupil education spending for the current fiscal year and 125 percent of that average spending; and~~

(2) a statewide comparison of student-teacher ratios among schools that are similar in number of students and number of grades.

Sec. 26. 16 V.S.A. § 4015 is amended to read:

§ 4015. ~~SMALL SCHOOL MERGER SUPPORT FOR MERGED DISTRICTS~~

~~(a) In this section:~~

~~(1) "Eligible school district" means a school district that:~~

~~(A) operates at least one school with an average grade size of 20 or fewer; and~~

~~(B) has been determined by the State Board, on an annual basis, to be eligible due to either:~~

~~(i) the lengthy driving times or inhospitable travel routes between the school and the nearest school in which there is excess capacity; or~~

~~(ii) the academic excellence and operational efficiency of the school, which shall be based upon consideration of:~~

~~(I) the school's measurable success in providing a variety of high-quality educational opportunities that meet or exceed the educational quality standards adopted by the State Board pursuant to section 165 of this title;~~

~~(II) the percentage of students from economically deprived backgrounds, as identified pursuant to subsection 4010(d) of this title, and those students' measurable success in achieving positive outcomes;~~

~~(III) the school's high student-to-staff ratios; and~~

~~(IV) the district's participation in a merger study and submission of a merger report to the State Board pursuant to chapter 11 of this title or otherwise.~~

~~(2) "Enrollment" means the number of students who are enrolled in a school operated by the district on October 1. A student shall be counted as one whether the student is enrolled as a full-time or part-time student.~~

~~(3) “Two-year average enrollment” means the average enrollment of the two most recently completed school years.~~

~~(4) “Average grade size” means two-year average enrollment divided by the number of grades taught in the district on October 1. For purposes of this calculation, kindergarten and prekindergarten programs shall be counted together as one grade.~~

~~(5) “AGS factor” means the following factors for each average grade size:~~

Average grade size		Factor:
More than:	but less than or equal to:	
0	7	0.19
7	9	0.175
9	10	0.16
10	11	0.145
11	12	0.13
12	13	0.115
13	14	0.10
14	15	0.085
15	16	0.070
16	17	0.055
17	18	0.040
18	19	0.025
19	20	0.015

~~(6) “School district” means a town, city, incorporated, interstate, or union school district or a joint contract school established under chapter 11, subchapter 1 of this title.~~

~~(b) Small schools support grant. Annually, the Secretary shall pay a small schools support grant to any eligible school district. The amount of the grant shall be the greater of:~~

~~(1) the amount determined by multiplying the two-year average enrollment in the district by \$500.00 and subtracting the product from \$50,000.00, with a maximum grant of \$2,500.00 per enrolled student; or~~

~~(2) the amount of 87 percent of the base education amount for the current year, multiplied by the two-year average enrollment, multiplied by the AGS factor.~~

~~(c) [Repealed.]~~

~~(d) [Repealed.]~~

~~(e) In the event that a school or schools that have received a grant under this section merge in any year following receipt of a grant, and the consolidated school is not eligible for a grant under this section or the small school grant for the consolidated school is less than the total amount of grant aid the schools would have received if they had not combined, the consolidated school shall continue to receive a grant for three years following consolidation. The amount of the annual grant shall be:~~

~~(1) in the first year following consolidation, an amount equal to the amount received by the school or schools in the last year of eligibility;~~

~~(2) in the second year following consolidation, an amount equal to two-thirds of the amount received in the previous year; and~~

~~(3) in the third year following consolidation, an amount equal to one-third of the amount received in the first year following consolidation.~~

~~(f)(1) Notwithstanding anything to the contrary in this section, a school district that received a small schools grant in fiscal year 2020 shall continue to receive an annual small schools grant.~~

~~(2) Payment of the grant under this subsection shall continue annually unless explicitly repealed by the General Assembly; provided, however, that the Secretary shall discontinue payment of the grant in the fiscal year following the cessation of operations of the school that made the district eligible for the small schools grant, and further provided that if the building that houses the school that made the district eligible for the small schools grant is consolidated with another school into a renovated or new school building, then the Secretary shall continue to pay the grant during the repayment term of any bonded indebtedness incurred in connection with the consolidation-related renovation or construction.~~

~~(3) A school district that is eligible to receive an annual small schools grant under this subsection shall not also be eligible to receive a small school grant or its equivalent under subsection (b) of this section or under any other provision of law.~~

(a) A school district that was voluntarily formed under 2010 Acts and Resolves No. 153, 2012 Acts and Resolves No. 156, or 2015 Acts and Resolves No. 46, each as amended, and received a merger support grant shall

continue to receive that merger support grant, subject to the provisions in subsection (c) of this section.

(b) A school district that was involuntarily formed under the Final Report of Decisions and Order on Statewide School District Merger Decisions Pursuant to Act 46, Secs. 8(b) and 10 dated November 28, 2018 and that received a small schools grant in fiscal year 2020 shall receive an annual merger support grant in that amount, subject to the provisions in subsection (c) of this section.

(c)(1) Payment of a merger support grant under this section shall not be made in any year that the school district receives a small school weight under section 4010 of this title.

(2) Payment of a merger support grant under this section shall continue annually unless explicitly repealed by the General Assembly; provided, however, that the Secretary shall discontinue payment of the grant in the fiscal year following the cessation of operations of the school that made the district originally eligible for the grant, and further provided that if the building that houses the school that made the district originally eligible for the grant is consolidated with another school into a renovated or new school building, then the Secretary shall continue to pay the grant during the repayment term of any bonded indebtedness incurred in connection with the consolidation-related renovation or construction.

Sec. 27. 16 V.S.A. § 4030 is amended to read:

§ 4030. DATA SUBMISSION; CORRECTIONS

* * *

(b) The Secretary shall use data submitted on or before January 15 prior to the fiscal year that begins the following July 1, in order to calculate the amounts due each school district for any fiscal year for ~~the following:~~

~~(1) transportation aid due under section 4016 of this title; and~~

~~(2) the small school support grant due under section 4015 of this title.~~

* * *

(d) The Secretary shall not use data corrected due to an error submitted following the deadlines to recalculate ~~the equalized pupil ratio under subdivision 4001(3)~~ weighted long-term membership under section 4010 of this title. The Secretary shall not adjust average daily membership counts if an error or change is reported more than three fiscal years following the date that the original data was due.

* * *

Sec. 28. 32 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this chapter:

* * *

(13)(A) “Education property tax spending adjustment” means the greater of one or a fraction in which the numerator is the district’s per pupil education spending plus excess spending, ~~per equalized pupil~~, for the school year, and the denominator is the property dollar equivalent yield for the school year, as defined in subdivision (15) of this section.

(B) “Education income tax spending adjustment” means the greater of one or a fraction in which the numerator is the district’s per pupil education spending plus excess spending, ~~per equalized pupil~~, for the school year, and the denominator is the income dollar equivalent yield for the school year, as defined in subdivision (16) of this section.

* * *

(15) “Property dollar equivalent yield” means the amount of per pupil education spending ~~per equalized pupil~~ that would result if the homestead tax rate were \$1.00 per \$100.00 of equalized education property value, and the statutory reserves under 16 V.S.A. § 4026 and section 5402b of this title were maintained.

(16) “Income dollar equivalent yield” means the amount of per pupil education spending ~~per equalized pupil~~ that would result if the income percentage in subdivision 6066(a)(2) of this title were 2.0 percent, and the statutory reserves under 16 V.S.A. § 4026 and section 5402b of this title were maintained.

Sec. 29. 32 V.S.A. § 5402(e) is amended to read:

(e) The Commissioner of Taxes shall determine a homestead education tax rate for each municipality that is a member of a union or unified union school district as follows:

(1) For a municipality that is a member of a unified union school district, use the base rate determined under subdivision (a)(2) of this section and a spending adjustment under subdivision 5401(13) of this title based upon the per pupil education spending ~~per equalized pupil~~ of the unified union.

(2) For a municipality that is a member of a union school district:

(A) Determine the municipal district homestead tax rate using the base rate determined under subdivision (a)(2) of this section and a spending

adjustment under subdivision 5401(13) of this title based on the per pupil education spending ~~per total equalized pupil~~ in the municipality who attends a school other than the union school.

(B) Determine the union district homestead tax rate using the base rate determined under subdivision (a)(2) of this section and a spending adjustment under subdivision 5401(13) of this title based on the per pupil education spending ~~per equalized pupil~~ of the union school district.

(C) Determine a combined homestead tax rate by calculating the weighted average of the rates determined under subdivisions (A) and (B) of this subdivision (2), with weighting based upon the ratio of union school ~~equalized pupils~~ long-term membership, as defined in 16 V.S.A. § 4001(7), from the member municipality to total ~~equalized pupils~~ long-term membership of the member municipality; and the ratio of ~~equalized pupils~~ long-term membership attending a school other than the union school to total ~~equalized pupils~~ long-term membership of the member municipality. Total ~~equalized pupils~~ long-term membership of the member municipality is based on the number of pupils who are legal residents of the municipality and attending school at public expense. If necessary, the Commissioner may adopt a rule to clarify and facilitate implementation of this subsection (e).

* * * Effective Dates * * *

Sec. 30. EFFECTIVE DATES

(a) The following sections shall take effect on July 1, 2022:

(1) Sec. 1 (findings);

(2) Sec. 2 (goals);

(3) Sec. 3 (intent of act);

(4) Sec. 5 (collaboration by the Agency of Education and Joint Fiscal Office);

(5) Sec. 6 (Vermont Center for Geographic Information);

(6) Sec. 7 (calculation of tax rates; tax rate review; fiscal years 2025–2029);

(7) Sec. 8 (suspension of laws);

(8) Sec. 9 (universal income declaration form);

(9) Sec. 11 (Joint Fiscal Office report; English learners services; categorical aid);

(10) Sec. 12 (Agency of Education; staffing);

- (11) Sec. 14 (education quality standards; rulemaking);
 - (12) Sec. 15 (evaluation and reporting on implementation of act);
 - (13) Sec. 17 (funding and governance structures of career technical education in Vermont);
 - (14) Sec. 18 (report; income-based education tax system; Department of Taxes);
 - (15) Sec. 19 (reports; property tax rates; Joint Fiscal Office);
 - (16) Sec. 20 (Joint Fiscal Office; appropriation); and
 - (17) this section (effective dates).
- (b) The following sections shall take effect on July 1, 2024:
- (1) Sec. 4 (amendment to 16 V.S.A. § 4010; determination of weighted long-term membership and per pupil education spending);
 - (2) Sec. 10 (adding 16 V.S.A. § 4013; English learners services; State aid);
 - (3) Sec. 13 (amendment to 16 V.S.A. § 165; education quality standards);
 - (4) Sec. 21 (amendment to 16 V.S.A. § 828; tuition to approved schools; age; appeal);
 - (5) Sec. 22 (amendment to 16 V.S.A. § 1531; responsibility of State Board);
 - (6) Sec. 23 (amendment to 16 V.S.A. § 1546; comprehensive high schools);
 - (7) Sec. 24 (amendment to 16 V.S.A. § 4001; definitions);
 - (8) Sec. 25 (amendment to 16 V.S.A. § 4011; education payments);
 - (9) Sec. 26 (amendment to 16 V.S.A. § 4015; merger support for merged districts);
 - (10) Sec. 27 (amendment to 16 V.S.A. § 4030; data submission; corrections);
 - (11) Sec. 28 (amendment to 32 V.S.A. § 5401; definitions); and
 - (12) Sec. 29 (amendment to 32 V.S.A. § 5402(e); determination of homestead education tax rate).

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

Bills Passed in Concurrence with Proposal of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposal of amendment:

H. 465. An act relating to boards and commissions.

H. 489. An act relating to miscellaneous provisions affecting health insurance regulation.

Proposals of Amendment; Bill Passed in Concurrence with Proposal of Amendment**H. 727.**

House bill entitled:

An act relating to the exploration, formation, and organization of union school districts and unified union school districts.

Was taken up.

Thereupon, pending third reading of the bill, Senators Perchlik, Campion, Chittenden, Hardy, Hooker, Lyons and Terenzini moved to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 4, withdrawal actions approved by State Board; new districts with an operational date on or after July 1, 2023, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. WITHDRAWAL ACTIONS APPROVED BY STATE BOARD;
NEW DISTRICTS WITH AN OPERATIONAL DATE ON OR
AFTER JULY 1, 2023

(a) Application of this section. This section shall apply solely to a withdrawal action initiated pursuant to the provisions of 16 V.S.A. § 724 that were in effect prior to the effective date of Sec. 3 of this act (former 16 V.S.A § 724), if each of the following actions occurred prior to that effective date:

(1) the State Board of Education gave final approval to the voter-approved and voter-ratified proposal to withdraw from the union school district;

(2) the State Board declared a new school district to be reconstituted;

(3) the State Board established the new school district's operational date as July 1, 2023 or after;

(4) the voters of the new school district elected school board members;

(5) the voters of the towns within the union district voted to approve the financial terms of withdrawal negotiated by the boards of the new school

district and the union district; and

(6) the State Board charged the new school district and its board with performing the transitional activities necessary to assume sole responsibility for the education of resident students on the identified operational date.

(b) Vote of the board of the new school district; operational date. Before July 1, 2022, the board of the new school district shall vote whether to move forward with preparing for the operational date in effect on July 1, 2022 (current operational date) or whether to extend the operational date by one year. If the school board votes to extend the operational date, the operational date shall be extended to one year from the current operational date (new operational date). The board of the new school district shall notify the State Board and clerk of the union district of its decision and operational date on or before July 1, 2022. The State Board shall then review the preparedness of the new school district pursuant to subsection (c) or (d) of this section depending on the operational date. The decision of the State Board shall be final regardless of whether it occurs in 2022 or 2023.

(c) Operational date in effect as of July 1, 2022; State Board review and action.

(1) Report. If the board of the new school district votes to move forward with preparing for the current operational date, it shall submit a written status report to the Board detailing the actions the district has taken and will take to ensure that, as of its operational date, the district will be prepared to assume sole responsibility for the education of its students in prekindergarten through grade 12 in a manner that will meet educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services. The status report shall include a timeline indicating the date by which each action shall be complete and the report shall be submitted to the State Board on or before the State Board's regular July 2022 meeting.

(2) State Board review and action. The State Board shall consider the status report and provide the board of the new school district an opportunity to be heard at a meeting located in the new school district. The State Board may also take testimony from other entities including the union school district and the Secretary of Education. The State Board shall issue a determination of preparedness based on the review and report on or before September 1, 2022.

(A) Preparedness deemed likely. If the State Board determines that it is likely the new school district will be prepared on the current operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as

required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services, then the new school district, the union district, and, if applicable, the supervisory union or unions shall continue to take all actions necessary to prepare for the realignment of duties on the operational date.

(B) Preparedness deemed unlikely. If the State Board determines there is a reasonable risk that the new school district will not be able to be prepared on the current operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165, and to ensure the provision of supervisory union services, then:

(i) the State Board shall reverse and void earlier declarations approving withdrawal and reconstituting the new school district and the withdrawal action initiated pursuant to the former 16 V.S.A. § 724 is concluded; provided, however, upon order of the State Board, the new school district and its board may continue to exist for up to six months after the date of the State Board's determination for the sole purpose of completing any outstanding business that cannot legally be performed by another entity;

(ii) the petitioning town shall be a town within the union district;

(iii) the State Board's determination of reasonable risk and the resulting consequences imposed by such a determination shall be final and shall conclude the withdrawal action initiated pursuant to the provisions of the former 16 V.S.A. § 724;

(iv) if voters residing in any town within the union district wish to initiate new withdrawal procedures, then they shall do so pursuant to the process set forth in Sec. 3, 16 V.S.A. § 724, of this act; and

(v) the State Board may make any declarations and take any actions, including recording certifications with the Secretary of State, that are necessary to support the consequences outlined in this subdivision (2)(B).

(d) Extension of operational date; State Board review and action.

(1) Notification to State Board. If the board of the new school district voted to extend the operational date to one year from the operational date in effect on July 1, 2022, then the board shall notify the State Board of Education of the new operational date pursuant to subsection (b) of this section and shall continue to take all actions necessary to prepare for the realignment of duties on the new operational date. The State Board may ask for updates from the board of the new school district on preparedness efforts at any point before its regular July 2023 meeting.

(2) Report. On or before the regular July 2023 State Board meeting, the new school district shall submit a written status report to the Board detailing the actions the district has taken and will take to ensure that as of its new operational date the district will be prepared to assume sole responsibility for the education of its students in prekindergarten through grade 12 in a manner that will meet educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services. The status report shall include a timeline indicating the date by which each action shall be complete.

(3) State Board review and action. The State Board shall consider the status report and provide the board of the new school district an opportunity to be heard at a meeting located in the new school district. The State Board may also take testimony from other entities including the union school district and the Secretary of Education. The State Board shall issue a determination of preparedness based on the review and the report on or before September 1, 2023.

(A) Preparedness deemed likely. If the State Board determines that it is likely the new school district will be prepared on the new operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services, then the new school district, the union district, and, if applicable, the supervisory union or unions shall continue to take all actions necessary to prepare for the realignment of duties on the operational date.

(B) Preparedness deemed unlikely. If the State Board determines there is a reasonable risk that the new school district will not be able to be prepared on the new operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services, then:

(i) the State Board shall reverse and void earlier declarations approving withdrawal and reconstituting the new school district and the withdrawal action initiated pursuant to the former 16 V.S.A. § 724 is concluded; provided, however, upon order of the State Board, the new school district and its board may continue to exist for up to six months after the date of the State Board's determination for the sole purpose of completing any outstanding business that cannot legally be performed by another entity;

(ii) the petitioning town shall be a town within the union district;

(iii) the State Board's determination of reasonable risk and the resulting consequences imposed by such a determination shall be final and

shall conclude the withdrawal action initiated pursuant to the provisions of the former 16 V.S.A. § 724;

(iv) if voters residing in any town within the union district wish to initiate new withdrawal procedures, then they shall do so pursuant to the process set forth in Sec. 3, 16 V.S.A. § 724, of this act; and

(v) the State Board may make any declarations and take any actions, including recording certifications with the Secretary of State, that are necessary to support the consequences outlined in this subdivision (3)(B).

(e) Repeal. This section is repealed on July 1, 2024.

Second: By striking out Sec. 6, withdrawal proposals on which the State Board has not taken action; union district created by the electorate, in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. WITHDRAWAL PROPOSALS ON WHICH THE STATE BOARD HAS NOT TAKEN ACTION; UNION DISTRICT CREATED BY THE ELECTORATE

(a) Application of this section. This section shall apply solely to a withdrawal action initiated by a town within a union district (petitioning town) pursuant to the provisions of 16 V.S.A. § 724 that were in effect prior to the effective date of Sec. 3 of this act (former 16 V.S.A. § 724) if each of the following actions occurred prior to that date:

(1) the union district formed pursuant to the provisions of 16 V.S.A. §§ 706–706j that were in effect prior to the effective date of Sec. 3 of this act;

(2) the voters of the petitioning town approved a proposal to withdraw from the union district;

(3) the voters of each of the other towns within the union district ratified the petitioning town’s proposal to withdraw; and

(4) the State Board of Education has not approved or taken action to approve the withdrawal proposal or to declare that a new school district is reconstituted.

(b) Decision regarding timing of State Board review. At any time before July 1, 2022, the self-selected representatives of the petitioning town shall decide whether to begin a State Board of Education review of their withdrawal proposal in July of 2022 or July of 2023 and shall transmit their decision and proposed operational date to the State Board of Education and the clerk of the union district. The State Board shall review the withdrawal proposal only once. If the review of the withdrawal proposal occurs in 2023, the State Board may ask for updates from the self-selected members of the petitioning town on

preparedness efforts prior to the final withdrawal proposal review. The decision of the State Board shall be final regardless of whether it occurs in 2022 or 2023.

(c) Report and plan. On or before the second Wednesday of July in the year in which the review will occur, the self-selected representatives of the petitioning town shall submit a written report and plan to the State Board and shall indicate to the State Board that the documents are submitted pursuant to this section.

(1) Report. The report shall describe the analysis that has been performed by the petitioning town to evaluate the likely strengths and challenges for the proposed new school district and for the reconfigured union district if withdrawal is approved and the ways in which withdrawal would enable both districts to provide for the education of their respective resident students in a manner that will meet educational quality standards as required by 16 V.S.A. § 165. The report shall address:

(A) the educational advantages and disadvantages likely to result from withdrawal for the students in the proposed new school district and the students in the remaining towns within the union district and the ways in which they are preferable to those of continuing in the current governance structure;

(B) the financial advantages and disadvantages likely to result from withdrawal for the taxpayers in the proposed new school district and the taxpayers in the remaining towns within the union district and the ways in which they are preferable to those of continuing in the current governance structure;

(C) the likely operational and financial viability and sustainability of the proposed new school district and the union district after withdrawal of the petitioning town;

(D) any other advantages and disadvantages of withdrawal, including any advantages and disadvantages to the students and taxpayers of the region and the State; and

(E) the potential source of supervisory union services for the new school district and, if appropriate, for the union district, including discussions with the board of any supervisory union to which the petitioning town proposes assignment.

(2) Plan. The plan shall describe the actions that the petitioning town has taken and will take to ensure that, as of its proposed operational date, the proposed new district will be prepared to assume sole responsibility for the education of its students in prekindergarten through grade 12 in a manner that

will meet educational quality standards as required by 16 V.S.A. § 165, including the actions necessary to transition to the proposed method by which supervisory union services would be provided. The plan shall include a timeline indicating the date by which each action will be complete. At a minimum, the plan and timeline should include the actions identified in subsection (e) of this section.

(d) Review and preparedness determination by the State Board.

(1) Review. The State Board shall consider the report and plan and provide the self-selected representatives of the petitioning town and the board of the union district an opportunity to be heard at a meeting held at a location within the petitioning town. The State Board may also take testimony from other individuals and entities, including the Secretary of Education and any supervisory union that has been identified as a potential source of supervisory union services for the proposed new school district. The State Board shall issue a determination of preparedness as soon as possible after receipt of the report and plan but in no event later than September 1, 2022 or September 1, 2023, as applicable, based on the decision of the self-selected representatives of the petitioning town made pursuant to subsection (b) of this section.

(2) Preparedness deemed likely; State Board of Education action. If the State Board determines that it is likely the proposed new school district on the proposed operational date will be prepared to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and that it is also likely supervisory union services will be available to the proposed new school district, then it shall vote to:

(A) approve the withdrawal proposal;

(B) approve any motion necessary for the withdrawal process to proceed pursuant to subsection (e) of this section, including a motion to create a new school district as of the date of the motion in order to enable the election of members to the board of the proposed new school district, negotiation and voter approval of a withdrawal agreement pursuant to the former 16 V.S.A. § 724(c), and preparation to assume full responsibility for the education of resident students on the operational date;

(C) determine or set a schedule for determining the manner in which supervisory union services will be provided to the proposed new school district and, if appropriate, the union district, to be effective on the proposed new school district's operational date; and

(D) make any other findings or declarations and approve any other motions that are related and necessary to the withdrawal proposal.

(3) Preparedness deemed unlikely. If the State Board determines there is a reasonable risk that the proposed new school district will not be able to be prepared on the proposed operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services, and that the criteria will not be met by postponing the operational date, then:

(A) the State Board shall declare that the petitioning town's proposal to withdraw initiated under the former 16 V.S.A. § 724 is denied;

(B) the petitioning town shall remain a town within the union district;

(C) the State Board's determination of reasonable risk and the resulting consequences imposed by such a determination shall be final and shall conclude the withdrawal action initiated pursuant to the provisions of the former 16 V.S.A. § 724; and

(D) if voters residing in any town within the union district wish to initiate new withdrawal procedures, then they shall do so pursuant to the process set forth in Sec. 3, 16 V.S.A. § 724, of this act.

(e) Preparedness deemed likely; next steps. If the State Board approves the withdrawal process pursuant to subdivision (d)(2) of this section, then the new school district, the union district, and, if applicable, the supervisory union or unions shall take all actions necessary to be fully operational on the identified operational date. At a minimum, the required necessary actions shall include:

(1) election of initial school board members by the voters of the new school district, whose terms of office shall be arranged so that one each expires on the day of the second, third, and fourth annual meeting of the new school district and whose sole responsibility until the new school district's operational date shall be to prepare for the district to assume sole responsibility for the education of resident students on that date;

(2) negotiation by the board of the new school district and the board of the union district of the proposed financial terms of withdrawal in order to comply with the requirements of the former 16 V.S.A. § 724(c);

(3) approval by the voters of each town within the union district of the negotiated proposed financial terms of withdrawal in order to comply with the requirements of the former 16 V.S.A. § 724(c);

(4) preparation of a proposed budget by the board of the new school district for the fiscal year beginning on the district's operational date, together with presentation to and approval by the district's voters prior to that date;

(5) preparation for the provision of supervisory union services to the new school district and, if applicable, for the transition of the union school district from a supervisory district structure to a supervisory union structure; and

(6) all other actions necessary to transition from one school district to two districts and, if applicable, to transition from a supervisory district structure to a supervisory union structure, including any actions necessary to address the collectively bargained rights of employees of the former employing entity.

(f) Repeal. This section is repealed on July 1, 2025.

Third: By striking out Sec. 7, withdrawal proposals; no final ratification votes, in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. WITHDRAWAL PROPOSALS; NO FINAL RATIFICATION VOTES

(a) Application of this section. This section shall apply solely to a withdrawal action initiated by a town within a union district (petitioning town) pursuant to the provisions of 16 V.S.A. § 724 that were in effect prior to the effective date of Sec. 3 of this act (former 16 V.S.A. § 724) if each of the following actions occurred prior to that date:

(1) the union district formed pursuant to the provisions of 16 V.S.A. §§ 706–706j that were in effect prior to the effective date of Sec. 3 of this act;

(2) a vote in the petitioning town to approve a withdrawal proposal was warned to occur on or before June 1, 2022; and

(3) the voters of each of the other towns within the union district have not voted whether to ratify the withdrawal proposal prior to the effective date of this section or they each voted but the votes are not final prior to the effective date.

(b) Vote of the other towns within the union district. If the voters in the petitioning town vote to approve withdrawal, then within 90 days after the town clerks in the other towns within the union district receive notice from the Secretary of State pursuant to the former 16 V.S.A. § 724(b) that the vote in the petitioning town is final, the voters of the other towns within the union district shall vote whether to ratify the withdrawal proposal. The question shall be determined by Australian ballot and shall proceed pursuant to Sec. 3,

16 V.S.A. § 737 (warnings of unified union school district meetings) and §§ 739–741 (vote by Australian ballot) of this act. The ballots shall not be commingled.

(1) Vote not to ratify withdrawal. If a majority of the voters in one or more towns within the union district do not vote in favor of withdrawal, then the proposed withdrawal shall not occur. The voters residing in any town within the union district may initiate new withdrawal procedures pursuant to the process set forth in Sec. 3, 16 V.S.A. § 724, of this act.

(2) Vote in favor of withdrawal. If a majority of the voters in all towns within the union district vote in favor of withdrawal, then the withdrawal process shall proceed pursuant to subsections (c)–(e) of this section.

(c) Decision regarding timing of State Board review. Within 30 days after the ratification votes of the other towns within the union district are final, the self-selected representatives of the petitioning town shall decide whether to undergo a State Board of Education review of the withdrawal proposal in 2022 or 2023 and shall transmit their decision and proposed operational date to the State Board of Education and clerk of the union district. In accordance with the decision of the self-selected representatives of the petitioning town regarding the year in which the withdrawal proposal shall be reviewed, the State Board, in consultation with the self-selected representatives, shall determine the date the final withdrawal proposal review will begin and transmit the date to the self-selected representatives of the petitioning town and the clerk of the union school district. The State Board shall review the withdrawal proposal only once. If the review of the withdrawal proposal occurs in 2023, the State Board may ask for updates from the self-selected members of the petitioning town on preparedness efforts prior to the final withdrawal proposal review. The decision of the State Board shall be final regardless of whether it occurs in 2022 or 2023.

(d) Report and plan. On or before the date set by the State Board to begin the final withdrawal proposal review, the self-selected representatives of the petitioning town shall submit a written report and plan to the State Board and shall indicate to the State Board that the documents are submitted pursuant to this section.

(1) Report. The report shall describe the analysis that has been performed by the petitioning town to evaluate the likely strengths and challenges for the proposed new school district and for the reconfigured union district if withdrawal is approved and the ways in which withdrawal would enable both districts to provide for the education of their respective resident students in a manner that will meet educational quality standards as required by 16 V.S.A. § 165. The report shall address:

(A) the educational advantages and disadvantages likely to result from withdrawal for the students in the proposed new school district and the students in the remaining towns within the union district and the ways in which they are preferable to those of continuing in the current governance structure;

(B) the financial advantages and disadvantages likely to result from withdrawal for the taxpayers in the proposed new school district and the taxpayers in the remaining towns within the union district and the ways in which they are preferable to those of continuing in the current governance structure;

(C) the likely operational and financial viability and sustainability of the proposed new school district and the union district after withdrawal of the petitioning town;

(D) any other advantages and disadvantages of withdrawal, including any advantages and disadvantages to the students and taxpayers of the region and the State; and

(E) the potential source of supervisory union services for the new school district and, if appropriate, for the union district, including discussions with the board of any supervisory union to which the petitioning town proposes assignment.

(2) Plan. The plan shall describe the actions that the petitioning town has taken and will take to ensure that, as of its proposed operational date, the proposed new district will be prepared to assume sole responsibility for the education of its students in prekindergarten through grade 12 in a manner that will meet educational quality standards as required by 16 V.S.A. § 165, including the actions necessary to transition to the proposed method by which supervisory union services would be provided. The plan shall include a timeline indicating the date by which each action will be complete. At a minimum, the plan and timeline should include the actions identified in subsection (f) of this section.

(e) Review and preparedness determination by the State Board.

(1) Review. The State Board shall consider the report and plan and provide the self-selected representatives of the petitioning town and the board of the union district an opportunity to be heard at a meeting held at a location within the petitioning town. The State Board may also take testimony from other individuals and entities including the Secretary of Education and any supervisory union that has been identified as a potential source of supervisory union services for the proposed new school district. The State Board shall issue a determination of preparedness as soon as possible after receipt of the

report and plan but in no event later than 90 days after the date set by the State Board to begin the final withdrawal proposal review.

(2) Preparedness deemed likely; State Board of Education action. If the State Board determines that it is likely the proposed new school district on the proposed operational date will be prepared to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and that it is also likely supervisory union services will be available to the proposed new school district, then it shall vote to:

(A) approve the withdrawal proposal;

(B) approve any motion necessary for the withdrawal process to proceed pursuant to subsection (f) of this section, including a motion to create a new school district as of the date of the motion in order to enable the election of members to the board of the proposed new school district, negotiation and voter approval of a withdrawal agreement pursuant to the former 16 V.S.A. § 724(c), and preparation to assume full responsibility for the education of resident students on the operational date;

(C) determine or set a schedule for determining the manner in which supervisory union services will be provided to the proposed new school district and, if appropriate, the union district, to be effective on the proposed new school district's operational date; and

(D) make any other findings or declarations and approve any other motions that are related and necessary to the withdrawal proposal.

(3) Preparedness deemed unlikely. If the State Board determines there is a reasonable risk that the proposed new school district will not be able to be prepared on the proposed operational date to assume full responsibility for the education of its resident students in a manner that substantially complies with educational quality standards as required by 16 V.S.A. § 165 and to ensure the provision of supervisory union services, and that the criteria will not be met by postponing the operational date, then:

(A) the State Board shall declare that the petitioning town's proposal to withdraw initiated under the former 16 V.S.A. § 724 is denied;

(B) the petitioning town shall remain a town within the union district;

(C) the State Board's determination of reasonable risk and the resulting consequences imposed by such a determination shall be final and shall conclude the withdrawal action initiated pursuant to the provisions of the former 16 V.S.A. § 724; and

(D) if voters residing in any town within the union district wish to initiate new withdrawal procedures, then they shall do so pursuant to the process set forth in Sec. 3, 16 V.S.A. § 724, of this act.

(f) Preparedness deemed likely; next steps. If the State Board approves the withdrawal process pursuant to subdivision (e)(2) of this section, then the new school district, the union district, and, if applicable, the supervisory union or unions shall take all actions necessary to be fully operational on the identified operational date. At a minimum, the required necessary actions shall include:

(1) election of initial school board members by the voters of the new school district, whose terms of office shall be arranged so that one each expires on the day of the second, third, and fourth annual meeting of the new school district and whose sole responsibility until the new school district's operational date shall be to prepare for the district to assume sole responsibility for the education of resident students on that date;

(2) negotiation by the board of the new school district and the board of the union district of the proposed financial terms of withdrawal in order to comply with the requirements of the former 16 V.S.A. § 724(c);

(3) approval by the voters of each town within the union district of the negotiated proposed financial terms of withdrawal in order to comply with the requirements of the former 16 V.S.A. § 724(c);

(4) preparation of a proposed budget by the board of the new school district for the fiscal year beginning on the district's operational date, together with presentation to and approval by the district's voters prior to that date;

(5) preparation for the provision of supervisory union services to the new school district and, if applicable, for the transition of the union school district from a supervisory district structure to a supervisory union structure; and

(6) all other actions necessary to transition from one school district to two districts and, if applicable, to transition from a supervisory district structure to a supervisory union structure, including any actions necessary to address the collectively bargained rights of employees of the former employing entity.

(g) Repeal. This section is repealed on July 1, 2025.

Which was agreed to.

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

Proposal of Amendment; Third Reading Ordered**H. 265.**

Senator Hardy, for the Committee on Health and Welfare, to which was referred House bill entitled:

An act relating to the Office of the Child, Youth, and Family Advocate.

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

Sec. 1. 33 V.S.A. chapter 32 is added to read:

CHAPTER 32. OFFICE OF THE CHILD, YOUTH, AND FAMILY
ADVOCATE

§ 3201. DEFINITIONS

As used in this chapter:

(1) “Child, Youth, and Family Advocate” or “Advocate” means an individual who leads the Office of the Child, Youth, and Family Advocate.

(2) “Department” means the Department for Children and Families.

(3) “Office” means the Office of the Child, Youth, and Family Advocate.

(4) “State agency” means any office, department, board, bureau, division, agency, or instrumentality of the State.

§ 3202. OFFICE OF THE CHILD, YOUTH, AND FAMILY ADVOCATE

There is established the Office of the Child, Youth, and Family Advocate for the purpose of advancing the interests and welfare of Vermont’s children and youths. The Office shall advocate for the welfare of children and youths receiving services from the Department and those involved in the child protection and juvenile justice systems. The Office shall promote reforms necessary to better serve Vermont’s children, youths, and families in a manner that addresses racial and social equity. The Office shall act independently of any State agency in the performance of its duties.

§ 3203. DUTIES AND AUTHORITY

(a) The Office shall:

(1) work in collaboration with relevant parties to strengthen services for children, youths, and families;

(2) analyze and monitor the development and implementation of federal, State, and local laws; regulations; and policies relating to child, youth, and family welfare and recommend changes when appropriate;

(3) review complaints concerning the actions of the Department and of any entity that provides services to children, youths, and families through funds provided by the Department; make appropriate referrals; and investigate those complaints where the Advocate determines that a child, youth, or family may be in need of assistance from the Office;

(4) support children, youths, and families by providing information about service recipients' rights and responsibilities;

(5) provide systemic information concerning child, youth, and family welfare to the public, the Governor, State agencies, legislators, and others, as necessary; and

(6) notwithstanding 2 V.S.A. § 20(d), submit to the General Assembly and the Governor on or before December 1 of each year a report addressing services provided by the Department, including:

(A) the conditions of placements for Vermont's children and youths;

(B) findings related to services for and assistance to children, youths, and families within the child protection and juvenile justice systems;

(C) recommendations related to improving services for children, youths, and families; and

(D) data disaggregated by race, ethnicity, gender, geographic location, disability status, and any other categories that the Advocate deems necessary.

(b) The Office may:

(1) review current systems to assess to what extent children and youths placed in the custody of the Department or who are receiving services under the supervision of the Department receive humane and dignified treatment at all times, including consideration by the Advocate as to what extent the system protects and enhances the child's or youth's personal dignity, right to privacy, and right to appropriate health care and education in accordance with State and federal law;

(2) address any challenges accessing information or records that are necessary for carrying out the provisions of this chapter; and

(3) as part of its annual report pursuant to subdivision (a)(6) of this section, include findings and recommendations related to other services provided to children, youths, and families.

§ 3204. CHILD, YOUTH, AND FAMILY ADVOCATE

(a) The Office shall be directed by the Child, Youth, and Family Advocate, an individual who shall be qualified by reason of education, expertise, and experience and who may have a professional degree in law, social work, public health, or a related field. The Child, Youth, and Family Advocate shall serve on a full-time basis and shall be exempt from classified service.

(b)(1) The Oversight Commission on Children, Youths, and Families established pursuant to section 3211 of this chapter shall recommend qualified applicants for the position of the Child, Youth, and Family Advocate to the Governor for consideration. Subject to confirmation by the Senate, the Governor shall appoint an Advocate within 45 days from among those applicants recommended by the Oversight Commission for a term of four years. The appointment for Advocate shall be made without regard to political affiliation and on the basis of integrity and demonstrated ability. The Advocate shall hold office until reappointed or until a successor is appointed.

(2) The Governor, upon a majority vote of the Oversight Commission, may remove the Child, Youth, and Family Advocate for cause, which includes only neglect of duty, gross misconduct, conviction of a crime, or inability to perform the responsibilities of the Office. The Speaker of the House and President Pro Tempore shall simultaneously receive notification from the Governor of the Advocate's removal. Any vacancy shall be filled by the appointment process set forth in subdivision (1) of this subsection for the remainder of the unexpired term.

(c) The Child, Youth, and Family Advocate shall appoint a Deputy Child, Youth, and Family Advocate, whose duties shall be performed at the direction of the Advocate.

(d) Upon any vacancy in the position of the Advocate, and until such time as a replacement is appointed and confirmed, the Deputy Child, Youth, and Family Advocate shall serve as the acting Child, Youth, and Family Advocate. The acting Child, Youth, and Family Advocate shall have the full responsibilities of the Advocate and shall be entitled to the same compensation as the outgoing Child, Youth, and Family Advocate.

§ 3205. CHILD, YOUTH, AND FAMILY ADVISORY COUNCIL

(a) Purpose and membership. The Child, Youth, and Family Advocate shall appoint and convene an Advisory Council composed of nine stakeholders who have been impacted by child welfare services provided by the Department for Children and Families. The Advisory Council's membership shall reflect the growing diversity of Vermont's children and families, including individuals who are Black, Indigenous, and Persons of Color, as well as with

regard to socioeconomic status, geographic location, gender, sexual identity, and disability status. Members shall provide advice and guidance to the Office of the Child, Youth, and Family Advocate regarding the routine administration and operation of the Office, including providing advice and guidance to the Advocate upon request.

(b) Meetings.

(1) The Advocate shall call the first meeting of the Advisory Council to occur on or before March 15, 2023.

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

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

(4) The Advisory Council shall cease to exist on July 1, 2028.

(c) Confidentiality. In seeking the advice and guidance of the Advisory Council, the Child, Youth, and Family Advocate shall not disclose to the Advisory Council, or any member thereof, individually identifiable information about a child or youth unless the information is already known to the public.

(d) Compensation. Members of the Advisory Council shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than eight meetings annually. These payments shall be made from monies appropriated to the Office.

§ 3206. INCIDENTS AND FATALITIES

(a) The Department shall notify the Office of all incidents of actual physical injury to children or youths in the custody of the Commissioner or at significant risk of such harm.

(b) The Department shall notify the Office within 48 hours of:

(1) any fatality of a child or youth in its custody; and

(2) the restraint or seclusion of any child or youth in its custody.

§ 3207. ACCESS TO INFORMATION AND FACILITIES

(a) Notwithstanding any other provision of law, the Child, Youth, and Family Advocate and the Deputy Advocate shall, upon request, have timely access, including the right to inspect and copy, to records necessary to carry out the provisions of this chapter, including relevant records produced and held by State entities and third parties. As used in this subsection, "third parties" does not include Vermont's Statistical Analysis Center.

(b) If the Child, Youth, and Family Advocate determines that doing so advances the welfare of a child or youth, the Advocate and Deputy Advocate may:

(1) communicate privately and visit with any child or youth who is in the custody of the Department; and

(2) upon first obtaining the consent of a child or youth's parent or guardian, communicate privately and visit with a child or youth who is not in the custody of the Department.

(c) Facilities and providers delivering services to children and youths shall permit the Child, Youth, and Family Advocate or the Deputy Advocate to access their facilities.

§ 3208. COOPERATION OF STATE AGENCIES

All State agencies shall comply with reasonable requests of the Child, Youth, and Family Advocate and Deputy Advocate for information and assistance.

§ 3209. CONFIDENTIALITY

(a) The Office shall maintain the confidentiality of all case records, third-party records, and court records, as well as any information gathered in the course of investigations and systems monitoring duties. These records are exempt from public inspection and copying under the Public Records Act and shall be kept confidential except as provided in subsections (b) and (c) of this section.

(b) In the course of carrying out the provisions of this chapter, if the Child, Youth, and Family Advocate or Deputy Advocate reasonably believes that the health, safety, or welfare of a child or youth is at imminent risk, the Advocate or Deputy Advocate may disclose relevant documents or information to the Department or any of the individuals or entities listed in subdivision 4921(e)(1) of this title or both. Determinations of relevancy shall be made by the Advocate.

(c) Notwithstanding subsection (a) of this section, the Child, Youth, and Family Advocate or Deputy Advocate may publicly disclose any patterns of conduct or repeated incidents identified by the Advocate or Deputy Advocate in carrying out the provisions of this chapter if the Advocate or Deputy Advocate reasonably believes that public disclosure is likely to mitigate a risk posed to the health, safety, and welfare of a child or youth, except the Advocate or Deputy Advocate shall not publicly disclose either of the following:

(1) individually identifiable information about a child or youth, or the child's or youth's family, foster family, or kin in a kinship placement unless the information is already known to the public; and

(2) investigation findings where there is a pending law enforcement investigation or prosecution.

§ 3210. CONFLICT OF INTEREST

The Child, Youth, and Family Advocate, the Advocate's employees or contractors, and members of the Oversight Commission on Children, Youths, and Families shall not have any conflict of interest with the Department or with any entity that provides services to children, youths, and families through funds provided by the Department relating to the performance of their responsibilities under this chapter. For the purposes of this section, a conflict of interest exists whenever the Child, Youth, and Family Advocate, the Advocate's employees or contractors, or a member of the Oversight Commission on Children, Youths, and Families:

(1) has direct involvement in the licensing, certification, or accreditation of a provider or facility delivering services to children, youths, and families;

(2) has a direct ownership interest in a provider or facility delivering services to children, youths, and families;

(3) is employed by or participates in the management of a provider or facility delivering services to children, youths, and families; or

(4) receives or has the right to receive, directly or indirectly, remuneration under a compensation arrangement with a provider or facility delivering services to children, youths, and families.

§ 3211. OVERSIGHT COMMISSION ON CHILDREN, YOUTHS, AND FAMILIES

(a) Creation. There is created the Oversight Commission on Children, Youths, and Families to provide guidance and recommendations to the Office of the Child, Youth, and Family Advocate.

(b) Membership. The Commission shall be composed of the following members who shall not have a conflict of interest with the Department for Children and Families:

(1) one current member of the House of Representatives who serves on the House Committee on Human Services, who shall be appointed by the Speaker of the House;

(2) one current member of the Senate who serves on the Senate Committee on Health and Welfare, who shall be appointed by the Committee

on Committees;

(3) a member with professional expertise in childhood trauma, adverse childhood experiences, or child welfare, who shall be appointed by the Governor;

(4) the Executive Director of Racial Equity established pursuant to 3 V.S.A. § 5001 or designee;

(5) one member of a child advocacy group, board, or commission, who shall be appointed by the Speaker of the House;

(6) one member of a child advocacy group, board, or commission, who shall be appointed by the Committee on Committees;

(7) one member of a child advocacy group, board, or commission, who shall be appointed by the Governor;

(8) an adult who was in the custody of the Department for Children and Families within the past five years, who shall be appointed by the Vermont Foster and Adoptive Family Association; and

(9) the relative caregiver of a child or youth involved in the child protection system, who shall be appointed by Vermont Kin as Parents.

(c) Powers and duties. The Commission shall:

(1) recommend qualified applicants for the position of the Child, Youth, and Family Advocate to the Governor for consideration pursuant to section 3204 of this chapter within 45 days following a vacancy; and

(2) provide oversight of the Office in its efforts to support an equitable, comprehensive, and coordinated system of services and programs for children, youths, and families.

(d) Assistance. The Commission shall have the administrative assistance of the Agency of Administration.

(e) Meetings.

(1) The member representing the House Committee on Human Services shall call the first meeting of the Commission to occur on or before August 1, 2022.

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

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

(f) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Commission serving in the member's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four meetings annually.

(2) Other members of the Commission shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not more than four meetings annually. These payments shall be made from monies appropriated to the Office of the Child, Youth, and Family Advocate.

Sec. 2. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) A mandated reporter is any:

* * *

(11) camp counselor; ~~or~~

(12) member of the clergy; or

(13) employee of the Office of the Child, Youth, and Family Advocate established pursuant to chapter 32 of this title.

* * *

Sec. 3. 33 V.S.A. § 4921 is amended to read:

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

* * *

(d) Upon request, Department records created under this subchapter shall be disclosed to:

* * *

(4) law enforcement officers engaged in a joint investigation with the Department, an Assistant Attorney General, or a State's Attorney; ~~and~~

(5) other State agencies conducting related inquiries or proceedings; and

(6) the Office of the Child, Youth, and Family Advocate for the purpose of carrying out the provisions in chapter 32 of this title.

* * *

Sec. 4. 33 V.S.A. § 5117 is amended to read:

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

* * *

(b)(1) Notwithstanding the foregoing, inspection of such records and files by or dissemination of such records and files to the following is not prohibited:

* * *

(H) the Human Services Board and the Commissioner's Registry Review Unit in processes required under chapter 49 of this title; ~~and~~

(I) the Department for Children and Families; and

(J) the Office of the Child, Youth, and Family Advocate for the purpose of carrying out the provisions in chapter 32 of this title.

* * *

Sec. 5. [Deleted.]

Sec. 6. TRANSITION

The initial term of the Child, Youth, and Family Advocate established pursuant to 33 V.S.A. chapter 32 shall begin on January 1, 2023.

Sec. 7. APPROPRIATION

The sum of \$120,000.00 is appropriated to the Office of the Child, Youth, and Family Advocate from the General Fund in fiscal year 2023 for carrying out the purposes of this act.

Sec. 8. [Deleted.]

Sec. 9. EFFECTIVE DATES

This act shall take effect on July 1, 2022, except that Secs. 2 (reporting child abuse and neglect; remedial action), 3 (Department's records of abuse and neglect), 4 (records of juvenile judicial proceedings), and 7 (appropriation) shall take effect on January 1, 2023.

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

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Health and Welfare.

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

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Health and Welfare?, Senators Hardy, Baruth, Kitchel, Nitka, Sears, Starr and Westman moved to amend the proposal of amendment of the Committee on Health and Welfare, as follows:

First: In Sec. 1, 33 V.S.A. chapter 32, section 3202, by striking out the second sentence in its entirety and inserting a new sentence in lieu thereof to read as follows:

The Office shall advocate for the welfare of children and youths receiving services from the Department directly, or through funds provided by the Department, and those involved in the child protection and juvenile justice systems.

Second: In Sec. 1, 33 V.S.A. chapter 32, section 3203, subsection (a), subdivision (3), by striking out “investigate” and inserting in lieu thereof respond to

Third: In Sec. 1, 33 V.S.A. chapter 32, section 3206, by striking out subsections (a) and (b) in their entireties and inserting in lieu thereof the following:

(a) The Department shall notify the Office of:

(1) all incidents of actual physical injury to children or youths in the custody of the Commissioner or at significant risk of such harm; and

(2) instances of restraint or seclusion of any child or youth in custody of the Commissioner.

(b) The Department shall notify the Office within 48 hours of any fatality of a child or youth in its custody.

Fourth: In Sec. 1, 33 V.S.A. chapter 32, section 3209, subsection (a), by striking out “investigations and systems monitoring duties” and inserting in lieu thereof carrying out individual complaint and systems reviews

Fifth: In Sec. 1, 33 V.S.A. chapter 32, section 3209, subsection (c), subdivision (2), before the word “findings” by striking out the word “investigation”

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare, as amended?, was agreed to 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 Hinsdale, Sears, Sirotkin, Starr, Terenzini, Westman, White.

Those Senators who voted in the negative were: None.

Thereupon, third reading of the bill was ordered.

Proposals of Amendment; Third Reading Ordered

H. 466.

Senator McCormack, for the Committee on Natural Resources and Energy, to which was referred House bill entitled:

An act relating to surface water withdrawals and interbasin transfers.

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

First: In Sec. 1, 10 V.S.A. chapter 41, section 1002, subdivision (20), after “ponds, lakes,” and before “and all bodies of surface waters” by striking out the words and springs

and by striking out subdivision (20)(D) in its entirety and inserting in lieu thereof a new subdivision (20)(D) to read as follows:

(D) constructed off-stream farm ponds or other off-stream impoundments that are used for irrigation or watering of livestock.

Second: In Sec. 1, 10 V.S.A. chapter 41, subchapter 4, section 1042, subsection (a), by striking out the first full sentence in its entirety and inserting in lieu thereof the following:

Beginning on January 1, 2023, any person withdrawing 10,000 gallons or more of surface water within a 24-hour period or 150,000 gallons over any 30-day period shall register with the Secretary.

and by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Methods of reporting withdrawals.

(1) Except as provided in subdivision (2) of this subsection, the following methods shall be used to report the amounts of withdrawn surface

water required to be reported under subsection (b) of this section:

(A) Withdrawals of between 10,000 and 50,000 gallons of surface water within a 24-hour period or 150,000 gallons over any 30-day period shall either provide an estimate of total volume withdrawn or provide meter data. The report shall describe how any estimate was calculated.

(B) Withdrawals of more than 50,000 gallons of surface water within a 24-hour period or 1,500,000 gallons over any 30-day period shall provide meter data or measured data by a technically appropriate method approved by the Secretary.

(2) Withdrawals for irrigation or watering of livestock of more than 10,000 gallons of surface water within a 24-hour period or 150,000 gallons over any 30-day period may provide an estimate of the total volume withdrawn based on log records pursuant to a technically appropriate method approved by the Secretary.

Third: In Sec. 1, 10 V.S.A. chapter 41, in subchapter 4, section 1043, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) Permits.

(1) The Secretary may issue a general permit to authorize certain withdrawal activities.

(2) The Secretary shall issue a general permit under this chapter for the withdrawal of surface water for State or municipal infrastructure projects. The general permit shall establish a rate and withdrawal volume that only requires notification of the Secretary and does not require Secretary approval prior to withdrawal.

(3) A permit issued under this subchapter shall be for a period of not longer than 10 years from the date of issuance.

Fourth: By inserting a new section to be Sec. 4a to read as follows:

Sec. 4a. IMPLEMENTATION; RULEMAKING

The Secretary of Natural Resources shall conduct public input and outreach with interested parties prior to initiating formal rulemaking pursuant to the Administrative Procedure Act for surface water withdrawals as set forth in 10 V.S.A. § 1045. The public input and outreach shall include an opportunity for interested parties to comment on a draft rule for surface water withdrawals.

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

Senator Pearson, for the Committee on Agriculture, 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 Natural Resources and Energy with the following amendments thereto:

By striking out the *first* through *fourth* proposals of amendment of the Committee on Natural Resources and by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 41 is amended to read:

CHAPTER 41. REGULATION OF STREAM FLOW

* * *

§ 1002. DEFINITIONS

~~Wherever As used or referred to in this chapter, unless a different meaning clearly appears from the context:~~

(1) “Artificial regulation of stream flow” means the intermittent or periodic manipulation of water levels and the intermittent or periodic regulation of discharge of water into the stream below the dam.

(2) “Banks” means that land area immediately adjacent to the bed of the stream, which is essential in maintaining the integrity thereof.

(3) “Basin” means the third-level, six-digit unit of the hydrologic unit hierarchy as defined by the U.S. Geological Survey (USGS), Federal Standards and Procedures for the National Watershed Boundary Dataset, Chapter 3 of Section A, Book 11. “Basin” is also referred to as “Hydrologic Unit Code 6” or “HUC-6”.

(4) “Bed” means the maximum area covered by waters of the stream for not less than 15 consecutive days in one year.

(5) “Berm” means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title.

~~(4)~~(6) “Board” means the Natural Resources Board.

(7) “Capacity” means the maximum volume of water capable of being withdrawn by the water withdrawal system.

~~(5)~~(8) “Cross section” means the entire channel to the top of the banks.

~~(6)~~(9) “Dam” applies to any artificial structure on a stream, or at the outlet of a pond or lake, that is utilized for holding back water by ponding or storage together with any penstock, flume, piping, or other facility for

transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.

~~(7)~~(10) “Department” means the Department of Environmental Conservation.

(11) “Existing surface withdrawal” means a surface water withdrawal that exists prior to January 1, 2023.

(12) “Frequency” means how often water will be withdrawn from a surface water over a period of time.

~~(8)~~(13) “Instream material” means:

(A) all gradations of sediment from silt to boulders;

(B) ledge rock; or

(C) large woody debris in the bed of a watercourse or within the banks of a watercourse.

(14) “Interbasin transfer” means the conveyance of surface water withdrawn from a basin for use in another basin.

(15) “Large woody debris” means any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.

~~(9)~~(16) “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; any federal agency; or any other legal or commercial entity.

(17) “Rate of withdrawal” means the volume of surface water that is withdrawn over a period of time, as reported in gallons per minute.

(18) “Reasonable and feasible” means available and capable of being implemented after consideration of cost, existing technology, logistics in light of the overall project purpose, environmental impact, and ability to obtain all necessary approvals for implementation.

(19) “Secretary” means the Secretary of Natural Resources or the Secretary’s duly authorized representative.

(20) “Surface water” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and all bodies of surface waters that are contained within, flow through, or border upon the State or any portion of it. “Surface water” does not include the following:

(A) groundwater as defined in section 1391 of this title;

(B) artificial waterbodies as defined under section 29A-101(d) of the Vermont Water Quality Standards;

(C) treatment ponds, lagoons, or wetlands created solely to meet the requirements of a permit issued for a discharge; and

(D) constructed off-stream farm ponds or other off-stream impoundments that are used for irrigation for farming or watering of livestock.

(21) “Vermont Water Quality Standards” means the standards adopted pursuant to chapter 47 and subdivision 6025(b) of this title.

~~(10)~~(22) “Watercourse” means any perennial stream. “Watercourse” shall does not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

~~(11) “Secretary” means the Secretary of Natural Resources, or the Secretary’s duly authorized representative.~~

(23) “Watershed” means a region containing waters that drain into a particular brook, stream, river, or other body of water.

(24) “Withdrawal” means the intentional diversion from a surface water by pumping, gravity, or other method for the purpose of being used for irrigation, industrial uses, snowmaking, livestock watering, water supply, aquaculture, or other off-stream uses. “Withdrawal” does not include hydroelectric projects that are regulated by the Federal Energy Regulatory Commission or the Public Utility Commission. “Withdrawal” does not include direct consumption of surface water by livestock.

~~(12) “Berm” means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title.~~

~~(13) “Large woody debris” means any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.~~

* * *

Subchapter 4. Surface Water Withdrawals and Interbasin Transfers

§ 1041. POLICY ON SURFACE WATER WITHDRAWALS FOR OFF-STREAM USES OTHER THAN SNOWMAKING

(a) This subchapter is intended to establish policy and standards for surface water withdrawals that are consistent with section 1001 and chapter 41 of this

title, including the Vermont Water Quality Standards.

(b) The policy established under this subchapter is to:

(1) assure the protection, maintenance, and restoration of the chemical, physical, and biological water quality, including water quantity, necessary to sustain aquatic communities and stream function;

(2) help to provide for and enhance the viability of those sectors and industries that rely on the use of surface waters and are important to Vermont's economy;

(3) permit surface water withdrawals and the construction of appurtenant facilities and related systems for uses other than snowmaking, based on an analysis of the need for water and the consideration of alternatives and consistent with this and related policies and other applicable laws and rules; and

(4) recognize that existing users of the State's waters for off-stream uses that may have an adverse effect on water quality should have time and opportunity to improve water quality.

§ 1042. REGISTRATION AND REPORTING; EXCEPTIONS

(a) Registration. Beginning on January 1, 2023, any person withdrawing 10,000 gallons or more of surface water within a 24-hour period or 150,000 gallons or more of surface water over any 30-day period shall register with the Secretary:

(1) the location of each withdrawal, including each impacted surface water;

(2) the frequency and rate of each withdrawal;

(3) a description of the use or uses of the water to be withdrawn;

(4) the capacity of the system to be used for the withdrawal; and

(5) a schedule for the withdrawal.

(b) Report. Beginning on January 1, 2023, a person that is required to register a surface water withdrawal pursuant to subsection (a) of this section shall file an annual report with the Secretary. Reports shall be filed annually by January 15 of the following year. The report shall be made on a form provided by the Secretary and shall include all of the following information:

(1) the total amount of water withdrawn each month;

(2) the location of each withdrawal, including each impacted surface water;

- (3) the daily maximum withdrawal for each month;
- (4) the date of daily maximum withdrawal; and
- (5) any other information required by the Secretary.

(c) Methods of reporting withdrawals. The following methods shall be used to report the amounts of withdrawn surface water required to be reported under subsection (b) of this section:

(1) For withdrawals of between 10,000 and 50,000 gallons of surface water within a 24-hour period or 150,000 gallons or more of surface water over any 30-day period, the person shall either provide an estimate of total volume withdrawn or provide meter data. The report shall describe how any estimate was calculated.

(2) For withdrawals of 50,000 gallons or more of surface water within a 24-hour period or 1,500,000 gallons or more of surface water over any 30-day period, the person shall provide meter data or measured data by a technically appropriate method approved by the Secretary.

(d) Exceptions. The following withdrawals shall not be subject to the requirements of subsection (a) or (b) of this section:

(1) surface water withdrawals for fire suppression or other public emergency response purposes;

(2) surface water withdrawals required to report under subchapter 3 of this chapter for snowmaking uses;

(3) surface water withdrawals approved pursuant to chapter 56 of this title on public water supply and the rules adopted thereunder for use as a public drinking water supply;

(4) surface water withdrawals for irrigation for farming, livestock watering, or other uses for farming, as the term "farming" is defined in 6 V.S.A. § 4802; and

(5) a surface water withdrawal reported to the Secretary under any project that requires the reporting of substantially similar data.

§ 1043. PERMIT REQUIREMENT; PROGRAM DEVELOPMENT

(a) Program development. On or before July 1, 2026, the Secretary shall implement a surface water withdrawal permitting program that is consistent with section 1041 of this subchapter. The program shall be developed to:

(1) require a permit or other authorization for surface water withdrawals based on potential impacts to surface waters or other factors, and establish conditions of operation necessary to protect surface waters and the Vermont

Water Quality Standards;

(2) consider surface water withdrawal registration and reporting information submitted pursuant to section 1042 of this chapter in the establishment of permitting thresholds and other permitting requirements;

(3) require efficient use and conservation of surface water;

(4) ensure that withdrawals comply with the Vermont water quality standards;

(5) establish limitations on withdrawals based on low flow or drought conditions and the development of potential alternatives to meet surface water withdrawal needs in such cases; and

(6) require assessment of any reasonable and feasible alternatives to proposed withdrawals that may have less of an impact on surface water quality.

(b) Application. Application for a permit to withdraw surface water under the program established under subsection (a) of this section shall be made on a form provided by the Secretary, and shall include the following information:

(1) the location of each withdrawal, including the identification and type of each impacted surface water;

(2) a description of the use or uses of the water to be withdrawn;

(3) a description of the proposed method of water withdrawal;

(4) the frequency and rate of the withdrawal;

(5) an estimated schedule for the withdrawal;

(6) the capacity of the system to be used for the withdrawal;

(7) the location of the proposed return flow of the withdrawn water, and whether the withdrawal is an interbasin transfer;

(8) an estimate of the volume of water needed for the proposed use or uses;

(9) a description of the alternative means considered for the proposed uses of water that will have less of an impact on surface water quality; and

(10) any other information required by the Secretary.

(c) Permits.

(1) The Secretary may issue a general permit to authorize certain withdrawal activities.

(2) The Secretary shall issue a general permit under this chapter for the withdrawal of surface water for State or municipal infrastructure projects. The general permit shall establish a rate and withdrawal volume that only requires notification of the Secretary and does not require Secretary approval prior to withdrawal.

(3) A permit issued under this subchapter shall be for a period of not longer than 10 years from the date of issuance.

(d) Exceptions. A permit required under this subchapter shall not be required for:

(1) surface water withdrawals for fire suppression or other public emergency response purposes; or

(2) surface water withdrawals for irrigation for farming, livestock watering, or other uses for farming, as the term “farming” is defined in 6 V.S.A. § 4802.

(e) Existing surface water withdrawals.

(1) Snowmaking withdrawals. Existing withdrawals approved pursuant to subchapter 3 of this chapter for snowmaking shall be reviewed pursuant to subdivision (f)(1) of this section.

(2) Nonsnowmaking withdrawals.

(A) A permit required under this subchapter shall not be required until July 1, 2030 for an existing surface water withdrawal for nonsnowmaking purposes, provided that:

(i) the existing surface water withdrawal is both registered and reported to the Secretary pursuant to section 1042 of this title on an annual basis; and

(ii) no expansion of the existing surface water withdrawal occurs on or after January 1, 2023.

(B) For purposes of this subdivision (2), an expansion includes an increase in reported surface water withdrawal rate or volume or increase in reported capacity of the system.

(f) Surface water withdrawals for snowmaking.

(1) Existing withdrawals. Existing surface water withdrawals for snowmaking purposes that have been reviewed and approved pursuant to subchapter 3 of this chapter shall not require additional technical review by the Secretary under this subchapter, provided that the approved snowmaking activity is operated in compliance with the terms and conditions of the

Secretary's approval. For such activities, the Secretary may issue a permit under the rules adopted pursuant to this subchapter.

(2) New withdrawals. Proposed surface water withdrawals for new snowmaking activities that require review pursuant to subchapter 3 of this chapter shall be reviewed by the Secretary in accordance with the rules adopted pursuant to section 1032 of this title. If the Secretary determines that the proposed activity is consistent with those rules, the Secretary shall issue a permit required by section 1043 of this section for that activity.

(g) Enforcement.

(1) The Secretary may require a person to obtain a permit under this subchapter when the Secretary, in the Secretary's discretion, determines that a withdrawal or other action circumvents the requirements of this subchapter.

(2) If the Secretary finds that a withdrawal subject to this subchapter results in the construction, installation, operation, or maintenance of any facility or condition that results in or can reasonably be expected to result in a violation of the Vermont Water Quality Standards, the Secretary may issue an order establishing reasonable and proper methods and procedures for the control of that activity in order to reduce or eliminate the violation.

(h) Reservation. Nothing in this subchapter shall be interpreted to supersede, limit, or otherwise effect the Secretary's authority to take action pursuant to section 1272 of this title or other applicable provision of law or rule.

§ 1044. INTERBASIN TRANSFERS OF SURFACE WATERS

(a) Review of HUC 6 interbasin transfers. The Secretary shall review any interbasin transfer pursuant to the Vermont Water Quality Standards and other requirements of State law listed in subdivision 1253(h)(1) of this title. This review shall be in addition to any applicable standards and permitting requirements adopted pursuant to subsection 1043(a) of this title.

(b) Review of other transfers likely to violate Vermont Water Quality Standards. The Secretary may review any other surface water withdrawal that includes the transfer of surface water from one watershed to another watershed under the requirements of subsection (a) of this section if the Secretary determines that the activity is likely to result in a violation of the Vermont Water Quality Standards. The Secretary shall make a determination under this subsection based on a review of information set forth under subsection 1043(b) of this title that is readily available to the Secretary.

§ 1045. REPORT TO GENERAL ASSEMBLY

Beginning February 15, 2023 and annually thereafter, the Secretary of Natural Resources, after consultation with 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 the data submitted to the Secretary pursuant to subsections 1042(a) and (b) of this title, data submitted as part of a permit required under section 1043 of this title, and the data submitted to the Secretary of Agriculture, Food and Markets under 6 V.S.A. § 4927.

§ 1046. RULEMAKING

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

Sec. 2. 10 V.S.A. § 1253(h)(1) is amended to read:

(h)(1) The Secretary shall administer a Clean Water Act Section 401 certification program to review activities that require a federal license or permit or activities subject to regulation under chapter 47, subchapter 4 of this title to ensure that a proposed activity complies with the Vermont Water Quality Standards, as well as with any other appropriate requirement of State law, including:

(A) 10 V.S.A. chapter 37 (wetlands protection and water resources management);

(B) 10 V.S.A. chapter 41 (regulation of stream flow);

(C) 10 V.S.A. § 1264 (stormwater management);

(D) 29 V.S.A. chapter 11 (management of lakes and ponds); and

(E) the Agency of Natural Resources Rules for Water Withdrawals for Snowmaking.

Sec. 3. 10 V.S.A. § 8003(a)(4) is amended to read:

(4) 10 V.S.A. chapters 41 and 43, relating to dams, surface water withdrawals, interbasin transfers, and stream alterations;

Sec. 4. 10 V.S.A. § 8503(a)(1)(C) is amended to read:

(C) chapter 41 (relating to dams, surface water withdrawals, interbasin transfers, and stream alterations, and regulation of stream flow);

Sec. 5. 6 V.S.A. chapter 215, subchapter 6A is added to read:

Subchapter 6A. Surface Water Withdrawals for Farming

§ 4926. DEFINITIONS

As used in this subchapter:

(1) “Surface water” means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, and all bodies of surface waters that are contained within, flow through, or border upon the State or any portion of it. “Surface water” does not include the following:

(A) groundwater as defined in 10 V.S.A. § 1391;

(B) artificial waterbodies as defined under section 29A-101(d) of the Vermont Water Quality Standards;

(C) treatment ponds, lagoons, or wetlands created solely to meet the requirements of a permit issued for a discharge; and

(D) constructed off-stream farm ponds or other off-stream impoundments that are used for irrigation for farming or watering of livestock.

(2) “Withdrawal” means the intentional diversion from a surface water by pumping, gravity, or other method for the purpose of being used for irrigation for farming, livestock watering, or other uses for farming. “Withdrawal” does not include direct consumption of surface water by livestock.

§ 4927. REPORT OF SURFACE WATER WITHDRAWALS FOR IRRIGATION, LIVESTOCK WATERING, OR OTHER FARMING USE

(a) Report of withdrawal. Beginning on January 15, 2023 and annually thereafter, any person who withdrew 10,000 gallons or more of surface water within a 24-hour period in the preceding calendar year or 150,000 gallons or more of surface water over any 30-day period in the preceding calendar year shall file a report with the Secretary of Agriculture, Food and Markets. The report shall be made on a form provided by the Secretary and shall include all of the following information:

(1) an estimate of the total amount of water withdrawn in the preceding calendar year;

(2) the location of the withdrawals;

(3) the daily maximum withdrawal for each month;

(4) the date of each daily maximum withdrawal; and

(5) any other information related to surface water withdrawal required by the Secretary of Agriculture, Food and Markets.

(c) Sharing of data. Beginning February 1, 2023 and annually thereafter, the Secretary of Agriculture, Food and Markets shall submit to the Secretary of Natural Resources the data collected under this section for the purposes of the report to the General Assembly required by 10 V.S.A. § 1045.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

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

Senator Pearson, for the Committee on Finance, 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 the recommendation of proposal of amendment of the Committee on Natural Resources and Energy was amended as recommended by the Committee on Agriculture.

Thereupon, the proposal of amendment recommended by the Committee on Natural Resources and Energy, as amended, was agreed to and third reading of the bill was ordered.

Rules Suspended; Bills Messaged

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

H. 465, H. 489, H. 606, H. 727.

Rules Suspended; Bill Delivered

On motion of Senator Balint, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S.287.

Rules Suspended; Bill Committed

Pending entry on the Calendar for notice, on motion of Senator Starr the rules were suspended and House bill entitled:

H. 626. An act relating to the sale, use, or application of neonicotinoid pesticides. An act relating to a universal, publicly financed primary care system.

was committed to the Committee on Appropriations pursuant to Rule 31 with the report of the Committee on Agriculture *intact*,

Adjournment

On motion of Senator Balint, the Senate adjourned until ten o'clock in the forenoon on Friday, May 6, 2022.