

1 TO THE HONORABLE SENATE:

2 The Committee on Education to which was referred Senate Bill No. 219
3 entitled “An act relating to ensuring compliance with the U.S. and Vermont
4 Constitutions in the use of public funds for tuition and in the dual enrollment
5 program” respectfully reports that it has considered the same and recommends
6 that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

8 * * * Provision of Publicly Funded Education in Vermont * * *

9 Sec. 1. 16 V.S.A. § 820 is added to read:

10 § 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN

11 VERMONT

12 (a) Findings and purpose.

13 (1) The Vermont Constitution provides that “a competent number of
14 schools ought to be maintained in each town unless the general assembly
15 permits other provisions for the convenient instruction of youth.” VT Const.
16 CH II, § 68. Interpreting this provision in *Brigham v. State*, 692 A.2d 384
17 (1997), the Vermont Supreme Court stated that “[t]he state may delegate to
18 local towns and cities the authority to finance and administer the schools
19 within their borders; it cannot, however, abdicate the basic responsibility for
20 education by passing it on to local governments, which are themselves
21 creations of the state.” *Id.* at 395.

1 (A) From this, it is evident that the State has a constitutional
2 obligation to provide public education to its youth. Many Vermont school
3 districts operate schools, but others do not. Vermont is a relatively sparsely
4 populated and mountainous State that has made the operation of public schools
5 unviable in certain regions of the State. **Students who live in these regions do**
6 **not have the choice of enrolling in a public school in their district; their only**
7 **choice is to enroll in a public school operated by another school district or an**
8 **independent school, or to be home schooled.** Therefore, in order to fulfill its
9 constitutional requirement to provide public education to its youth, the State
10 permits school districts that do not operate schools (nonoperating school
11 districts) to use public funds to send their resident youth to public schools
12 operated by other school districts or to certain independent schools.

13 (B) Independent schools that enroll publicly funded students serve a
14 public function **because** they are a means of fulfilling the State’s constitutional
15 obligation to provide these students with a public education. Therefore, in
16 order to be eligible to receive public tuition, this section requires these schools
17 to operate in a manner that is consistent with providing a public education by:

18 (i) complying with all federal and State antidiscrimination laws
19 applicable to Vermont public schools; and

1 (ii) not using public tuition to support religious instruction,
2 religious indoctrination, religious worship, or the propagation of religious
3 views.

4 (2) Chapter 1, Article 3 of the Vermont Constitution, known as the
5 “Compelled Support Clause,” provides that “no person ... can be compelled to
6 support any place of worship ... contrary to the dictates of conscience ...”

7 (A) In *Chittenden Town v. Department of Education*, 38 A.2d 539
8 (Vt. 1999), the Vermont Supreme Court held that a school district may pay
9 public tuition to a school with a religious mission under the Compelled
10 Support Clause if the school has adequate safeguards against the use of such
11 funds for religious worship or instruction or the propagation of religious views.

12 (B) This section sets out adequate safeguards to ensure that public
13 tuition is not used for religious instruction, religious indoctrination, religious
14 worship, or the propagation of religious views.

15 (b) Conditions for eligibility of an approved independent school to receive
16 public tuition. An approved independent school shall be eligible to receive
17 public tuition only if all of the following conditions are met.

18 (1)(A) The school has adopted and implemented policies and procedures
19 to comply with all federal and State antidiscrimination laws applicable to
20 Vermont public schools and makes reasonable efforts to enforce these policies
21 and procedures. Compliance with the requirements set forth in these

1 antidiscrimination laws includes compliance with the Vermont Public
2 Accommodations Act, 9 V.S.A. chapter 141, and the Vermont Fair
3 Employment Practices laws, 21 V.S.A. chapter 5, subchapter 6 to the same
4 extent as these laws apply to public schools, even if those laws by their terms
5 do not apply to the school.

6 (B) The school posts and maintains on its website in a prominent
7 place its policy to comply with all antidiscrimination laws that apply to public
8 schools.

9 (2) None of the public tuition will be used to support religious
10 instruction, religious indoctrination, religious worship, or the propagation of
11 religious views, except for religious instruction that is designed to provide an
12 overview of religious history and teachings and does not support religious
13 instruction, religious indoctrination, religious worship, or the propagation of
14 any one religion or theology over others. In this section, “indoctrination”
15 means the process of repeating an idea or belief to someone until they accept it
16 without criticism or question.

17 (3) The school receives approval from the State Board of Education to
18 receive public tuition. In order to receive State Board approval, the school
19 shall, in addition to satisfying any conditions required by the State Board, enter
20 into a contract with the State Board, signed by an authorized representative
21 acting on behalf of the school’s governing body, agreeing to comply with the

1 eligibility requirements under subdivisions (1)–(2) of this subsection (b)
2 (antidiscrimination; no use of funds for religious purposes).

3 (c) Process for payment and school selection.

4 (1) The State Board of Education shall maintain a list of approved
5 independent schools eligible to receive public tuition on its website.

6 (2) A school district may only pay tuition to an approved independent
7 school eligible to receive public tuition listed on the State Board's website.
8 Payment of public tuition shall be made directly from the district to the school
9 unless otherwise required by court order.

10 (d) Approved independent school eligible to receive public tuition. As
11 used in this title, an “approved independent school eligible to receive public
12 tuition” means an approved independent school that is eligible to receive
13 public tuition under this section. An independent school meeting education
14 quality standards under section 165 of this title or an approved independent
15 school in Vermont functioning as an approved area career technical center
16 under chapter 37 of this title that seeks to receive public tuition is required also
17 to qualify as an approved independent school eligible to receive public tuition.

18 Sec. 1a. 16 V.S.A. § 820 is amended to read:

19 § 820. PROVISION OF PUBLICLY FUNDED EDUCATION IN

20 VERMONT

21 (a) Findings and purpose.

1 eligibility requirements under subdivisions (1)–(2)(3) of this subsection (b)
2 (antidiscrimination; no use of funds for religious purposes; enrollment of
3 students on an IEP).

4 * * *

5 * * * Unlawful Employment Practice * * *

6 Sec. 2. 21 V.S.A. § 495 is amended to read:

7 § 495. UNLAWFUL EMPLOYMENT PRACTICE

8 * * *

9 ~~(e) The provisions of this section prohibiting discrimination on the basis of~~
10 ~~sexual orientation and gender identity shall not be construed to prohibit or~~
11 ~~prevent any religious or denominational institution or organization, or any~~
12 ~~organization operated for charitable or educational purposes, that is operated,~~
13 ~~supervised, or controlled by or in connection with a religious organization,~~
14 ~~from giving preference to persons of the same religion or denomination or~~
15 ~~from taking any action with respect to matters of employment that is calculated~~
16 ~~by the organization to promote the religious principles for which it is~~
17 ~~established or maintained. [Repealed.]~~

18 * * *

19 * * * Dual Enrollment * * *

20 Sec. 3. 16 V.S.A. § 944 is amended to read:

21 § 944. DUAL ENROLLMENT PROGRAM

1 * * *

2 (b) Students.

3 (1) A Vermont resident who has completed grade 10 but has not received
4 a high school diploma is eligible to participate in the Program if:

5 (A) the student:

6 (i) is enrolled in:

7 (I) a Vermont public school, including a Vermont career
8 technical center;

9 (II) a public school in another state or an approved independent
10 school that is designated as the public secondary school for the student's
11 district of residence; or

12 (III) an approved independent school in Vermont to which the
13 student's district of residence pays publicly funded tuition on behalf of the
14 student;

15 (ii) is assigned to a public school through the High School
16 Completion Program; or

17 (iii) is a home study student;
18 none of the payment to the accredited postsecondary institution will be used to
19 support religious instruction, religious indoctrination (as defined in section 820
20 of this title), religious worship, or the propagation of religious views, except
21 for religious instruction that is designed to provide an overview of religious

1 history and teachings and does not support religious instruction, religious
2 indoctrination, religious worship, or the propagation of religious views of any
3 one religion or theology over others; and

4 (B) the student is not enrolled in a recognized independent
5 school or a school or program that is not recognized for attendance purposes
6 under section 1121 of this title;

7 (B)(C) dual enrollment is an element included within the student’s
8 personalized learning plan; and

9 (C)(D) the secondary school and the postsecondary institution have
10 determined that the student is sufficiently prepared to succeed in a dual
11 enrollment course, which can be determined in part by the assessment tool or
12 tools identified by the participating postsecondary institution.

13 * * *

14 * * * Conforming Changes * * *

15 Sec. 4. 16 V.S.A. § 11 is amended to read:

16 § 11. CLASSIFICATIONS AND DEFINITIONS

17 (a) As used in this title, unless the context otherwise clearly requires:

18 * * *

19 (20a) “Approved independent school eligible to receive public tuition”
20 means an approved independent school that is also approved by the State
21 Board of Education to receive public tuition under section 820 of this title.

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Sec. 5. 16 V.S.A. § 165 is amended to read:

§ 165. EDUCATION QUALITY STANDARDS; EQUAL EDUCATIONAL
OPPORTUNITIES; INDEPENDENT SCHOOL MEETING
EDUCATION QUALITY STANDARDS

* * *

(b) Annually, the Secretary shall determine whether students in each Vermont public school are provided educational opportunities substantially equal to those provided in other public schools. If the Secretary determines that a school is not meeting the education quality standards listed in subsection (a) of this section or that the school is making insufficient progress in improving student performance in relation to the standards for student performance set forth in subdivision 164(9) of this title, ~~he or she~~ the Secretary shall describe in writing actions that a district must take in order to meet either or both sets of standards and shall provide technical assistance to the school. If the school fails to meet the standards or make sufficient progress within two years of the determination, the Secretary shall recommend to the State Board one or more of the following actions:

* * *

(4) the State Board close an individual school or schools and require that the school district pay tuition to another public school or an approved

1 independent school ~~pursuant to chapter 21 of this title~~ eligible to receive public
2 tuition; or

3 * * *

4 Sec. 6. 16 V.S.A. § 166 is amended to read:

5 § 166. APPROVED AND RECOGNIZED INDEPENDENT SCHOOLS

6 * * *

7 (b) Approved independent schools. On application, the State Board shall
8 approve an independent school that offers elementary or secondary education
9 if it finds, after opportunity for hearing, that the school provides a minimum
10 course of study pursuant to section 906 of this title and that it substantially
11 complies with all statutory requirements for approved independent schools and
12 the Board's rules for approved independent schools. ~~An independent school~~
13 ~~that intends to accept public tuition shall be approved by the State Board only~~
14 ~~on the condition that the school agrees, notwithstanding any provision of law~~
15 ~~to the contrary, to enroll any student who requires special education services~~
16 ~~and who is placed in or referred to the approved independent school as an~~
17 ~~appropriate placement and least restrictive environment for the student by the~~
18 ~~student's individualized education program team or by the local education~~
19 ~~agency; provided, however, that this requirement shall not apply to an~~
20 ~~independent school that limits enrollment to students who are on an~~
21 ~~individualized education program or a plan under Section 504 of the~~

1 ~~Rehabilitation Act of 1973, 29 U.S.C. § 794, and who are enrolled pursuant to~~
2 ~~a written agreement between the local education agency and the school.~~

3 Except as provided in subdivision (6) of this subsection, the Board’s rules must
4 at minimum require that the school have the resources required to meet its
5 stated objectives, including financial capacity, faculty who are qualified by
6 training and experience in the areas in which they are assigned, and physical
7 facilities and special services that are in accordance with any State or federal
8 law or regulation. Approval may be granted without State Board evaluation in
9 the case of any school accredited by a private, State, or regional agency
10 recognized by the State Board for accrediting purposes, provided that the State
11 Board shall determine that the school complies with all student enrollment
12 provisions required by law.

13 * * *

14 Sec. 7. 16 V.S.A. § 821 is amended to read:

15 § 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY
16 SCHOOLS OR PAY TUITION

17 * * *

18 (d) Notwithstanding subdivision (a)(1) of this section, the electorate of a
19 school district that does not maintain an elementary school may grant general
20 authority to the school board to pay tuition for an elementary student at an
21 approved independent elementary school eligible to receive public tuition or an

1 independent school meeting education quality standards pursuant to sections
2 823 and 828 of this chapter upon notice given by the student's parent or legal
3 guardian before April 15 for the next academic year

4 Sec. 8. 16 V.S.A. § 822 is amended to read:

5 § 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS OR
6 PAY TUITION

7 (a) Each school district shall maintain one or more approved high schools
8 in which high school education is provided for its resident students unless:

9 (1) the electorate authorizes the school board to close an existing high
10 school and to provide for the high school education of its students by paying
11 tuition to a public high school, an approved independent high school eligible to
12 receive public tuition, or an independent school meeting education quality
13 standards, to be selected by the parents or guardians of the student, within or
14 outside the State; or

15 * * *

16 (c)(1) A school district may both maintain a high school and furnish high
17 school education by paying tuition:

18 * * *

19 (B) to an approved independent school eligible to receive public
20 tuition or an independent school meeting education quality standards if the

1 school board judges that a student has unique educational needs that cannot be
2 served within the district or at a nearby public school.

3 * * *

4 Sec. 9. 16 V.S.A. § 823 is amended to read:

5 § 823. ELEMENTARY TUITION

6 * * *

7 (b) Unless the electorate of a school district authorizes payment of a higher
8 amount at an annual or special meeting warned for the purpose, the tuition paid
9 to an approved independent elementary school eligible to receive public tuition
10 or an independent school meeting education quality standards shall not exceed
11 the least of:

12 * * *

13 Sec. 10. 16 V.S.A. § 824 is amended to read:

14 § 824. HIGH SCHOOL TUITION

15 * * *

16 (c) The district shall pay an amount not to exceed the average announced
17 tuition of Vermont union high schools for the year of attendance for its
18 students enrolled in an approved independent school eligible to receive public
19 tuition that does not functioning function as a Vermont area career technical
20 center, or any higher amount approved by the electorate at an annual or special
21 meeting warned for that purpose.

1 Sec. 11. 16 V.S.A. § 827 is amended to read:

2 § 827. DESIGNATION OF A PUBLIC HIGH SCHOOL OR AN

3 APPROVED INDEPENDENT HIGH SCHOOL AS THE PUBLIC

4 HIGH SCHOOL OF A SCHOOL DISTRICT

5 (a) A school district not maintaining an approved public high school may
6 vote on such terms or conditions as it deems appropriate, to designate three or
7 fewer approved independent schools eligible to receive public tuition or public
8 high schools as the public high school or schools of the district.

9 * * *

10 (c) A parent or legal guardian who is dissatisfied with the instruction
11 provided at a designated school or who cannot obtain for ~~his or her~~ the parent's
12 or legal guardian's child the kind of course or instruction desired there, or
13 whose child can be better accommodated in an approved independent school
14 eligible to receive public tuition or public high school nearer ~~his or her~~ the
15 child's home during the next academic year, may request on or before April 15
16 that the school board pay tuition to another approved independent school
17 eligible to receive public tuition or public high school selected by the parent or
18 guardian.

19 * * *

20 (e) Notwithstanding any other provision of law to the contrary:

21 * * *

1 (2) unless otherwise directed by an affirmative vote of the school
2 district, when the Wells Board approves parental requests to pay tuition to a
3 nondesignated approved independent school eligible to receive public tuition
4 or public school, the Board shall pay tuition in an amount not to exceed the
5 base education amount as determined under section 4011 of this title for the
6 fiscal year in which tuition is being paid; and

7 (3) unless otherwise directed by an affirmative vote of the school
8 district, when the Strafford Board approves a parental request to pay tuition to
9 a nondesignated approved independent school eligible to receive public tuition
10 or public school, the Board shall pay tuition to the nondesignated school
11 pursuant to section 824 of this title for the year in which the student is enrolled;
12 provided, however, that it shall not pay tuition in an amount that exceeds the
13 tuition paid to the designated school for the same academic year.

14 Sec. 12. 16 V.S.A. § 828 is amended to read:

15 § 828. TUITION TO APPROVED SCHOOLS; AGE; APPEAL

16 (a) A school district shall not pay the tuition of a student except to a public
17 school, an approved independent school eligible to receive public tuition, an
18 independent school meeting education quality standards, a tutorial program
19 approved by the State Board, an approved education program, or, subject to
20 subsection (b) of this section, an independent school in another state or country
21 approved under the laws of that state or country; nor shall payment Payment

1 of tuition on behalf of a person shall not be denied on account of age. Unless
2 otherwise provided, a person who is aggrieved by a decision of a school board
3 relating to eligibility for tuition payments, the amount of tuition payable, or the
4 school ~~he or she~~ the person may attend, may appeal to the State Board and its
5 decision shall be final.

6 (b) An independent school in another state or country that is approved
7 under the laws of that state or country is eligible to receive public tuition if all
8 of the following conditions are met:

9 (1) It is located in a state that borders Vermont or in the Quebec
10 Province of Canada; provided that an independent school that is not located in
11 a state that borders Vermont or in the Quebec Province of Canada shall be
12 eligible to receive public tuition if the school board of the resident student
13 determines that the student has unique educational needs that cannot
14 adequately be served by schools located in Vermont.

15 (2)(A) The independent school has adopted and implemented policies
16 and procedures to comply with all antidiscrimination laws applicable to public
17 schools in the state or country where the independent school is located and
18 makes reasonable efforts to enforce these policies and procedures. Compliance
19 with the requirements set forth in these antidiscrimination laws includes
20 compliance with antidiscrimination laws to the same extent as these laws apply

1 to public schools, even if those laws by their terms do not apply to the
2 independent school.

3 (B) The independent school posts and maintains on its website in a
4 prominent place its policy to comply with all antidiscrimination laws that apply
5 to public schools in the state or country where the independent school is
6 located.

7 (3) None of the public tuition will be used to support religious
8 instruction, religious indoctrination (as defined in section 820 of this title),
9 religious worship, or the propagation of religious views, except for religious
10 instruction that is designed to provide an overview of religious history and
11 teachings and does not support religious instruction, religious indoctrination,
12 religious worship, or the propagation of religious views of any one religion or
13 theology over others.

14 (4) The independent school enters into a contract with the Vermont
15 State Board of Education, signed by an authorized representative acting on
16 behalf of the school’s governing body, agreeing to comply with the eligibility
17 requirements under subdivisions (2)–(3) of this subsection (b)
18 (antidiscrimination; no use of funds for religious purposes).

19 Sec. 13. 16 V.S.A. § 1073 is amended to read:

20 § 1073. “LEGAL PUPIL” DEFINED; ACCESS TO SCHOOL

21 * * *

1 (b) Access to school.

2 * * *

3 (2) Right to enroll in a public or independent school. Notwithstanding
4 the provisions of sections 822 and 1075 of this title, a pregnant or parenting
5 student may enroll in any approved public school in Vermont or an adjacent
6 state, any approved independent school eligible to receive public tuition in
7 Vermont, or any other educational program approved by the State Board in
8 which any other legal pupil in Vermont may enroll.

9 * * *

10 Sec. 14. 16 V.S.A. § 2962 is amended to read:

11 § 2962. EXTRAORDINARY SPECIAL EDUCATION REIMBURSEMENT

12 * * *

13 (e) Under section 2973 of this title, a supervisory union, in its role as the
14 local education agency, may place a student with an individualized education
15 program under the Individuals with Disabilities Education Act, 20 U.S.C.
16 chapter 33, with ~~certain~~ approved independent schools ~~that accept public~~
17 ~~tuition~~ eligible to receive public tuition. If the approved independent school is
18 entitled to special education cost reimbursement under that section, it may bill
19 the supervisory union for excess special education costs incurred by the
20 independent school in providing special education services to that student
21 beyond those covered by general tuition. If those costs for that student exceed

1 the extraordinary expenditures threshold as defined in subdivision (a)(2) of this
2 section, the supervisory union shall be entitled to extraordinary reimbursement.

3 * * * Development of Standard Contract * * *

4 **Sec. 15. DEVELOPMENT OF STANDARD CONTRACT**

5 (a) On or before August 1, 2022, the State Board of Education shall create
6 and post on its website a standard form contract for use by approved
7 independent schools eligible to receive public tuition that complies with the
8 requirements of 16 V.S.A. § 820(b)(3) (antidiscrimination; no use of funds for
9 religious purposes; enrollment of students on an individualized education
10 program). The contract shall contain each of the following provisions.

11 (1) The State Board’s authorization for the school to receive public
12 tuition is conditioned on continued compliance by the school of this contract as
13 well as any other conditions required by law or State Board rules.

14 (2)(A) The school has adopted and implemented policies and procedures
15 to comply with all federal and State antidiscrimination laws applicable to
16 Vermont public schools and makes reasonable efforts to enforce these policies
17 and procedures. Compliance with the requirements set forth in these
18 antidiscrimination laws includes compliance with the Vermont Public
19 Accommodations Act, 9 V.S.A. chapter 141, and the Vermont Fair
20 Employment Practices laws, 21 V.S.A. chapter 5, subchapter 6 to the same

1 extent as these laws apply to public schools, even if those laws by their terms
2 do not apply to the school.

3 (B) The school has posted and shall maintain on its website in a
4 prominent place its policy to comply with all antidiscrimination laws that apply
5 to public schools.

6 (3) None of the public tuition will be used by the school to support
7 religious instruction, religious indoctrination, religious worship, or the
8 propagation of religious views, except for religious instruction that is designed
9 to provide an overview of religious history and teachings and does not support
10 religious instruction, religious indoctrination, religious worship, or the
11 propagation of any one religion or theology over others. As used in this
12 contract, “indoctrination” means the process of repeating an idea or belief to
13 someone until they accept it without criticism or question.

14 (4) Commencing with the 2023-2024 school year and thereafter, the
15 school shall enroll any student with an individualized education program who
16 requires special education services and who is placed in the school as an
17 appropriate placement and least restrictive environment for the student by the
18 student’s individualized education program team or by the local education
19 agency as required under 16 V.S.A. § 2973.

20 (b) On or before August 1, 2022, the State Board of Education shall create
21 and post on its website a standard form contract for use by independent schools

1 in another state or country that complies with the requirements of 16 V.S.A.
2 § 828(b) (antidiscrimination; no use of funds for religious purposes). The
3 contract shall contain each of the following provisions.

4 (1) The State Board’s authorization for the school to receive public
5 tuition is conditioned on continued compliance by the school of this contract.

6 (2)(A) The independent school has adopted and implemented policies
7 and procedures to comply with all antidiscrimination laws applicable to public
8 schools in the state or country where the independent school is located and
9 makes reasonable efforts to enforce these policies and procedures. Compliance
10 with the requirements set forth in these antidiscrimination laws includes
11 compliance with antidiscrimination laws to the same extent as these laws apply
12 to public schools, even if those laws by their terms do not apply to the
13 independent school.

14 (B) The independent school posts and maintains on its website in a
15 prominent place its policy to comply with all antidiscrimination laws that apply
16 to public schools in the state or country where the independent school is
17 located.

18 (3) None of the public tuition will be used to support religious
19 instruction, religious indoctrination, religious worship, or the propagation of
20 religious views, except for religious instruction that is designed to provide an
21 overview of religious history and teachings and does not support religious

1 instruction, religious indoctrination, religious worship, or the propagation of
2 religious views of any one religion or theology over others. As used in this
3 contract, “indoctrination” means the process of repeating an idea or belief to
4 someone until they accept it without criticism or question.

5 (c) A contract signed on behalf of the State Board and a school under 16
6 V.S.A. §§ 820(b)(3) or 828(b) shall contain no other conditions or
7 requirements than those required under this section. The State Board and the
8 school shall amend the contract as necessary to comply with applicable law,
9 and the State Board shall amend its model contract accordingly.

10 * * * Transition * * *

11 Sec. 16. TRANSITION

12 A student enrolled for the 2021-2022 school year in, or has been accepted
13 for enrollment for the 2022-2023 school year by, an independent school in
14 another state or country that would not be eligible to receive public tuition
15 under 16 V.S.A. § 828 as amended by this act shall continue to be entitled to
16 public tuition until such time as the student graduates from that school. The

1 school shall not be required to enter into the contract with the Vermont State
2 Board of Education under 16 V.S.A. § 828 as amended by this act.

3 * * * Effective Dates * * *

4 Sec. 17. EFFECTIVE DATES

5 This act shall take effect on passage, except for and Secs. 1a, 6, and 14,
6 which shall take effect on July 1, 2023.

7 and that after passage the title of this bill be amended to read: “An act
8 relating to ensuring compliance with the U.S. and Vermont Constitutions in the
9 use of public funds for tuition”

10

11

12

13 (Committee vote: _____)

14

15

Senator _____

16

FOR THE COMMITTEE