

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 28, Nays 0.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

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

**Those Senators absent and not voting were:** Fox, Miller.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

### **Senate Concurrent Resolution**

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

By All Members of the Senate,

By All Members of the House,

### **S.C.R. 39.**

Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday.

### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, March 1, 2012.

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### **THURSDAY, MARCH 1, 2012**

The Senate was called to order by the President.

### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Bill Referred to Committee on Appropriations****S. 244.**

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to referral to court diversion for driving with a suspended license.

**Consideration Postponed****S. 129.**

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

An act relating to recognition of the Koasek Abenaki of the Koas as a Native American Indian tribe.

Reported that the bill ought to pass.

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

Thereupon, pending the question, Shall the bill be read a third time?, on motion of Senator Campbell consideration of the bill was postponed until the next legislative day on a division of the Senate Yeas 18, Nays 9.

**Bills Amended; Third Readings Ordered****S. 189.**

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

An act relating to expanding confidentiality of cases accepted by the court diversion project.

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

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify, in writing, the diversion program and the court of his or her intention to refer the person to diversion. If the

prosecuting attorney refers a case to diversion, the ~~information and affidavit files held by the court, the state's attorney, and the law enforcement agency~~ related to the charges shall be confidential and shall remain confidential unless:

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

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

§ 164a. RESTITUTION

(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

\* \* \*

(c) The restitution unit shall have the authority to:

\* \* \*

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

\* \* \*

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection.

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to section 164a of Title 3.

\* \* \*

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

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**Sec. 6. EFFECTIVE DATE**

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Senator Snelling, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

**S. 197.**

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

An act relating to hospital-based outpatient fees.

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

Sec. 1. 18 V.S.A. § 9458 is added to read:

§ 9458. HOSPITAL-ACQUIRED MEDICAL PRACTICES

(a) Beginning January 1, 2011, whenever a hospital acquires a medical practice, the hospital shall, for a period of 30 months following the date of acquisition, provide written notice as described in subsection (b) of this section to each patient and prospective patient prior to performing the first outpatient service after April 1, 2012 for which such patient or prospective patient may incur an increased out-of-pocket expense.

(b) The written notice provided to a patient pursuant to this section shall notify the patient that the hospital's acquisition of the medical practice may result in changes to the patient's out-of-pocket expenses for an outpatient visit or ancillary service, including the potential for cost-sharing requirements in excess of the typical office visit co-payment under the patient's health insurance plan.

**Sec. 2. EFFECTIVE DATE**

This act shall take effect on passage and shall apply to any medical practice acquired by a hospital on or after January 1, 2011 for a period of 30 months following the date of acquisition.

And that when so amended the bill ought to pass.

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

### **S. 199.**

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

An act relating to immunization exemptions and the immunization pilot program.

Reported that the bill ought to pass.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Nitka moved to amend the bill by striking out Sec. 3.

Which was agreed to.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 25, Nays 4.

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:** Ayer, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman, White.

**Those Senators who voted in the negative were:** \*Ashe, Baruth, Hartwell, Pollina.

**The Senator absent and not voting was:** Fox.

\*Senator Ashe explained his vote as follows:

“Mr. President:

I have an unanswered question which relates to the effect of this change. Until it is answered I do not feel comfortable voting yes.”

### **Message from the House No. 31**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 577.** An act relating to public water systems.

**H. 756.** An act relating to the sales and use tax exemption for packaging equipment.

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

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

**H. 558.** An act relating to fiscal year 2012 budget adjustment.

And has adopted the same on its part.

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning on Friday, March 2, 2012.

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### **FRIDAY, MARCH 2, 2012**

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. 32**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered Senate proposal of amendment to House bill entitled:

**H. 630.** An act relating to reforming Vermont's mental health system.

And has refused to concur therein and asks for a Committee of Conference upon the disagreeing votes of the two Houses;

The Speaker appointed as members of such Committee on the part of the House:

Rep. Pugh of South Burlington  
Rep. Haas of Rochester  
Rep. Emmons of Springfield

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 278.** House concurrent resolution commemorating the 30th anniversary of the Vietnam Veterans Memorial, "The Wall," in Washington, D.C. and all Vietnam War Veterans.

**H.C.R. 279.** House concurrent resolution commemorating the 30th anniversary of the Vermont Vietnam Veterans Memorial and all Vietnam War Veterans.

**H.C.R. 280.** House concurrent resolution commemorating the 250th anniversary of the town of Bristol.

**H.C.R. 281.** House concurrent resolution honoring radio station WBTN-AM in Bennington for its public service broadcasting during Tropical Storm Irene.

**H.C.R. 282.** House concurrent resolution expressing solidarity with the people of Japan on the first anniversary of the 2011 triple disaster.

**H.C.R. 283.** House concurrent resolution in memory of former Representative Harvey B. Otterman Jr. of Topsham.

**H.C.R. 284.** House concurrent resolution honoring Orange clerk-treasurer Rita Bisson for her outstanding 33 years of public service.

**H.C.R. 285.** House concurrent resolution commemorating the 250th anniversary of the incorporation of the Essex County towns of Averill, Bloomfield, Lemington, and Lewis.

**H.C.R. 286.** House concurrent resolution honoring Big Heavy World and its volunteer staff for its significant 15-year contribution to music and the creative economy in Vermont.

**H.C.R. 287.** House concurrent resolution commemorating the 250th charter anniversary of the town of Shaftsbury.

**H.C.R. 288.** House concurrent resolution commemorating the 250th anniversary of the town of Charlotte.

**H.C.R. 289.** House concurrent resolution commemorating the 250th anniversary of the town of Ferrisburgh.



**H.C.R. 290.** House concurrent resolution commemorating the 250th anniversary of the chartering of the town of Monkton.

**H.C.R. 291.** House concurrent resolution honoring Addison town clerk Jane Grace for her exemplary 40 years of public service.

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

The House has considered concurrent resolution originating in the Senate of the following title:

**S.C.R. 38.** Senate concurrent resolution honoring the six fire chiefs past and present who have given over 280 years of combined service to the Marshfield Volunteer Fire Department.

And has adopted the same in concurrence.

### **Bill Referred to Committee on Appropriations**

#### **S. 89.**

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to Medicaid for Working Persons with Disabilities.

### **Bills Referred**

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

#### **H. 577.**

An act relating to public water systems.

To the Committee on Natural Resources and Energy.

#### **H. 756.**

An act relating to the sales and use tax exemption for packaging equipment.

To the Committee on Finance.

### **Third Reading Ordered**

#### **S. 128.**

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

An act relating to recognition of the Missisquoi, St. Francis-Sokoki Band as a Native American Indian tribe.

Reported that the bill ought to pass.

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

**Consideration Resumed; Third Reading Ordered**

**S. 129.**

Consideration was resumed on Senate bill entitled:

An act relating to recognition of the Koasek Abenaki of the Koas as a Native American Indian tribe.

Thereupon, the recurring question, Shall the bill be read the third time?, was decided in the affirmative.

**Bills Passed**

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

**S. 189.** An act relating to expanding confidentiality of cases accepted by the court diversion project.

**S. 197.** An act relating to hospital-based outpatient fees.

**S. 199.** An act relating to immunization exemptions and the immunization pilot program.

**Third Reading Ordered**

**S. 251.**

Senate committee bill entitled:

An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

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

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

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

**Third Reading Ordered**

**S. 147.**

Senator McCormack, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to granting staff of the departments of corrections and for children and families ex officio status for the purpose of obtaining and providing notary public services.

Reported that the bill ought to pass.

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

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

#### **S. 230.**

Senator Brock, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to property and casualty insurers and electronic notices.

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

Sec. 1. 8 V.S.A. § 3666 is added to read:

#### § 3666. DELIVERY OF NOTICES BY ELECTRONIC MEANS

(a) As used in this section:

(1) "Delivered by electronic means" includes:

(A) delivery to an electronic mail address at which a party has consented to receive notice; and

(B) posting on an electronic network, together with separate notice to a party sent to the electronic mail address at which the party has consented to receive notice of the posting.

(2) "Party" means an applicant, an insured, or a policyholder.

(b) Subject to subsection (d) of this section, any notice to a party required under section 3880, 3881, 4224, 4225, 4712, or 4713 of this title may be, but is not required to be delivered by electronic means provided the process used to obtain consent of the party to have notice delivered by electronic means meets the requirements of 9 V.S.A. chapter 20, the Uniform Electronic Transactions Act.

(c) Delivery of a notice pursuant to subsection (b) of this section shall be considered equivalent to any delivery method required under section 3883, 4226, or 4714 of this title, including delivery by first-class mail, certified mail, certificate of mail, or certificate of mailing.

(d) A notice may be delivered by electronic means by an insurer to a party under this section if:

(1) The party has affirmatively consented to such method of delivery and not subsequently withdrawn consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement:

(A) informing the party of:

(i) the right of the party to have the notice provided or made available in paper or another nonelectronic form at no additional cost;

(ii) the right of the party to withdraw consent to have notice delivered by electronic means;

(iii) whether the party's consent applies:

(I) only to the particular transaction as to which the notice must be given; or

(II) to identified categories of notices that may be delivered by electronic means during the course of the party's relationship with the insurer;

(iv) how, after consent is given, the party may obtain a paper copy of a notice delivered by electronic means at no additional cost; and

(v) the procedures the party must use to withdraw consent to have notice delivered by electronic means and to update information needed to contact the party electronically.

(3) The party:

(A) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(B) consents electronically or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices delivered by electronic means as to which the party has given consent.

(4) After consent of the party is given, the insurer, in the event a change in the hardware or software requirements needed to access or retain a notice delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice to which the consent applies:

(A) provides the party with a statement of:

(i) the revised hardware and software requirements for access to and retention of a notice delivered by electronic means; and

(ii) a revised statement required by subdivision (2) of this subsection; and

(B) the party affirmatively consents to continued delivery of notices by electronic means.

(e) Every notice delivered pursuant to subsection (b) of this section shall include the statement required by subdivision (d)(2) of this section. This section does not otherwise affect the content or timing of any notice required under chapter 105, 113, or 128 of this title.

(f) If a provision of chapter 105, 113, or 128 of this title requiring notice to be provided to a party expressly requires verification or acknowledgment of receipt of the notice, the notice may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt. Absent acknowledgement of receipt of the initial notice on the part of the party, the insurer shall send two subsequent notices on separate business days.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance may not be made contingent upon obtaining electronic consent or confirmation of consent of a party in accordance with subdivision (d)(3)(B) of this section.

(h)(1) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a notice delivered by electronic means to the party before the withdrawal of consent is effective.

(2) A withdrawal of consent by a party is effective within 30 days after receipt of the withdrawal by the insurer.

(3) Failure to comply with subdivision (d)(4) of this section shall be treated as a withdrawal of consent for purposes of this section.

(i) A party who does not consent to delivery of notices by electronic means under subsection (b) of this section, or who withdraws his or her consent, shall not be subjected to any additional fees or costs for having notices provided or made available in paper or another nonelectronic form.

(j) This section shall not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. chapter 96, relating to the use of an electronic record to provide or make available information that is required to be provided or made available in writing to a party.

**Sec. 2. INTERPRETATION**

The delivery of notice in accordance with Sec. 1 of this act is intended and shall be construed to meet the requirements of state insurance regulation 78-01, section 1, as revised.

**Sec. 3. EFFECTIVE DATE**

This act shall take effect on January 1, 2013 and apply to all policies and certificates delivered, issued for delivery, or renewed in this state on or after that date.

And that when so amended the bill ought to pass.

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

**Rules Suspended; Bills Passed; Rules Suspended; Bill Messaged****S. 128.**

On motion of Senator Illuzzi, the rules were suspended and Senate bill entitled:

An act relating to recognition of the Missisquoi, St. Francis-Sokoki Band as a Native American Indian tribe.

Was placed on all remaining stages of its passage forthwith.

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

Thereupon, on motion of Senator Illuzzi, the rules were suspended, and the bill was ordered messaged to the House forthwith.

**S. 129.**

On motion of Senator Illuzzi, the rules were suspended and Senate bill entitled:

An act relating to recognition of the Koasek Abenaki of the Koas as a Native American Indian tribe.

Was placed on all remaining stages of its passage forthwith.

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

Thereupon, on motion of Senator Illuzzi, the rules were suspended, and the bill was ordered messaged to the House forthwith.

**Rules Suspended; Bill Committed**

On motion of Senator Illuzzi, the Committee on Appropriations was relieved of further consideration of Senate bill entitled:

**S. 246.** An act relating to preserving Vermont's working landscape.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator Illuzzi moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Economic Development, Housing and General Affairs with the report of the Committee on Agriculture *intact*,

Which was agreed to.

### **Rules Suspended; Bills Messaged**

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

**S. 189, S. 197, S. 199.**

### **Committee of Conference Appointed**

#### **H. 630.**

An act relating to reforming Vermont's mental health system.

Was taken up. Pursuant to the request of the House, the President announced the appointment of

Senator Ayer  
Senator Hartwell  
Senator Mullin

as members of the Committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses.

### **Senate Concurrent Resolution**

The following joint concurrent resolution, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, was adopted on the part of the Senate:

By Senators Kitchel, Benning and Westman,

By Representative Leriche and others,

#### **S.C.R. 40.**

Senate concurrent resolution congratulating Ross Connelly and Thomas F. Kearney on their induction into the New England Newspaper Hall of Fame.

**House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were adopted in concurrence:

By All Members of the House,

By All Members of the Senate,

**H.C.R. 278.**

House concurrent resolution commemorating the 30th anniversary of the Vietnam Veterans Memorial, "The Wall," in Washington, D.C. and all Vietnam War Veterans.

By All Members of the House,

By All Members of the Senate,

**H.C.R. 279.**

House concurrent resolution commemorating the 30th anniversary of the Vermont Vietnam Veterans Memorial and all Vietnam War Veterans.

By Representatives Sharpe and Fisher,

By Senators Ayer and Giard,

**H.C.R. 280.**

House concurrent resolution commemorating the 250th anniversary of the town of Bristol.

By Representative Condon and others,

By Senators Sears and Hartwell,

**H.C.R. 281.**

House concurrent resolution honoring radio station WBTN-AM in Bennington for its public service broadcasting during Tropical Storm Irene.

By Representative Mrowicki and others,

**H.C.R. 282.**

House concurrent resolution expressing solidarity with the people of Japan on the first anniversary of the 2011 triple disaster.



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By All Members of the House,

**H.C.R. 283.**

House concurrent resolution in memory of former Representative Harvey B. Otterman Jr. of Topsham.

By Representatives Winters and Davis,

By Senators Benning and Kitchel,

**H.C.R. 284.**

House concurrent resolution honoring Orange clerk-treasurer Rita Bisson for her outstanding 33 years of public service.

By Representative Johnson and others,

By Senators Illuzzi and Starr,

**H.C.R. 285.**

House concurrent resolution commemorating the 250th anniversary of the incorporation of the Essex County towns of Averill, Bloomfield, Lemington, and Lewis.

By Representative Lorber and others,

**H.C.R. 286.**

House concurrent resolution honoring Big Heavy World and its volunteer staff for its significant 15-year contribution to music and the creative economy in Vermont.

By Representative Miller,

By Senators Hartwell and Sears,

**H.C.R. 287.**

House concurrent resolution commemorating the 250th charter anniversary of the town of Shaftsbury.

By Representative Yantachka,

**H.C.R. 288.**

House concurrent resolution commemorating the 250th anniversary of the town of Charlotte.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

**H.C.R. 289.**

House concurrent resolution commemorating the 250th anniversary of the town of Ferrisburgh.

By Representatives Sharpe and Fisher,

**H.C.R. 290.**

House concurrent resolution commemorating the 250th anniversary of the chartering of the town of Monkton.

By Representatives Clark and Lanpher,

By Senators Ayer and Giard,

**H.C.R. 291.**

House concurrent resolution honoring Addison town clerk Jane Grace for her exemplary 40 years of public service.

**Adjournment**

On motion of Senator Carris, the Senate adjourned, to reconvene on Tuesday, March 13, 2012, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 35.

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**TUESDAY, MARCH 13, 2012**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Nancy McHugh of Waitsfield.

**Pledge of Allegiance**

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

**Bills Referred to Committee on Appropriations**

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

**S. 138.** An act relating to the record keeping of search warrants.

**S. 223.** An act relating to extending health insurance coverage for autism spectrum disorders.

**S. 226.** An act relating to prohibiting synthetic stimulants.

**Rules Suspended; Bill Committed**

**S. 238.**

Appearing on the Calendar for notice, on motion of Senator Kittell, the rules were suspended and Senate bill entitled:

An act relating to establishing the Vermont farm guest worker program.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Agriculture, Senator Kittell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Transportation with the report of the Committee on Agriculture *intact*,

Which was agreed to.

**Joint Senate Resolution Adopted on the Part of the Senate**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

**J.R.S. 49.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Thursday, March 15, 2012, or, Friday, March 16, 2012, it be to meet again no later than Tuesday, March 20, 2012.

**Joint Resolution Placed on Calendar**

**J.R.S. 50.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Nitka,

**J.R.S. 50.** Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Magistrate.

*Whereas*, declarations have been submitted by the following two Superior Judges that they be retained for another six-year term, Judge Karen R. Carroll, Judge Dennis R. Pearson, and one Magistrate that he be retained for another six year term, Magistrate Barry Peterson, and

*Whereas*, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each candidate and the comments of members of the Vermont bar and the public, and

*Whereas*, the Committee was unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the candidates seeking to be retained in office by March 8, 2012, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 15, 2012, the date specified in subsection 10(b) of Title 2, and

*Whereas*, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the two Houses meet in Joint Assembly on Thursday, March 29, 2012, at one o'clock in the afternoon to vote on the retention of two Superior Judges and one Magistrate. In case the vote to retain said Judges and Magistrate shall not be made on that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**Consideration Postponed**

**S. 230.**

Senate bill entitled:

An act relating to property and casualty insurers and electronic notices.

Was taken up.

Thereupon, pending third reading of the bill, Senator Brock moved to amend the bill in Sec. 1, 8 V.S.A. § 3666, subsection (f), by inserting at the end of the last sentence the following ; provided, however, that for notices of cancellation pursuant to 8 V.S.A. § 3880, 4224, or 4712, the third notice shall be by certified mail

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Brock?, Senator Galbraith moved to amend the recommendation of amendment of Senator Brock as follows: after the word "cancellation" by inserting and non-renewal and after the word "third" by inserting or final

Thereupon, pending the question, Shall the recommendation of amendment of Senator Brock be amended as recommended by Senator Galbraith?, on motion of Senator Cummings consideration of the bill be postponed until the next legislative day.

### Bill Passed

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

**S. 251.** An act relating to miscellaneous amendments to laws pertaining to motor vehicles.

### Message from the House No. 33

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 485.** An act relating to establishing universal recycling of solid waste.

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

The House has adopted joint resolutions of the following titles:

**J.R.H. 28.** Joint resolution congratulating the Republic of China (Taiwan), President Ma Ying-jeou, and the 23 million Taiwanese people on their successful 2012 democratic elections and urging support for Taiwan's participation in various international organizations.

**J.R.H. 29.** Joint resolution commemorating Women's History Month, the publication of the sixth edition of *The Legal Rights of Women in Vermont*, and reaffirming continuing support for equal rights for women.

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

The Governor has informed the House that on March 7, 2012, he approved and signed bills originating in the House of the following titles:

**H. 558.** An act relating to fiscal year 2012 budget adjustment.

**H. 755.** An act relating to extending the deadline for adoption of certain health department rules.

The Governor has informed the House that on March 8, 2012, he approved and signed a bill originating in the House of the following title:

**H. 365.** An act relating to designating skiing and snowboarding as the official winter state sports.

**Adjournment**

On motion of Senator Campbell, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, March 14, 2012.

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**WEDNESDAY, MARCH 14, 2012**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Rules Suspended; Bill Committed**

On motion of Senator Kitchel, the Committee on Appropriations was relieved of further consideration of Senate bill entitled:

**S. 223.** An act relating to extending health insurance coverage for autism spectrum disorders.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator Kitchel moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

**Bill Referred**

House bill of the following title was read the first time and referred:

**H. 485.**

An act relating to establishing universal recycling of solid waste.

To the Committee on Natural Resources and Energy.

**Joint Resolutions Placed on Calendar****J.R.H. 28.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution congratulating the Republic of China (Taiwan), President Ma Ying-jeou, and the 23 million Taiwanese people on their successful 2012 democratic elections and urging support for Taiwan's participation in various international organizations.

Whereas, on January 14, 2012, the Republic of China (Taiwan) held a successful democratically conducted election for president, vice president, and the legislature, demonstrating it is a beacon for freedom and democracy, and

Whereas, recently re-elected President Ma Ying-jeou has worked tirelessly to uphold democratic principles in Taiwan, ensure the prosperity of the Taiwanese people, promote its standing as a responsible member of the international community, increase participation in international organizations, dispatch humanitarian missions abroad, and further improve relations between the United States and Taiwan, and

Whereas, the United States and the Republic of China (Taiwan), and especially the State of Vermont, share an historically close relationship, marked by strong bilateral trade, educational and cultural exchanges, scientific and technological interests, and tourism, and

Whereas, in December 2011, Taiwan was nominated to participate in the United States Visa Waiver Program, and

Whereas, the United States ranks as Taiwan's third largest trading partner and Taiwan is the 10th largest trading partner of the United States, and bilateral trade reached \$62 billion with exports to Taiwan totaling approximately \$25 billion in 2011, and Vermont's exports to Taiwan totaled \$154 million in 2010, and

Whereas, on November 12, 2011, President Barack Obama and the leaders of eight Trans-Pacific Partnership countries announced the achievement of the broad outlines for a 21st century Trans-Pacific Partnership agreement which will forge close links among economies, enhance competitiveness, and benefit consumers, and

Whereas, the Asia-Pacific region is the largest market in the world for U.S. exports, and \$3.9 billion, or 93 percent, of Vermont's total exports went to markets in that region, and

Whereas, exports to Taiwan are estimated to support 12,300 Vermont jobs, and the latest available data (2009) indicated that 898 companies exported goods from Vermont, and

Whereas, Taiwan is the world's seventeenth largest trading economy and a member of the Asia-Pacific Economic Cooperation Forum, and

Whereas, the United Nations Framework Convention on Climate Change is the leading international agency addressing climate change, and Taiwan desires and should be granted membership in this important organization, and

Whereas, it remains in the interest of the traveling public that Taiwan be included in the International Civil Aviation Organization since Taiwan is a key

transport hub in the Asia-Pacific region, and the Taipei Flight Information Region which is under Taiwan's jurisdiction covers an area of 176,000 square nautical miles with 1.35 million controlled flights annually passing through, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly congratulates the Republic of China (Taiwan), President Ma Ying-jeou, and the 23 million Taiwanese people on their successful 2012 democratic elections and urges support for Taiwan's participation in various international organizations and agreements, including the Trans-Pacific Partnership, the United Nations Framework Convention on Climate Change, and the International Civil Aviation Organization, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to President Barack Obama, Governor Peter Shumlin, the Vermont Congressional Delegation, Taiwanese President Ma Ying-jeou, and Anne Hung, Director-General of the Taipei Economic and Cultural Office in Boston.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**J.R.H. 29.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution commemorating Women's History Month, the publication of the sixth edition of *The Legal Rights of Women in Vermont*, and reaffirming continuing support for equal rights for women.

Whereas, the month of March is Women's History Month, an annual worldwide celebration highlighting the contributions of women in history and society, and

Whereas, many Vermonters, both men and women, have fought for equal rights for women under the law, and

Whereas, Clarina Howard Nichols, a journalist and advocate for women's rights, temperance, and antislavery, was the first woman to address the Vermont legislature, and she contributed to reform of married women's property rights in 1847 and introduced school suffrage for women in Vermont, and

Whereas, the contributions of many other Vermont women may be found in the Vermont Women's History Project database maintained by the Vermont Historical Society, and



Whereas, in order to access justice under the law, women need to understand their rights, and

Whereas, the Vermont Commission on Women has published a handbook for this purpose since 1977 called *The Legal Rights of Women in Vermont*, and the sixth edition of this handbook has now been digitally published on the commission's website, [www.women.vermont.gov](http://www.women.vermont.gov), and the commission will assist those without a computer, and

Whereas, written in plain English, this comprehensive guide is an up-to-date digital resource providing explanations of many topics, and each chapter concludes with links to the commission's online resource directory and to federal and state statutory websites that enable the reader to find and read applicable laws, and

Whereas, while written for women, *The Legal Rights of Women in Vermont* covers legal issues affecting all Vermonters, including: adoption, guardianship and emancipated minors, consumer protection and fair credit, domestic relations; education, employment rights, housing and property rights, immigration, insurance, name changes, public accommodations, public assistance and government benefits, reproductive rights, violence against women and children; and wills, probate court, and advanced directives, and

Whereas, Vermont Women's History Project, a program through the Vermont Historical Society, is a dynamic database of all Vermont women who have contributed to our state's history, including Vermont's first 100 women lawyers, and

Whereas, on March 21, 2012 at 12:00 noon, the Vermont Women's History Project is sponsoring a panel discussion with four women lawyers who have made strides in women's legal rights, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly commemorates Women's History Month and the publication of the sixth edition of *The Legal Rights of Women in Vermont* and reaffirms its continuing support of equal rights for women, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont Women's History Project, the Vermont Commission on Women, and the Women's Section of the Vermont Bar Association.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**Message from the Governor  
Appointments Referred**

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

Billings, Jireh of Bridgewater - Member of the Capitol Complex Commission, - from March 12, 2012, to February 28, 2015.

To the Committee on Institutions.

Boucher, Patricia of Enosburg Falls - Member of the Parole Board, - from March 1, 2012, to February 28, 2015.

To the Committee on Institutions.

Coakley, Kellie of Colchester - Member of the Children and Family Council for Prevention Programs, - from March 1, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Villars, Allyson of Brattleboro - Member of the Children and Family Council for Prevention Programs, - from March 1, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Kamp, Susan of South Burlington - Member of the Children and Family Council for Prevention Programs, - from March 1, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Schatz, Ken of South Burlington - Member of the Children and Family Council for Prevention Programs, - from March 1, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Hover, Caprice of Rutland - Member of the Children and Family Council for Prevention Programs, - from March 1, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Roessle, Drusilla of Burlington - Member of the Children and Family Council for Prevention Programs, - from February 15, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

Uerz, Lori of Jericho - Member of the Children and Family Council for Prevention Programs, - from February 15, 2012, to February 28, 2015.

To the Committee on Health and Welfare.

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Farrell, Willa of East Hardwick - Member of the Children and Family Council for Prevention Programs, - from February 15, 2012, to February 28, 2014.

To the Committee on Health and Welfare.

Nolan, Craig of Averill - Member of the Fish and Wildlife Board, - from March 1, 2012, to February 28, 2018.

To the Committee on Natural Resources and Energy.

Hrydziusko, Wesley of Windsor - Member of the Transportation Board, - from March 1, 2012, to February 28, 2015.

To the Committee on Transportation.

Sanborn, Arthur of Kirby - Member of the Transportation Board, - from March 1, 2012, to February 28, 2015.

To the Committee on Transportation.

Stern, Robin of Brattleboro - Member of the Transportation Board, - from March 1, 2012, to February 28, 2015.

To the Committee on Transportation.

Amidon, Ed of Charlotte - Chair of the Valuation Appeals Board, - from February 29, 2012, to January 31, 2015.

To the Committee on Finance.

Alexander, Sonia of Westminster - Member of the Valuation Appeals Board, - from February 29, 2012, to January 31, 2015.

To the Committee on Finance.

Hill, Pixley of Swanton - Member of the VT Citizens' Advisory Council on Lake Champlain's Future, - from March 1, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Naud, Mark of South Hero - Member of the VT Citizens' Advisory Council on Lake Champlain's Future, - from March 1, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Ziter, Randi of Putney - Member of the Travel Information Council, - from March 2, 2012, to February 28, 2014.

To the Committee on Transportation.

**Rules Suspended; Bill Committed****S. 131.**

Senator White moved the rules be suspended and that Senate bill entitled:

An act relating to the study of whether licensure should be required for the practice of roofing.

be committed to the Committee on Government Operations with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

**Bill Passed**

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

**S. 147.** An act relating to granting staff of the departments of corrections and for children and families *ex officio* status for the purpose of obtaining and providing notary public services.

**Proposal of Amendment; Third Reading Ordered****H. 512.**

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to banking, insurance, securities, and health care administration.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 41 in its entirety and inserting in lieu thereof a new Sec. 41 to read as follows:

Sec. 41. 8 V.S.A. § 6052(b) is amended to read:

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation and feasibility study which includes a description of the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer, together with such additional information as the commissioner may reasonably require. In considering and approving the risk retention group's plan of operation and any subsequent amendments thereto, the commissioner may limit the net amount of risk retained by a risk retention group. The risk retention group shall submit for approval by the commissioner an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, including any material change in the information called for in subsection

(c) of this section, but excluding the identity of policyholders and any changes in rates or rating classification systems. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner. The risk retention group shall inform the commissioner of any material changes in rates or rating classification systems, within 30 days of the adoption of such change.

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

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

### **Consideration Resumed; Bill Amended; Bill Passed**

#### **S. 230.**

Consideration was resumed on Senate bill entitled:

An act relating to property and casualty insurers and electronic notices.

Thereupon, pending the question, Shall the recommendation of amendment as moved by Senator Brock be amended as moved by Senator Galbraith?, Senator Brock requested and was granted leave to withdraw the recommendation of amendment.

Thereupon, Senator Brock, on behalf of the Committee on Finance, moved to amend the bill by adding a new section to be numbered Sec. 3 to read as follows:

#### **Sec. 3. STATEMENT OF CONSUMER RIGHTS; ELECTRONIC NOTICES**

The commissioner of banking, insurance, securities, and health care administration shall issue a bulletin regarding the statement to be provided to a party under 8 V.S.A. § 3666(d)(2). The bulletin shall require insurance companies to clearly and conspicuously inform the party of the types of notices (cancellation and nonrenewal) permitted to be delivered by electronic means; the risks associated with electronic notifications and the party's assumption of those risks if he or she consents to receive electronic notifications; the party's right to receive notices by mail at no additional cost; the form of the electronic notices and their provisions; and any other provisions the commissioner deems necessary to protect the interests of Vermonters and otherwise carry out the purposes of this act.

And by renumbering the remaining sections to be numerically correct.

Which was agreed to.

Thereupon, pending the question, Shall the bill pass? Senator Galbraith moved that the bill be amended in Sec. 1, 8 V.S.A. § 3666, subsection (f), at the end of the last sentence following the word “days” by inserting the following: : provided, however, that for notices of cancellation or nonrenewal pursuant to 8 V.S.A. § 3880, 3881, 4224, 4225, 4712, or 4713 the third notice shall be by certified mail

Which was disagreed to on a roll call, Yeas 13, Nays 16.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ayer, Baruth, Benning, Campbell, Galbraith, Giard, Illuzzi, Kitchel, Kittell, Mazza, Nitka, Pollina, Starr.

**Those Senators who voted in the negative were:** Ashe, Brock, Carris, Cummings, Doyle, Flory, Fox, Hartwell, Lyons, MacDonald, McCormack, Mullin, Sears, Snelling, Westman, White.

**The Senator absent and not voting was:** Miller.

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

### **Bills Amended; Third Readings Ordered**

#### **S. 136.**

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

An act relating to vocational rehabilitation.

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

Sec. 1. 21 V.S.A. § 641 is amended to read:

#### § 641. VOCATIONAL REHABILITATION

(a) When as a result of an injury covered by this chapter, an employee is unable to perform work for which the employee has previous training or experience, the employee shall be entitled to vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. Vocational rehabilitation services shall be provided as follows:

\* \* \*

(3) The commissioner shall adopt rules to assure that a worker who requests services or who has ~~received~~ been out of work for more than 90 days of continuous temporary total disability benefits is timely and cost-effectively screened for benefits under this section. The rules shall:

\* \* \*

## Sec. 2. STUDY

(a) The department of labor in consultation with the department of disabilities, aging, and independent living, and other interested parties, including vocational rehabilitation services, shall study the following:

(1) what performance standards should apply to vocational rehabilitation counselors;

(2) whether the department of disabilities, aging, and independent living should be allowed to provide workers' compensation vocational rehabilitation services and charge the fees for those services to insurance companies; and

(3) whether injured workers receiving vocational rehabilitation services are receiving those services in a timely manner.

(b) The department of labor shall report its findings as well as any recommendations by January 15, 2013, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

And that when so amended the bill ought to pass.

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

## **S. 152.**

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

An act relating to the definition of line of duty in the workers' compensation statutes.

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

Sec. 1. 21 V.S.A. § 601 is amended to read:

### § 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

\* \* \*

(12) "Public employment" means the following:

\* \* \*

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department or rescue and ambulance squads, after the governing officials of such municipal body so vote;

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting ~~in the line of duty~~ in any capacity under the direction and control of the rescue or ambulance squad after election by the organization to have its members covered by this chapter;

\* \* \*

And that when so amended the bill ought to pass.

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

### **Consideration Postponed**

#### **S. 239.**

Senator Giard, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to ensuring the humane treatment and slaughter of animals.

Reported recommending that the bill be amended by striking out Secs. 3 and 4, in their entirety.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending question, Shall the bill be amended as recommended by the Committee on Agriculture?, on motion of Senator Campbell, action on the bill was postponed until the next legislative day.



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**Bill Amended; Third Reading Ordered****S. 194.**

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

An act relating to consolidation of supervisory unions.

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

**Sec. 1. SUPERVISORY UNION SIZE AND STRUCTURE**

(a) The secretary of administration or designee, in consultation with the commissioner of education or designee, shall explore the purpose, structure, duties, and authority of supervisory unions and design a revised structure based roughly on existing technical center service regions that results in no more than three supervisory unions within each region. The primary purpose of any design shall be to improve education quality. The secretary shall analyze the feasibility of the revised structure and shall develop a plan of transition. Among other things, the secretary shall:

(1) consider the optimal size of supervisory unions, in terms of geography and numbers of students, technical centers, schools, and school districts served;

(2) consider structural elements, such as:

(A) management models;

(B) staffing, including the most appropriate way to address existing contracts, staff consolidation, and salary equalization;

(C) special education services;

(D) financial and other data collection and management systems;

(E) transportation, including ownership of buses, merger of systems, and consolidation of routes;

(F) supervisory union boards, including structure, selection of members, district representation, and the purpose, authority, and membership of executive committees;

(G) supervisory union budgets, including the manner in which they are adopted and the method by which costs are assessed to the member districts;

(H) ownership of real and personal property;

(I) ability to borrow money; and

(J) alignment of curricula and calendars;

(3) consider ways in which the department and state board of education would support transition to a proposed structure; and

(4) estimate both the financial cost of transitioning to and the potential savings in the proposed structure.

(b) By January 15, 2013, the secretary shall report to the senate and house committees on education on the work required by this section. The secretary shall also provide recommendations for legislative action necessary to implement its proposed plan.

And that when so amended the bill ought to pass.

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

#### **Joint Resolution Adopted on the Part of the Senate**

##### **J.R.S. 50.**

Joint Senate resolution entitled:

Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Magistrate.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

#### **Message from the House No. 34**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has considered joint resolution originating in the Senate of the following title:

**J.R.S. 49.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

#### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, March 15, 2012.

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**THURSDAY, MARCH 15, 2012**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Jeffery Potter of Peacham.

**Committee Bill Introduced**

Senate committee bill of the following title was introduced, read the first time, and, under the rule, placed on the Calendar for notice the next legislative day:

**S. 252.**

By the Committee on Government Operations,

An act relating to the repeal or revision of reporting requirements.

**Bill Referred to Committee on Appropriations****S. 218.**

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to high-quality, early childhood education programs.

**Bill Amended; Third Reading Ordered****S. 244.**

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

An act relating to referral to court diversion for driving with a suspended license.

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

**Sec. 1. LEGISLATIVE PURPOSE**

(a) The Vermont General Assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The committee began its work by looking at the most common nonviolent

misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system.

(b) Currently, over 38,000 motor vehicle licenses are suspended in Vermont. There are a number of reasons that a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, failure to pay child support, procurement of alcohol by a minor, and automatic suspensions for serious violations such as driving while intoxicated. The majority of licenses (60 percent) are suspended for failure to pay a traffic ticket, followed by accumulation of points for moving violations (24 percent).

(c) The committee determined that many otherwise law-abiding citizens become caught in a cycle of suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates. The committee believes it is in the public interest to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

(d) Court diversion is an existing preadjudication option for many people who have been charged with a crime. The diversion program offers willing offenders the opportunity to take responsibility for their actions and make amends to victims and the community.

## Sec. 2. DIVERSION PROGRAM FOR DRIVING WITH A SUSPENDED LICENSE

(a) The court administrator, the court diversion program, and the department of motor vehicles shall work cooperatively in an effort to assist Vermonters who have a suspended motor vehicle operator's license to regain their license through participation in the DLS diversion program, as provided in this section.

(b)(1) Except as provided in subdivision (2) of this subsection, the court administrator shall notify a person who has had his or her operator's license suspended pursuant to 23 V.S.A. §§ 674 or 676 that he or she is eligible to participate in the DLS diversion program, which is intended to assist people in regaining their operator's license. A person shall be eligible to participate in the DLS diversion program if the person completes all the requirements of the underlying violation and the suspension and if, as a result, the person would otherwise be eligible to regain his or her license if not for unmet financial obligations.

(2) A person whose operator's license is suspended for a violation of 23 V.S.A. §§ 1091(b), 1094(b), 1128(b) or (c), or 1201 or 1205 shall not be

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eligible to participate in the DLS diversion program with respect to the suspension for such violation.

(3) The notice shall provide that:

(A) The program is designed to assist the person to get his or her driver's license reinstated prior to completion of payment of any debt related to the suspension.

(B) The person may be eligible for a reduction in the amount of the person's financial obligation to the state or may be permitted to establish a reasonable payment plan to discharge the debt.

(C) The program is voluntary but agreeing to participate would include certain requirements including:

(i) meeting with diversion staff to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension.

(ii) completing all conditions related to the offense and indicated by the screening process that are imposed by the diversion program.

(4) The court administrator may charge the cost of preparing and sending the notice against revenues collected pursuant to this subsection.

(c) Upon receiving a request from a person who has been issued a notice pursuant to subsection (b) of this section, the diversion program shall register the person in the DLS diversion program. The program staff shall meet with the person to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension. Based upon the assessment, the program shall develop a contract with the person that may include:

(1) Adherence to a plan to pay fines and fees required to reinstate a driver's license.

(2) Acquiring and showing proof of auto insurance.

(3) Performance of community service.

(4) Completion of a driving education program.

(5) Any other conditions related to the reasons for the violation that led to license suspension.

(d) A person with fewer than five violations of 23 V.S.A. § 676 may apply to the DLS diversion program. Upon receipt of an application and determination of eligibility, the diversion program shall send the person a notice to report to the diversion program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of

assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

(e) The diversion program shall notify the judicial bureau of acceptance of a person into the DLS diversion program and that a contract has been agreed to by the parties. Upon approval of the contract and any related payment plan, the judicial bureau shall notify the department of motor vehicles of compliance with the contract and the department shall reinstate the person's operator's license provided the person remains in compliance with the diversion contract. The department of motor vehicles may suspend a person's license for failure to comply with the diversion contract.

(f) The DLS diversion program shall work cooperatively with the judicial bureau to establish a reasonable payment plan for fines and fees owed by a person enrolled in the program. In addition to any remedies already provided, the judicial bureau may do the following in cases involving a person enrolled in the DLS diversion program:

(1) Reduce the amount of fines or fees owed in exchange for community service or education, or both, as provided in a diversion contract.

(2) Withdraw any debt placed for collection with a collection agency or the department of taxes.

(g) The court diversion program, in cooperation with the judiciary, shall adopt standards for operating the DLS diversion program, including determining whether a person is in compliance with conditions as set forth in this section. The standards shall specifically identify circumstances, such as additional violations or accumulation of points, which shall require additional contract conditions and circumstances that will result in dismissal from the program. Such standards shall be applicable in all county diversion programs.

(h) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by the program using a sliding-scale fee based on financial means of the participant. The fee shall not exceed \$300.00. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subsection shall be retained and used solely for the purpose of the DLS diversion program.

(i) The court administrator shall begin notification as provided in subsection (b) by January 15, 2013, at which time the DLS diversion program shall be operational. Priority shall be given to persons determined to be at highest risk of acquiring a criminal DLS pursuant to 23 V.S.A. § 674 due to an accumulation of civil suspensions violation pursuant to 23 V.S.A. § 674.

(j) The department of motor vehicles and the court administrator shall coordinate a method for determining the appropriate mechanism to inform people about the DLS diversion program.

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before April 1, 2013 and again on or before January 15, 2014 on the implementation of the DLS diversion program and the advisability of implementing the program through roadside stops for driving without a license and extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

### Sec. 3. DLS DIVERSION SPECIAL FUND

There is established the DLS diversion program special fund to be administered by the attorney general. The fund shall be used to fund the requirements of this act. Administrative fees collected pursuant to subsection (h) of Sec. 2 of this act shall be deposited and credited to this fund. The fund shall be available to the attorney general to enter into memorandums of understanding with diversion programs to pay for contractual and operating expenses and project-related staffing related to the implementation and continuing operations of the DLS diversion program.

Sec. 4. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

### Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

\* \* \*

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times annually and shall cease to exist on January 1, ~~2012~~ 2014.

\* \* \*

### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

Senator Nitka, for the Committee on Appropriations, to which the bill was referred reported recommending that the bill be amended by striking out Sec. 4 in its entirety and by renumbering the remaining section to be numerically correct.

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

**Bill Passed**

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

**S. 136.** An act relating to vocational rehabilitation.

**Bill Amended; Bill Passed**

**S. 152.**

Senate bill entitled:

An act relating to the definition of line of duty in the workers' compensation statutes.

Was taken up.

Thereupon, pending third reading of the bill, Senators Illuzzi, Campbell, and Carris moved to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

\* \* \*

(12) "Public employment" means the following:

\* \* \*

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting ~~in the line of duty, after the governing officials of such municipal body so vote; in any capacity under the direction and control of the fire department or rescue and ambulance squads.~~

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty after election by the organization to~~



have its members covered by this chapter; in any capacity under the direction and control of the fire department.

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting ~~in the line of duty after election by the organization to have its members covered by this chapter;~~ in any capacity under the direction and control of the rescue or ambulance squad.

\* \* \*

Which was agreed to.

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

#### **Bill Passed**

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

**S. 194.** An act relating to consolidation of supervisory unions.

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

#### **H. 512.**

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

An act relating to banking, insurance, securities, and health care administration.

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

#### **S. 239.**

Consideration was resumed on Senate bill entitled:

An act relating to ensuring the humane treatment and slaughter of animals.

Senator Giard, on behalf of the Committee on Agriculture moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Agriculture as follows:

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

#### **Sec. 1. STATEMENT OF PURPOSE**

It shall be the purpose of this act to prohibit the cruel confinement of sows during gestation in a manner that does not allow them to turn around freely, lie down, stand up, or fully extend their limbs.

Sec. 2. 6 V.S.A. chapter 201 is amended to read:

CHAPTER 201. HUMANE SLAUGHTER OF LIVESTOCK

\* \* \*

§ 3134. PENALTY

A person who violates section 3132 or 3135 of this title shall be guilty of a misdemeanor and shall be fined upon conviction not more than \$ 1,000.00 for the first violation, not more than \$5,000.00 for the second violation, and not more than \$10,000.00 per violation for the third and any subsequent violations, or imprisoned not more than two years, or both. In addition to the penalties provided in this subsection, the secretary may seek an injunction against a slaughterer, packer, or stockyard operator who engages in practices which are prohibited by section 3132 or 3135 of this title, by application to the superior court for the county in which such slaughterer, packer, or stockyard operator resides, or where such violations occur. The secretary may refer a violation of section 3132 or 3135 of this title to the attorney general or the state's attorney for criminal prosecution. The secretary may also take any action authorized under chapter 1 of this title.

§ 3135. DEFINITIONS

(a) In this section:

(1) “Enclosure” means a cage, crate, or other structure used to confine an animal, including what is commonly described as a “gestation crate” for sows.

(2) “Farm” means the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber and does not include live animal markets.

(3) “Farm owner or operator” means any person who owns or controls the operations of a farm and does not include any non-management employee, contractor, or consultant.

(4) “Fully extending the animal’s limbs” means fully extending all limbs without touching the side of an enclosure.

(5) “Sow in gestation” means a pregnant animal of the porcine species kept for the primary purpose of breeding.

(6) “Turning around freely” means turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure.

(b) Prohibition. Notwithstanding any other provision of law, a person is guilty of unlawful confinement of a sow during gestation if the person is a farm owner or operator who knowingly tethers or confines the sow in an enclosure in a manner that prevents the sow from turning around freely, lying down, standing up, and fully extending its limbs.

(c) Exceptions. The prohibition in subsection (b) of this section shall not apply:

(1) During examination or testing or individual treatment of or operation on an animal for veterinary purposes;

(2) During transportation;

(3) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions or educational programs;

(4) To the humane slaughter of an animal in accordance with this chapter and the rules adopted pursuant to section 3133 of this title pertaining to the slaughter of animals; and

(5) To a sow during the seven-day period prior to the sow's expected date of giving birth.

(d) Relation to other laws.

(1) The provisions of this section are in addition to and not in lieu of any other laws protecting animal welfare.

(2) It is not an affirmative defense to alleged violations of this section that the sow was kept as part of an agricultural operation and in accordance with customary animal husbandry or farming practices.

Which was agreed to.

Thereupon, the question, Shall the bill be amended as substituted by the Committee on Agriculture?, was decided in the affirmative.

Thereupon, the question, Shall the bill be read the third time?, was decided in the affirmative 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:** Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

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

**Bill Amended; Third Reading Ordered**

**S. 106.**

Senator Flory, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to miscellaneous changes to municipal government law.

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

\* \* \* Violations; Penalties \* \* \*

Sec. 1. 10 V.S.A. § 2675 is amended to read:

§ 2675. PENALTIES

A person who commits a violation under subsection 2645(a) or 2648(a) of this title shall be subject to a fine of not more than ~~\$25.00~~ \$75.00 per violation. In the case of a violation which continues after the issuance of a fire prevention complaint, each day's continuance may be deemed a separate violation.

Sec. 2. 24 V.S.A. § 1974a is amended to read:

§ 1974a. ENFORCEMENT OF CIVIL ORDINANCE VIOLATIONS

(a) A civil penalty of not more than ~~\$500.00~~ \$800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is ~~\$500.00~~ \$800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than ~~\$500.00~~ \$800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

\* \* \*

Sec. 3. 24 V.S.A. § 4451 is amended to read:

§ 4451. ENFORCEMENT; PENALTIES

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than ~~\$100.00~~ \$300.00 for each

offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than ~~\$100.00~~ \$300.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

\* \* \* Damages by Dogs \* \* \*

#### Sec. 4. REPEAL

20 V.S.A. §§ 3741 (election of remedy), 3742 (notice of damage; appraisal), 3743 (examination of certificate), 3744 (fees and travel expenses), 3745 (identification and killing of dogs), 3746 (action against town), and 3747 (action by town against owner of dogs) are repealed.

## \* \* \* Taxes \* \* \*

Sec. 5. 24 V.S.A. § 1535 is amended to read:

## § 1535. ABATEMENT

(a) The board may abate in whole or part taxes, interest, ~~and~~ or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

\* \* \*

## \* \* \* Municipal Powers and Duties \* \* \*

Sec. 6. 24 V.S.A. § 1571 is amended to read:

## § 1571. ACCOUNTS

(a) The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him or her, and of moneys paid out by him or her for the town and the town school district, which accounts shall at all times be open to the inspection of persons interested.

(b) Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.

(c) The town treasurer shall file quarterly reports with the legislative body regarding his or her actions described in subsections (a) and (b) of this section.

Sec. 7. 24 V.S.A. § 1972 is amended to read:

## § 1972. PROCEDURE

(a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. ~~The full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published~~ legislative body shall arrange for one formal publication of the ordinance or rule in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, the information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer

questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title, ~~and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.~~

(2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by ~~section~~ subsection 1973(e) of this title.

\* \* \*

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law, or particular statute.

Sec. 8. 24 V.S.A. § 2291 is amended to read:

#### § 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. §§ ~~1141-1147~~ chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

\* \* \*

(6) To regulate the location, installation, maintenance, repair, and removal of utility poles, wires and conduits, water pipes or mains, or gas mains and sewers, upon, under, or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227-.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise, or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon, or other conveyance, excepting persons selling fruits, vegetables, or other farm produce.

\* \* \*

(11) To regulate, license, tax, or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.

\* \* \*

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

\* \* \*

(16) To name and rename streets and to number and renumber lots pursuant to section ~~4424~~ 4463 of this title.

\* \* \*

\* \* \* Poor Relief \* \* \*

Sec. 9. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

\* \* \*

(2) To perform all duties now conferred by law upon the ~~selectmen~~ selectboard, except that he or she shall not prepare tax bills, sign orders on the general fund of the town, ~~other than orders for poor relief~~, call special or annual town meetings, lay out highways, establish and lay out public parks, make assessments, award damages, act as member of the board of civil authority, nor make appointments to fill vacancies which the ~~selectmen are~~ selectboard is now authorized by law to fill; but he or she shall, in all matters herein excepted, render the ~~selectmen~~ selectboard such assistance as ~~they~~ it shall require;



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\* \* \*

(4) To have charge and supervision of all public town buildings, repairs thereon, and repairs of buildings of the town school district upon requisition of the school directors; and all building done by the town or town school district, unless otherwise specially voted, shall be done under his or her charge and supervision;

(5) To perform all the duties now conferred by law upon the road commissioner of the town, including the signing of orders; provided, however, that when an incorporated village lies within the territorial limits of a town which is operating under a town manager, and such village fails to pay to such town for expenditure on the roads of the town outside the village, at least ~~fifteen~~ 15 percent of the last highway tax levied in such village, the legal voters residing in such town, outside such village, may elect one or two road commissioners who shall have and exercise all powers of road commissioner within that part of such town as lies outside such village;

\* \* \*

Sec. 10. 24 V.S.A. § 1762 is amended to read:

§ 1762. LIMITS

(a) A municipal corporation shall not incur an indebtedness for public improvements which, with its previously contracted indebtedness, shall, in the aggregate, exceed ten times the amount of the last grand list of such municipal corporation. Bonds or obligations given or created in excess of the limit authorized by this subchapter and contrary to its provisions shall be void.

(b) However, the provisions of this subchapter as to the debt limit shall not apply to bonds issued under sections 1752; or 1754 and 1769 of this title, relating to the ordinary expenses of a municipality, ~~nor to bonds issued for poor relief.~~

Sec. 11. REPEAL

24 V.S.A. §§ 1769 (notes and bonds for poor relief) and 1770 (application) are repealed.

\* \* \* Glebe Lands \* \* \*

Sec. 12. REPEAL

24 V.S.A. §§ 2404 (rents of other lands, how divided and applied) and 2405 (contract under previous law not affected) are repealed.

## \* \* \* Municipal Planning and Development \* \* \*

Sec. 13. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

\* \* \*

(33) “Public road” means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

Sec. 14. 24 V.S.A. § 4442 is amended to read:

§ 4442. ADOPTION OF BYLAWS AND RELATED REGULATORY TOOLS; AMENDMENT OR REPEAL

\* \* \*

(c) Routine adoption.

(1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.

(2) However, a rural town ~~with a population of fewer than 2,500 persons as defined in section 4303 of this chapter~~, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

\* \* \*

\* \* \* Property; Filing of Land Plats \* \* \*

Sec. 15. 27 V.S.A. § 1404(b) is amended to read:

(b) Survey plats prepared and filed in accordance with ~~section 4416 of Title 24 V.S.A. § 4463~~ shall be exempt from subdivision 1403(b)(6) of this title. Survey plats or plans filed under this exemption shall contain a title area, the location of the land and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

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**Sec. 16. EFFECTIVE DATE**

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Ashe, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

**Bill Amended; Third Reading Ordered****S. 226.**

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

An act relating to prohibiting synthetic stimulants.

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

**Sec. 1. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)**

(a) Prescription drug abuse is Vermont's fastest growing drug problem. Treatment demand has grown over 500 percent since 2005 for medication-assisted treatment from physicians and methadone programs.

(b) Increased crime is a community by-product of the increase in untreated addiction. Reducing demand for these substances is an essential component of Vermont's strategy to decrease the crime and health-related problems stemming from prescription drug abuse and opiate addiction.

(c) Current capacity for methadone and buprenorphine treatment is not sufficient to meet the demand. As a component of the development of health homes, expansion of these treatments shall be sought in order to meet the escalating demand.

(d) The integrated treatment continuum for opiate dependence, also known as the hub and spoke model, that is being developed by the agency of human services in collaboration with community providers will create a coordinated, systemic response to the complex issues of opiate addiction. The use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 2. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) Murder in the first or second degree.

(2) Arson under sections 501-504 and 506 of this title.

(3) Sexual exploitation of children under sections 7822, 2822, and 2824 of this title.

(4) Receiving stolen property under sections 2561-2564 of this title.

(5) An offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under ~~section 4237, subdivision 4231(e)(1), or subsection 4233(c) or 4234a(e) of Title 18;~~

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana.

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine.

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin.

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine.

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine.

Sec. 3. 13 V.S.A. § 1409 is amended to read:

§ 1409. PENALTIES

The penalty for conspiracy is the same as that authorized for the crime which is the object of the conspiracy, ~~except that no term of imprisonment~~

~~shall exceed five years, and no fine shall exceed \$10,000.00. A sentence imposed under this section shall be concurrent with any sentence imposed for an offense which was an object of the conspiracy.~~

Sec. 4. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME

~~A Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony or while committing an offense under section 667 of Title 7, or while committing the crime of smuggling of an alien as defined by the laws of the United States, shall be imprisoned not more than five years or fined not more than \$500.00, or both.~~

Sec. 5. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A DRUG

(a) A person who uses a firearm during and in relation to selling or dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3), 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of this title shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, in addition to the penalty for the underlying crime.

(b) A person who uses a firearm during and in relation to trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or 4234a(c) of this title shall be imprisoned not more than five years or fined not more than \$10,000.00, or both, in addition to the penalty for the underlying crime.

(c) For purposes of this section, “use of a firearm” shall include the exchange of firearms for drugs, and this section shall apply to the person who trades his or her firearms for drugs and the person who trades his or her drugs for firearms.

Sec. 6. MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The Vermont drug task force (task force) was established in 1987 as a multi-jurisdictional, collaborative law enforcement approach to combating drug crime. The task force is composed of state, local, and county officers who are assigned to work undercover as full-time drug investigators. These investigators receive specialized training, equipment, and resources that enable them to conduct covert drug investigations. There are four units of the task force geographically located to cover all areas of the state. The drug investigators of each of the units are supervised by a state police sergeant.

State police commanders of the special investigation section are responsible for overall supervision and oversight of the task force.

(b) Working closely with state, local, county, and federal law enforcement agencies, the task force strives to investigate and apprehend those individuals directly involved in the distribution of dangerous drugs. The task force focuses on mid- to upper-level dealers, but also targets street level dealers who are negatively impacting Vermont's communities.

(c) To address the growing concern regarding gang involvement in the illegal drug trade as well as other gang-related criminal activity in Vermont's communities, a mobile enforcement team (team) shall be established consistent with the task force model. According to the U.S. Department of Justice, a gang is defined as a group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in or have engaged in criminal activity which creates an atmosphere of fear and intimidation.

(d) The team shall be made up of state and local investigators to include uniformed troopers and shall focus on gangs and organized criminal activity to include drug and gun trafficking and associated crimes. The team shall work closely with federal law enforcement agencies, state and federal prosecutors, the Vermont information and analysis center, and the department of corrections in collecting intelligence on gangs and organized criminal groups, to be shared with law enforcement partners throughout Vermont. The team shall not be assigned to a specific geographical area of Vermont but shall act as a rapid response team to specific identified problem areas.

#### Sec. 7. GANG ACTIVITY TASK FORCE

(a) The gang activity task force is established for the purpose of raising public awareness about gang activity and organized crime in Vermont and across state and international borders, identifying resources for local, county, and state law enforcement officials, recommending to the public ways to identify and report acts of gang activity and organized crime, and making findings and recommendations regarding those efforts to the general assembly.

(b) The task force shall be composed of the following members:

(1) The commissioner of public safety or his or her designee, who shall serve as chair.

(2) The commissioner of liquor control or his or her designee.

(3) Representatives, appointed by the governor, from the following:

(A) a municipal police department;

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- (B) a sheriff's department;
  - (C) the department of corrections;
  - (D) the department of education;
  - (E) the business community; and
  - (F) the health care community.
- (4) The United States' attorney for Vermont.
- (5) A representative of the Vermont crime victims services.
- (c) The task force shall perform the following duties:
- (1) Identify ways to raise public awareness about gang activity in Vermont communities.
  - (2) Recommend how the Vermont public, business community, local and state government, and health and education providers can best identify, report, and prevent acts of gang activity in Vermont.
  - (3) Identify the services needed by victims of gang activity and their families and recommend ways to provide those services.
- (d) The task force shall have the assistance and cooperation of all state and local agencies and departments.
- (e) For attendance at meetings, members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010, plus mileage.
- (f) On or before November 15, 2012, the task force shall report to the members of the senate and house committees on judiciary and to the legislative council its recommendations and legislative proposals, if any, relating to its findings.
- (g) The task force may meet no more than six times and shall cease to exist on January 15, 2013.

Sec. 8. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity in Vermont and assess whether Vermont would benefit from a state Racketeer Influenced and Corrupt Organizations Act. The attorney general shall consult with the gang activity task force and the defender general in his or her deliberations. The report shall identify existing Vermont and federal law that addresses organized crime and recommendations for enhancing these laws, including any

legislation necessary to implement the recommendations. The attorney general shall issue the report to the general assembly no later than January 15, 2013.

Sec. 9. APPROPRIATION; MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The amount of \$150,000.00 is appropriated from the general fund to the department of public safety to provide funding for the mobile enforcement team established in Sec. 6 of this act.

(b) The commissioner of public safety may, at his or her discretion, utilize grants dedicated to fund the work of the drug task force to support the efforts of the gang task force and mobile enforcement team.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

After passage, the title of the bill is to be amended to read:

An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

**Joint Resolution Referred**

**J.R.H. 28.**

Joint House resolution entitled:

Joint resolution congratulating the Republic of China (Taiwan), President Ma Ying-jeou, and the 23 million Taiwanese people on their successful 2012 democratic elections and urging support for Taiwan's participation in various international organizations.

Having been placed on the Calendar for action, was taken up and pending the question, Shall the joint House resolution be adopted in concurrence?, on motion of Senator Ashe, the joint resolution was referred to the Committee on Economic Development, Housing and General Affairs.



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**Joint Resolution Adopted in Concurrence****J.R.H. 29.**

Joint House resolution entitled:

Joint resolution commemorating Women's History Month, the publication of the sixth edition of *The Legal Rights of Women in Vermont*, and reaffirming continuing support for equal rights for women.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

**Message from the House No. 35**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

**H. 469.** An act relating to potable water supply and wastewater system isolation distances.

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

The House has considered joint resolution originating in the Senate of the following title:

**J.R.S. 50.** Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Magistrate.

And has adopted the same in concurrence.

**Adjournment**

On motion of Senator Campbell, the Senate adjourned until eleven o'clock and thirty minutes in the morning on Friday, March 16, 2012.

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**FRIDAY, MARCH 16, 2012**

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. 36**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 37.** An act relating to telemedicine.

**H. 523.** An act relating to revising the state highway condemnation law.

**H. 524.** An act relating to the regulation of professions and occupations.

**H. 764.** An act relating to health insurance brokers' fees.

**H. 765.** An act relating to the mental health needs of the corrections population.

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

The House has adopted joint resolutions of the following titles:

**J.R.H. 27.** Joint resolution supporting the Vermont State Hospital employees.

**J.R.H. 30.** Joint resolution authorizing 2012 Green Mountain Girls' State to conduct a civic education program at the State House.

**J.R.H. 31.** Joint resolution urging Congress to designate March 29 as Vietnam Veterans Day.

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

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 292.** House concurrent resolution designating March 12–18 as Multiple Sclerosis Week in Vermont.

**H.C.R. 293.** House concurrent resolution honoring Montpelier city clerk and treasurer Charlotte Hoyt for her outstanding public service.

**H.C.R. 294.** House concurrent resolution honoring and thanking the individuals, institutions, and organizations who lent their assistance so generously during and after Tropical Storm Irene.

**H.C.R. 295.** House concurrent resolution congratulating Emery Tillman of Cornwall on her kayaking accomplishments.

**H.C.R. 296.** House concurrent resolution honoring Elizabeth Benedict for her lifelong commitment to educational excellence.

**H.C.R. 297.** House concurrent resolution honoring Belinda H. Clegg for her outstanding public service to the town of Wolcott.

**H.C.R. 298.** House concurrent resolution congratulating Marlboro College on its 65th anniversary.

**H.C.R. 299.** House concurrent resolution recognizing the outstanding health care services provided by Gifford Medical Center in Randolph.

**H.C.R. 300.** House concurrent resolution honoring Brattleboro radio station WKVT AM/FM for its outstanding Tropical Storm Irene community support effort.

**H.C.R. 301.** House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

**H.C.R. 302.** House concurrent resolution in memory of former Representative Mary Shelby Paull.

**H.C.R. 303.** House concurrent resolution congratulating the Middlebury Union High School Tigers' 2012 Division II girls' championship Nordic skiing team .

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

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

**S.C.R. 39.** Senate concurrent resolution honoring former Representative and Senator Robert T. Gannett on his 95th birthday.

**S.C.R. 40.** Senate concurrent resolution congratulating Ross Connelly and Thomas F. Kearney on their induction into the New England Newspaper Hall of Fame.

And has adopted the same in concurrence.

### **Rules Suspended; Bill Committed**

#### **S. 200.**

Appearing on the Calendar for notice, on motion of Senator Cumings, the rules were suspended and Senate bill entitled:

An act relating to the reporting requirements of health insurers.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

**Rules Suspended; Bill Committed****S. 222.**

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

An act relating to cost-sharing for employer-sponsored insurance assistance plans.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Health and Welfare, Senator Campbell moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Appropriations with the report of the Committee on Health and Welfare *intact*,

Which was agreed to.

**Bills Referred**

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

**H. 37.**

An act relating to telemedicine.

To the Committee on Health and Welfare.

**H. 469.**

An act relating to potable water supply and wastewater system isolation distances.

To the Committee on Natural Resources and Energy.

**H. 523.**

An act relating to revising the state highway condemnation law.

To the Committee on Judiciary.

**H. 524.**

An act relating to the regulation of professions and occupations.

To the Committee on Government Operations.

**H. 764.**

An act relating to health insurance brokers' fees.

To the Committee on Finance.

**H. 765.**

An act relating to the mental health needs of the corrections population.

To the Committee on Institutions.

**Joint Resolution Referred****J.R.H. 27.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution supporting the Vermont State Hospital employees.

Whereas, on August 28, 2011, the severe flooding resulting from Tropical Storm Irene forced the immediate closing of the Vermont State Hospital in Waterbury, and

Whereas, this sudden disaster required quick and decisive decisions to be implemented, and

Whereas, the Vermont State Hospital employees safely evacuated every patient, and the patients were all relocated to alternative locations across the state, and

Whereas, the employees continued to provide outstanding care to the patients wherever they were temporarily assigned, including hospital psychiatric units, step-down facilities, and even correctional units, and

Whereas, at great personal sacrifice to themselves and their families, the employees voluntarily moved to 12-hour shifts and stayed at hotels near where their patients were being treated, and

Whereas, the employees' heroic efforts have been widely credited for preventing tragedy and a complete breakdown of Vermont's mental health system, and

Whereas, the department of mental health's announcement on February 24, 2012 that approximately 80 of these excellent state employees will soon be separated from state service is a devastating blow to these extremely conscientious and dedicated individuals, and

Whereas, the working Vermonters legislative caucus is gravely concerned about the future of the entire mental health system, including the welfare of the patients and the fair treatment of state employees, and

Whereas, every reasonable effort to provide continuing employment for these individuals must be made, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly strongly urges the department of mental health and the department of human resources to agree to the following:

First: That should an interim state mental health care facility be opened, the laid-off state employees will be given the first rights to accept the jobs required to operate this temporary mental health care facility;

Second: That for one year after a new permanent state hospital is opened, the laid-off state employees will be granted reduction in force (RIF) rights, even if they have been working outside state government in the interim, and

Third: That the department of human resources and the Vermont State Employees Association will collaborate on potential alternatives to employee layoffs including possible retirement options, and

Fourth: That the employees will be provided with job counseling and assistance in finding immediate employment either in or outside state government, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Governor Peter Shumlin, Commissioner of Mental Health Patrick Flood, and Commissioner of Human Resources Kate Duffy.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was treated as a bill and referred to the Committee on Government Operations.

### **Joint Resolutions Placed on Calendar**

#### **J.R.H. 30.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution authorizing 2012 Green Mountain Girls' State to conduct a civic education program at the State House.

Whereas, for many years, the Vermont American Legion Auxiliary has sponsored the annual Green Mountain Girls' State (Girls' State) civic education program, and

Whereas, Girls' State enables young women in high school to gain a first-hand experience and understanding of state government's procedures in all three branches of government, and

Whereas, a highlight of Girls' State is the day at the State House, featuring mock legislative committee meetings and chamber debate on proposed bills that focus on leading public policy issues, and students shadowing senior officials in the executive and judicial branches, and

Whereas, legislative staff have offered their professional support services, helping the students gain a better appreciation of Vermont's legislative process, and

Whereas, in 2012, Girls' State is scheduled to convene at the State House on June 20, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes Green Mountain Girls' State to use the House and Senate chambers, the legislative committee meeting rooms, and the governor's ceremonial office on Wednesday, June 20, 2012, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Vermont American Legion Auxiliary.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**J.R.H. 31.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution urging Congress to designate March 29 as Vietnam Veterans Day.

Whereas, on March 29, 1973, the last 2,500 United States troops were withdrawn from South Vietnam, ending American military involvement in what was the longest war in our country's history, and

Whereas, the President designated March 29, 1974 as Vietnam Veterans Day, and

Whereas, the 58,195 honorable and brave souls who fought and died during the Vietnam War, the many who remain missing in action, and all those who have died since from the consequences of that war deserve the eternal gratitude and respect of our nation, and

Whereas, the men and women who served with dedication, honor, and pride during the Vietnam War era in Vietnam, elsewhere overseas, or in the United States merit special honor and recognition, and

Whereas, the families whose loved ones gave their lives for our country during the Vietnam War should always be in our thoughts, and

Whereas, many men and women came home from Vietnam with physical and emotional wounds, and their families are committed to a lifetime of care and support for their loved one, and these families should be honored, and

Whereas, the citizens who stood by and supported, without reservation, the families of the fallen as well as the Vietnam veterans who returned and their families all are worthy of praise, and

Whereas, the professionals and volunteers who committed themselves to the loving care and healing of the bodily and emotionally wounded from the Vietnam War are special individuals who deserve recognition, and

Whereas, allied personnel who served with dedication, honor, and pride alongside our nation's defenders during the Vietnam War deserve our respect and gratitude, and

Whereas, this expression of respect and gratitude for the service and sacrifice of Vietnam veterans and their families will give hope and assurance to current and future generations of our nation's defenders and their families that our nation will honor and remember their sacrifice, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to designate March 29 as Vietnam Veterans Day, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to members of the Vermont Congressional Delegation.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

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

#### **S. 214.**

Senator MacDonald, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to customer rights regarding smart meters.

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

Sec. 1. 30 V.S.A. § 2811 is added to read:

#### § 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Smart meter" means a wired smart meter or a wireless smart meter.

(2) "Wired smart meter" means an advanced metering infrastructure device using a fixed wire for two-way communication between the device and an electric company.



(3) “Wireless smart meter” means an advanced metering infrastructure device using radio or other wireless means for two-way communication between the device and an electric company.

(b) Customer rights. Notwithstanding any law, order, or agreement to the contrary, an electric company may install a wireless smart meter on a customer’s premises, provided the company:

(1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights under subdivisions (2) and (3) of this subsection;

(2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge, unless such charge is approved by the public service board pursuant to subsection (c) of this section; and

(3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.

(c) Fees. Upon full deployment of its advanced metering infrastructure, an electric company may charge an opt-out fee to customers who choose not to have a wireless smart meter installed, or who have a wireless smart meter removed, provided the fee is cost based and approved by the board.

(d) Reports. On January 1, 2014 and again on January 1, 2016, the commissioner of public service shall publish a report on the energy savings realized through the use of smart meters, as well as on the occurrence of any breaches to a company’s cyber security infrastructure. The reports shall be based on electric company data requested by and provided to the commissioner of public service and shall be in a form and in a manner the commissioner deems necessary to accomplish the purposes of this subsection. The reports shall be submitted to the senate committees on finance and on natural resources and energy and the house committees on commerce and economic development and on natural resources and energy.

(e) Health report. On or before January 15, 2013, the commissioner of health shall submit a report to the senate committee on finance and the house committee on commerce and economic development which shall include: an update of the department of health’s 2012 report entitled “Radio Frequency Radiation and Health: Smart Meters”; a summary of the department’s activities monitoring the deployment of wireless smart meters in Vermont, including a representative sample of postdeployment radio frequency level

testing; and recommendations relating to evidence-based surveillance on the potential health effects of wireless smart meters.

Sec. 2. INSTALLED WIRELESS SMART METERS

If an electric company has installed a wireless smart meter, as defined in 30 V.S.A. § 2811(a)(3), prior to the effective date of this act, the company shall provide notice of the installation to the applicable customers, and such notice shall include a statement of customer rights as described under 30 V.S.A. § 2811(b).

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

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

**Bill Amended; Bill Passed**

**S. 226.**

Senate bill entitled:

An act relating to prohibiting synthetic stimulants.

Was taken up.

Thereupon, pending third reading of the bill, Senators Campbell and Benning moved to amend the bill by in Sec. 7, by adding subdivisions (b)(6)–(9) to read as follows:

(6) An attorney appointed by the criminal law section of the Vermont Bar Association.

(7) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(8) A senator appointed by the president pro tempore.

(9) A representative appointed by the speaker of the house.

Which was agreed to.

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

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**Bills Passed**

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

**S. 239.** An act relating to ensuring the humane treatment and slaughter of animals.

**S. 244.** An act relating to referral to court diversion for driving with a suspended license.

**Bill Amended; Third Reading Ordered**

**S. 201.**

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

An act relating to expanding public school choice for elementary and high school students.

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

Sec. 1. 16 V.S.A. § 822 is amended to read:

**§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS ~~OR~~ PAY TUITION; TUITION**

(a) Each school district shall ~~provide, furnish, and~~ maintain one or more approved ~~high~~ schools in which it provides high school education ~~is provided~~ for its resident pupils unless:

(1) ~~The~~ the electorate authorizes the school board to ~~close an existing high school and to~~ provide for the high school education of its resident pupils solely by paying tuition ~~in accordance with law. Tuition for its pupils shall be paid pursuant to this chapter~~ to a public high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or ~~without~~ outside the state; or

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory school attendance shall be obligated to pay tuition for its pupils for at least four additional years. [Repealed.]~~

(c) ~~The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the~~

~~board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at a nearby another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

Sec. 2. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) "High school" means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) "Student" means a student's parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this

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section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition

the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 3. 16 V.S.A. § 4001(1) is amended to read:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

\* \* \*

Sec. 4. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 5. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 2 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

Sec. 6. EFFECTIVE DATE; IMPLEMENTATION

This act shall take effect on July 1, 2012; provided, however, that this act shall apply to enrollment in academic year 2013–2014 and after.

After passage, the title of the bill is to be amended to read:

An act relating to creating full public school choice for high school students.

And that when so amended the bill ought to pass.

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

### **House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Representative Krebs and others,

#### **H.C.R. 292.**

House concurrent resolution designating March 12–18 as Multiple Sclerosis Week in Vermont.

By Representatives Hooper and Kitzmiller,

By Senators Cummings, Doyle and Pollina,

#### **H.C.R. 293.**

House concurrent resolution honoring Montpelier city clerk and treasurer Charlotte Hoyt for her outstanding public service.

By All Members of the House,

By All Members of the Senate,

#### **H.C.R. 294.**

House concurrent resolution honoring and thanking the individuals, institutions, and organizations who lent their assistance so generously during and after Tropical Storm Irene.

By Representative Jewett,

#### **H.C.R. 295.**

House concurrent resolution congratulating Emery Tillman of Cornwall on her kayaking accomplishments.

By Representative Miller,

By Senators Hartwell and Sears,

#### **H.C.R. 296.**

House concurrent resolution honoring Elizabeth Benedict for her lifelong commitment to educational excellence.



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By Representative Martin,

**H.C.R. 297.**

House concurrent resolution honoring Belinda H. Clegg for her outstanding public service to the town of Wolcott.

By Representative Stuart and others,

By Senators Galbraith and White,

**H.C.R. 298.**

House concurrent resolution congratulating Marlboro College on its 65th anniversary.

By Representative Townsend and others,

By Senator MacDonald,

**H.C.R. 299.**

House concurrent resolution recognizing the outstanding health care services provided by Gifford Medical Center in Randolph.

By Representative Edwards and others,

By Senators Galbraith and White,

**H.C.R. 300.**

House concurrent resolution honoring Brattleboro radio station WKVT AM/FM for its outstanding Tropical Storm Irene community support effort.

By Representative Pugh and others,

By Senator Ayer,

**H.C.R. 301.**

House concurrent resolution honoring the outstanding efforts of those who care for, educate, and advocate for our young children in Vermont.

By Representative Batchelor and others,

By Senators Illuzzi and Starr,

**H.C.R. 302.**

House concurrent resolution in memory of former Representative Mary Shelby Paull.

By Representative Nuovo and others,

**H.C.R. 303.**

House concurrent resolution congratulating the Middlebury Union High School Tigers' 2012 Division II girls' championship Nordic skiing team.

**Adjournment**

On motion of Senator Campbell, the Senate adjourned, to reconvene on Tuesday, March 20, 2012, at nine o'clock and thirty minutes in the forenoon pursuant to J.R.S. 49.

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**TUESDAY, MARCH 20, 2012**

The Senate was called to order by the President.

**Devotional Exercises**

Devotional exercises were conducted by the Reverend Kevin Rooney of Northfield.

**Pledge of Allegiance**

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

**Bills Referred to Committee on Finance**

Senate bills of the following titles, appearing on the Calendar for notice, and affecting the revenue of the state, under the rule were severally referred to the Committee on Finance:

**S. 99.** An act relating to agricultural economic development.

**S. 143.** An act relating to disclosing building energy performance and promoting thermal energy efficiency.

**S. 173.** An act relating to simplifying the formation of business start-ups.

**S. 246.** An act relating to preserving Vermont's working landscape.

**Bills Referred to Committee on Appropriations**

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

**S. 169.** An act relating to workers' compensation liens.

**S. 172.** An act relating to creating a private activity bond advisory committee.

**S. 223.** An act relating to extending health insurance coverage for autism spectrum disorders.

**S. 233.** An act relating to gradually increasing the mandatory age of school attendance.

**S. 238.** An act relating to establishing the Vermont farm guest worker program.

### **Joint Senate Resolution Adopted on the Part of the Senate**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

**J.R.S. 51.** Joint resolution relating to weekend adjournment.

#### ***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Thursday, March 22, 2012, or, Friday, March 23, 2012, it be to meet again no later than Tuesday, March 27, 2012.

### **Rules Suspended; Bill Committed**

Appearing on the Calendar for notice, on motion of Senator Cummings the rules were suspended and Senate bill entitled:

**S. 137.** An act relating to workers' compensation and unemployment compensation.

Was taken up for immediate consideration.

Thereupon, pending the reading of the report of the Committee on Economic Development, Housing and General Affairs, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Finance with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

### **Consideration Postponed**

#### **S. 106.**

Senate bill entitled:

An act relating to miscellaneous changes to municipal government law.

Was taken up.

Thereupon, pending third reading of the bill, Senator Flory moved to amend the bill by in Sec. 7, 24 V.S.A. § 1972, in subdivision (a)(1), after "legislative

body shall arrange for one formal publication of the ordinance or rule”, by inserting the following: or a concise summary thereof

Which was agreed to.

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

First: In Sec. 3, 24 V.S.A. § 4451, in subsection (a), after “~~\$100.00~~”, by striking out the following: “~~\$300.00~~” and inserting in lieu thereof the following: \$200.00

Second: In Sec. 3, 24 V.S.A. § 4451, in subsection (b), after “~~\$100.00~~”, by striking out the following: “~~\$300.00~~” and inserting in lieu thereof the following: \$200.00

Which was agreed to.

Thereupon, pending the question, Shall the bill pass?, on motion of Senator Campbell consideration of the bill was postponed until later in the legislative day.

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

#### **S. 148.**

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

An act relating to a pilot project on expediting development of small hydroelectric plants.

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

#### Sec. 1. FINDINGS

The general assembly finds:

(1) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) The Comprehensive Energy Plan issued in December 2011 by the department of public service (DPS) states in Sec. 5.8.2.1.1:

Opinions differ on the amount of available hydropower that is available in Vermont. Depending on assumptions used, reports vary from 25 MW at 44 sites (estimated by the ANR [agency of natural resources] in 2008) to 434 MW at 1,291 sites (estimated in a DOE [Department of Energy] study in 2006). A 2007 study for

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the DPS identified more than 90 MW developable at 300 of the existing 1,200 existing dams.

(3) Many hydroelectric projects require a license from the Federal Energy Regulatory Commission (FERC) unless FERC grants an exemption. The length and cost of the process of obtaining a FERC license or exemption do not vary significantly with the capacity of the hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

(4) There are two classes of hydroelectric license exemptions granted by FERC:

(A) Small hydropower projects, which are five megawatts or less, that will be built at an existing dam, or projects that utilize a natural water feature for head or an existing project that has a capacity of five megawatts or less and proposes to increase capacity.

(B) Conduit exemptions for generating capacities of 15 megawatts or less for nonmunicipal and 40 megawatts or less for a municipal project. The conduit must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, "conduit" refers to a human-made water conveyance (e.g., an irrigation canal).

(5) In August 2010, FERC and the state of Colorado, through its energy office, entered into a memorandum of understanding "to streamline and simplify the authorization of small-scale hydropower projects." Under this agreement, Colorado has undertaken a pilot project to test options for simplifying the procedures to authorize the exemptions described in subdivision (4) of this section for projects in Colorado while ensuring environmental safeguards. The state's prescreening will allow FERC to waive stages of its exemption authorization process. The pilot project will continue until 20 projects have gone through the program.

(6) In Vermont, the state energy office is the department of public service and the main agency engaged in environmental regulation is the agency of natural resources (ANR). When a FERC license is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

(7) In a report to the general assembly entitled "The Development of Small Hydroelectric Projects in Vermont" (Jan. 9, 2008) at p. 19, ANR states that most hydroelectric projects in Vermont are smaller than five MW in capacity.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL HYDROELECTRIC PROJECTS

(a) In consultation with the secretary of natural resources (the secretary), the commissioner of the department of public service (the commissioner) shall enter into a memorandum of understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a project to simplify the procedures for FERC's granting exemptions to its license requirements for projects in Vermont that constitute small conduit hydroelectric facilities and small hydroelectric power projects as defined in 18 C.F.R. § 4.30 (the MOU project). By July 15, 2012, the commissioner shall initiate with FERC the process of negotiating this MOU.

(b) In negotiating and entering into this MOU, the commissioner shall seek terms at least as favorable to the development of in-state hydroelectric projects as those contained in the August 2010 "Memorandum of Understanding between the Federal Energy Regulatory Commission and the State of Colorado through the Governor's Energy Office to Streamline and Simplify the Authorization of Small Scale Hydropower Projects."

(c) In negotiating and entering into an MOU under this section, the commissioner in consultation with the secretary shall offer and agree to prescreening by the state of Vermont of hydroelectric projects participating in the MOU project.

(d) A MOU between the commissioner of public service and FERC under this section shall bind the state of Vermont and its agencies, including the department of public service and the agency of natural resources.

(e) No later than January 15, 2013 and annually by each January 15 thereafter through the first January 15 after completion of the MOU project, the commissioner shall submit a written report to the general assembly detailing the progress of the project, including an identification of each hydroelectric project participating in the MOU project. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection.

(f) On entry into an MOU with FERC under this section, the commissioner shall submit a copy of the MOU to the general assembly.

(g) As necessary and appropriate, the commissioner and the secretary shall seek funding from available sources to support the MOU project under this section, including funding from a federal agency or funding that may be available because a participating hydroelectric project will provide benefits to the regional electric transmission or local electric transmission and distribution

systems. Inception of the MOU project shall not be contingent on receipt of such funding.

### Sec. 3. MICRO HYDROELECTRIC PROJECTS; STUDY; REPORT

By January 15, 2013, the secretary of natural resources (the secretary), in consultation with the commissioner of the department of public service, shall evaluate options to facilitate the development in Vermont of micro hydroelectric projects and shall submit a report to the general assembly stating the results of this evaluation and providing the secretary's recommendations on how to facilitate such development.

(1) For the purpose of this section, "micro hydroelectric project" shall mean a hydroelectric project having a nameplate capacity of 100 kilowatts or less.

(2) The evaluation and report under this section shall address the regulatory barriers to the development of in-state micro hydroelectric projects.

(3) The report shall include the secretary's recommendations on how these barriers may be appropriately addressed, while protecting environmental quality, in order to facilitate the development of micro hydroelectric projects, including potential mechanisms to increase the transparency and reduce the cost and time of the process to obtain necessary government approvals.

(4) The report shall attach recommended legislation to facilitate the development in Vermont of micro hydroelectric projects.

(5) In preparing the report under this section, the secretary may build on work performed in preparing prior reports and studies that address the same subject matter.

### Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

After passage, the title of the bill is to be amended to read:

An act relating to expediting development of small and micro hydroelectric projects.

And that when so amended the bill ought to pass.

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

**Bill Amended; Third Reading Ordered****S. 202.**

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

An act relating to regulation of flood hazard areas.

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

Sec. 1. 10 V.S.A. chapter 32 is amended to read:

CHAPTER 32. FLOOD HAZARD AREAS

§ 751. PURPOSE

The purpose of this chapter is to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding; to ensure that the development of the flood hazard areas of this state is accomplished in a manner consistent with the health, safety and welfare of the public; ~~to provide state assistance to local government units in management of flood hazard areas;~~ to coordinate federal, state, and local management activities for flood hazard areas; to encourage local government units to manage flood hazard areas and other flood-prone lands; ~~to provide state assistance to local government units in management of flood-prone lands;~~ to authorize adoption of state rules for management in a flood hazard area of development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117; to maintain the wise agricultural use of flood-prone lands; to carry out a comprehensive statewide flood hazard area management program for the state in order to ~~make the state and units of local government eligible~~ ensure eligibility for flood insurance under the requirements of the ~~federal department of housing and urban development in administering Title XIII of the Housing and Urban Development Act of 1968~~ National Flood Insurance Program.

§ 752. DEFINITIONS

For the purpose of this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Development," for the purposes of flood hazard area management and regulation, shall have the same meaning as "development" under 44 C.F.R. § 59.1.

(3) ~~"Flood hazard area" means an area which would be inundated in a flood of such severity that the flood would be statistically likely to occur once~~



~~in every hundred years. In appropriate circumstances this might be the 1927 or the 1973 flood. In delineating any flood hazard area for the one hundred year flood based upon prior floods, flood control devices such as, but not limited to dams, canals, and channel work should be considered in the delineation shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.~~

~~(3)(4) “Flood proofing” shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.~~

~~(5) “Floodway” means the channel of a watercourse and adjacent land areas which are required to carry and discharge the one hundred year flood within a regulated flood hazard area without substantially increasing the flood heights delineation shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.~~

~~(4) “Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings delineation.~~

~~(5)(6) “Legislative body” means the board of selectmen selectboard, trustees, mayor, city council, and board of aldermen alderboard of a municipality.~~

~~(6)(7) “Municipality” means any town, city, or incorporated village.~~

~~(7)(8) “Obstruction” means any natural or artificial condition including but not limited to, real estate which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or so situated that the flow of the water might carry it downstream to the damage of life or property “National Flood Insurance Program” means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.~~

~~(8)(9) “Regional planning commission” means the regional planning commission of which a municipality is a member or would be a member based upon its location.~~

~~(10) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium condition, as that term is defined in section 1422 of this title, and minimize fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.~~

(9)(11) “Secretary” means the secretary of the agency of natural resources or the secretary’s duly authorized representative.

§ 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and schedule.~~ All The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to these ends achieve the purposes of this chapter and to secure flood plain insurance for municipalities and the state of Vermont. All correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the legislative body, and the planning commission, and the conservation commission if one exists. Copies of this correspondence shall be sent to the regional planning commission, and the agency of commerce and community development, and the state planning office.

(b) Notice of designation of flood hazard areas; maps. The secretary shall, as the information becomes available, provide each municipality with a designation of flood hazard areas. The designation shall include a map or maps.

(c) Permit application review by certified floodplain managers. The secretary may delegate to a certified flood plain manager for a regional planning commission or for a municipality with a flood hazard area bylaw or ordinance the secretary’s authority under 24 V.S.A. § 4424(a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. The secretary shall establish a procedure for authorizing a certified floodplain manager to conduct the review required under 24 V.S.A. § 4424(a)(2)(D), including eligibility requirements for authorization to conduct permit application review and an approved process or list of approved certifications that the secretary shall accept as proof of floodplain management certification. Comments provided by a certified floodplain manager delegated under this subsection shall not be binding on a municipality.

§ 754. FLOOD HAZARD AREA RULES; DEVELOPMENT EXEMPT FROM MUNICIPAL REGULATION

(a) Rulemaking authority. On or before July 1, 2013, the secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to development that is:

(1) exempt from municipal land use regulation under 24 V.S.A. chapter 117; and

(2) located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure that development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 is regulated by the state in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

(2) be designed to ensure that the state and municipalities meet community eligibility requirements for the National Flood Insurance Program.

(3) require that the secretary provide to a municipality in which the development will occur notice of an application received under this section and a copy of the permit issued.

(c) Discretionary rulemaking; general permit. The rules may:

(1) establish requirements that exceed the requirements of the National Flood Insurance Program for development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117.

(2) establish requirements, allowances, or exemptions for the regulation of development in established “downtowns” and “village centers,” as those terms are defined in 24 V.S.A. § 2791(3) and (10), provided that such requirements comply with the minimum regulatory obligations set forth under the National Flood Insurance Program.

(d) General permit. The rules authorized by this section may establish requirements for a general permit to implement the rules adopted under this section, including authorization under the general permit to conduct specified development without notifying or reporting to the secretary or to an agency delegated under subsection (i) of this section.

(e) Consultation with interested parties. Prior to adopting or amending rules under this section, the secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the Federal Emergency Management Agency; the secretary of commerce and community development; the secretary of agriculture, food and markets; the secretary of transportation; the regional planning commissions; and the Vermont League of Cities and Towns.

(f) FEMA approval. On completing the rulemaking process under 3 V.S.A. chapter 25, the secretary shall promptly request the Federal Emergency Management Agency’s approval of the rules adopted pursuant to this section.

(g) Effective date of rules. Notwithstanding 3 V.S.A. § 845(d), rules adopted under this section shall take effect 120 days after they are approved by the Federal Emergency Management Agency.

(h) Permit requirement. Upon the effective date of the rules required by this section, no person shall commence or conduct development that is exempt from municipal land use regulation under 24 V.S.A. chapter 117 in a flood hazard area in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 without a permit issued by the secretary under the rules required by this section.

(i) Delegation.

(1) The secretary may delegate to another state agency the authority to implement the rules adopted under this section, to issue a permit under subsection (h) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the secretary and a delegated state agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section. Prior to entering a memorandum of understanding, the secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the house and senate committees on natural resources and energy, the house committee on fish, wildlife and water resources, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

(j) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance only shall apply to development that is not exempt from municipal land use regulation under 24 V.S.A. chapter 117.

#### § 755. MUNICIPAL EDUCATION; MODEL FLOOD HAZARD AREA BYLAW OR ORDINANCE

(a) Education and assistance. The secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance,

and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program.

(b) Model flood hazard area bylaw or ordinance. The secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance may include provisions that exceed the minimum requirements of the National Flood Insurance Program in order to encourage municipal land use regulation of nonexempt development in a manner that minimizes the risk of harm to life, property, and infrastructure from flooding.

(c) Assistance to municipalities with no flood hazard area bylaw or ordinance. The secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the National Flood Insurance Program.

\* \* \* Stream Alteration; Emergency Activities \* \* \*

Sec. 2. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

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

(4) “Board” means the natural resources board.

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

(6) “Dam” applies to any artificial structure on a stream or at the outlet of a pond or lake, which 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) "Department" means the department of environmental conservation.

(8) ~~Repealed.~~ "Instream material" means gravel, soil, silt, or large woody debris in the bed of a watercourse or within the banks of a watercourse.

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

(10) "Watercourse" means any perennial stream. "Watercourse" shall 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 the agency of natural resources, or the secretary's duly authorized representative.

(12) "Berm" means a linear fill of earthen material on or adjacent to the bank of a watercourse constructed for the purpose of constraining waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title.

(13) "Large woody debris" means any piece of wood with a diameter of 10 or more inches and a length of 10 or more feet.

Sec. 3. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or ~~by~~ excavation of ten cubic yards or more of instream material in any year, unless authorized by the secretary. A person shall not construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (10) of this title, unless authorized by the secretary or constructed as an emergency protective measure under subsection (b) of this section.

(b) This subchapter shall not apply to emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both. The protective measures shall:

(1) be limited to the minimum amount necessary to remove imminent threats to life or property, ~~shall~~;

(2) have prior approval from a member of the municipal legislative body ~~and shall~~;

(3) be reported to the secretary by the legislative body within ~~72~~ 24 hours after the onset of the emergency; and

(4) be implemented in a manner consistent with the rules adopted under section 1027 of this title regarding stream alteration during a declared emergency.

(c)(1) No person shall remove ~~gravel~~ instream material from any watercourse primarily for construction or for sale.

(2) No person shall remove instream material from any watercourse for the purpose of constructing a berm in a river corridor or flood plain, as those terms are defined in subdivisions 752(3) and (10) of this title, unless the construction of the berm is permitted by the secretary under section 1023 of this title or construction of the berm is an emergency protective measure under subsection (b) of this section.

(d) Notwithstanding subsection (c) of this section, a riparian owner may remove up to 50 cubic yards of ~~gravel~~ instream material per year from that portion of a watercourse running through or bordering on the owner's property, provided:

(1) the material shall be removed only for the owner's use on the owner's property;

(2) the material removed shall be above the waterline of the watercourse at the time of removal; ~~and~~

(3) at least 72 hours prior to the removal of 10 cubic yards, or more, the landowner shall notify the secretary;

(4) ~~however~~, if the portion of the watercourse in question has been designated as outstanding resource waters, then the riparian owner may ~~so~~ remove no more than 10 cubic yards of ~~gravel~~ instream material per year, and ~~must~~ shall notify the secretary at least 72 hours prior to the removal of any ~~gravel~~ instream material.

(e) This subchapter does not apply to dams subject to chapter 43 of this title nor to highways or bridges subject to 19 V.S.A. § 10(12).

(f) This subchapter shall not apply to accepted agricultural or silvicultural practices, as defined by the secretary of agriculture, food and markets, or the commissioner of forests, parks and recreation, respectively.

(g) Nothing in this chapter shall prohibit, in the normal use of land, the fording of or access to a watercourse by a person with the right or privilege to use the land.

Sec. 4. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

(a) Upon receipt of an application, the secretary shall cause an investigation of the proposed change to be made. Prior to making a decision, a written report shall be made by the secretary concerning the effect of the proposed change on the watercourse. The permit shall be granted, subject to such conditions determined to be warranted, if it appears that the change:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. Notice of the action of the secretary shall also be sent to the selectmen of the town in which the proposed change is located, and to each owner of property which abuts or is opposite the land where the alteration is to take place.

(c) If the local legislative body and planning commission determine in writing by majority vote of each that ~~gravel~~ instream material in a watercourse is threatening life or property, due to increased potential for flooding, and that the removal of ~~gravel~~ instream material is necessary to prevent the threat to life or property, and if a complete permit application has been submitted to the secretary, requesting authority to remove ~~gravel~~ instream material in the minimum amount necessary to remove threats to life or property, the local legislative body and the planning commission may request an expedited review of the complete permit application by notifying the secretary and providing copies of their respective decisions. If the secretary fails to approve or deny the application within 45 calendar days of receipt of notice of the decisions, the application shall be deemed approved and a permit shall be deemed to have been granted. ~~Gravel~~ Instream material removed shall be used only for public purposes, and cannot be sold, traded, or bartered. The fact that an application for a permit has been filed under this subsection shall not limit the ability to take emergency measures under subsection 1021(b) of this title. For the purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.



(d) The secretary shall conduct training programs or seminars regarding how to conduct the stream alteration, water quality review, stormwater discharge, and wastewater discharge activities necessary during a state of emergency declared under 20 V.S.A. chapter 1. The secretary shall make the training programs or seminars available to agency employees in an agency division other than the watershed management division, employees of other state agencies, regional planning commission members and employees, and municipal officers and employees.

(e) The secretary is authorized to enter into reciprocal mutual aid agreements or compacts with other states in the region to assist the secretary and the state in addressing watershed, river management, and transportation system issues that arise when a state of emergency is declared under 20 V.S.A. § 9.

Sec. 5. 10 V.S.A. § 1027 is added to read:

§ 1027. RULEMAKING; EMERGENCY PERMIT

(a) The secretary may adopt rules to implement the requirements of this subchapter.

(b) The secretary shall adopt rules regarding the permitting of stream alteration activities under this subchapter when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stream alteration emergency permit or receive coverage under a general stream alteration emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit; and

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity.

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stream alteration.

Sec. 6. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

\* \* \*

(k) The secretary shall adopt rules regarding the permitting of stormwater discharges under this section when a state of emergency is declared under 20 V.S.A. chapter 1. A rule adopted under this subsection may include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit. A rule adopted under this subsection may establish:

(1) criteria for coverage under an individual or general emergency permit;

(2) criteria for different categories of activities covered under a general emergency permit;

(3) reporting requirements for categories of activities, including authorizing activities that do not require reporting to the secretary or that require reporting to the secretary after initiation or completion of the activity;

(4) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(5) requirements for coordination with state and municipal authorities;

(6) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, permit duration, and the nature of activity when such activity is authorized to notify the secretary after initiation or completion of stormwater discharge or other activity.

\* \* \* River Corridor Assessment and Planning \* \* \*

Sec. 7. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning

grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 8. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

(1) “Agency” means the agency of natural resources.

\* \* \*

(7) “Secretary” means the secretary of natural resources or the secretary’s duly authorized representative.

\* \* \*

(12) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel, and necessary to maintain or restore fluvial dynamic equilibrium conditions and minimize fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

(13) “River” means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(14) “Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(15) “Flood hazard area” shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.

(16) “Fluvial erosion” means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(17) “Geomorphic condition” means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) “River corridor protection area” means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

(19) “Sensitivity” means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

Sec. 9. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

~~(1) upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a municipality shall delineate a recommended buffer that is based on site-specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and assess the geomorphic condition and sensitivity of the rivers of the state and identify where the sensitivity of the river poses a probable risk of harm to life, property, or infrastructure. As used in this section, “infrastructure” means state and municipal highways and roads, public and private buildings, public and private utility construction, and cemeteries.~~

(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the secretary by procedure; and

(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.

~~(b) River sensitivity assessment. No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers. Notwithstanding the schedule established by the secretary under subdivision (a)(2) of this section, the secretary may complete a sensitivity assessment for a river if, in the secretary’s discretion, the sensitivity of a river~~

and the risk it poses to life, property, and infrastructure require an expedited assessment.

(c) ~~No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section~~ Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the secretary shall consult with the legislative body or designee of municipalities in which a river is located.

Sec. 10. 10 V.S.A. §§ 1428 is added to read:

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains and river corridor protection areas and shall recommend best management practices, including vegetated buffers, based on site-specific conditions. The secretary shall post a copy of the sensitivity assessment and river corridor map to the agency of natural resources' website. A municipality shall post a copy of a sensitivity assessment or river corridor map received under this subsection in the municipal offices of the municipality or municipalities in which the river or river segment is located.

(b) Flood resilient communities program; incentives. No later than February 1, 2013, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall establish a flood resilient communities program. The program shall list the existing financial incentives under state law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The secretary of natural resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection.

\* \* \* Municipal Planning; Flood Hazard and River Corridor Protection  
Areas \* \* \*

Sec. 11. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context otherwise requires:

\* \* \*

(8) “Flood hazard area” for purposes of section 4424 of this title ~~means the land subject to flooding from the base flood. “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year shall have the same meaning as “area of special flood hazard” under 44 C.F.R. § 59.1.~~ Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) “Floodproofing” ~~means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures~~ shall have the same meaning as “flood proofing” under 44 C.F.R. § 59.1.

(B) “Floodway” ~~means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one foot~~ shall have the same meaning as “regulatory floodway” under 44 C.F.R. § 59.1.

(C) “Hazard area” means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a “local mitigation plan” enacted under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

(D) “National Flood Insurance Program” means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

(E) “New construction” means construction of structures or filling commenced on or after the effective date of the adoption of a community’s flood hazard bylaws.

~~(E)~~(F) “Substantial improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(G) “Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(H) “Fluvial erosion” means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(I) “River” means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(J) “River corridor” means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary to maintain or restore dynamic equilibrium conditions and minimize fluvial erosion hazards.

(K) “River corridor protection area” means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and would represent a hazard to life, property, and infrastructure placed within the area.

\* \* \*

Sec. 12. 24 V.S.A. § 4411(b) is amended to read:

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described

by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

- (1) To make transitional provisions at and near the boundaries of districts.
- (2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.
- (3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

\* \* \*

(G) Flood, ~~fluvial erosion~~ river corridor protection area, or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427.

\* \* \*

Sec. 13. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS; FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING BYLAWS

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or a local hazard mitigation plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

- (1) Bylaws to regulate development and use along shorelands.
- (2) Bylaws to regulate development and use in flood, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding,



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landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood, fluvial erosion, and loss or damage to life and property.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same

manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

(i) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources.

(ii) Either 30 days have elapsed following the mailing or the agency delivers comments on the application.

~~(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:~~

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the continued economically feasible operation of a nonresidential enterprise.~~

~~(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.~~

~~(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner.~~

(b) A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

Sec. 14. 24 V.S.A. § 4469 is amended to read:

§ 4469. APPEAL; VARIANCES

(a) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision

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in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program, as that term is defined in 10 V.S.A. § 752(8).

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title.

Sec. 16. 10 V.S.A. § 6086(c) is amended to read:

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (1) through (10) of subsection (a), including but not limited to those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

\* \* \* Enforcement, Appeals, Transition; Effective Dates \* \* \*

Sec. 17. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) ~~{Deleted.}~~ 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter 23, relating to air quality 32, relating to flood hazard areas;

\* \* \*

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; and

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps.

Sec. 18. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

\* \* \*

(R) chapter 32 (flood hazard areas).

Sec. 19. IMPLEMENTATION; TRANSITION

(a) By July 1, 2013, the secretary of natural resources shall conduct and complete the processes for adopting rules under Sec. 1 of this act, 10 V.S.A. § 754 (flood hazard area rules) and shall submit the adopted rules to the Federal Emergency Management Agency (FEMA) for approval.

(b) No later than 30 days after the approval of such rules by FEMA, the secretary shall notify municipalities of the effective date of the rules.

(c) The consolidated executive branch fee report and request to be submitted on or before the third Tuesday of January 2013 pursuant to 32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or fees to support the agency's services provided under Sec. 1 of this act, 10 V.S.A. § 754 (flood hazard area rules). The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the agency of natural resources of implementing, administering, and enforcing the rules adopted under 10 V.S.A. § 754.

Sec. 20. REPEAL

25 V.S.A. chapter 3 (general provisions relating to rivers and streams), except for 25 V.S.A. § 141 (public easement in stream), is repealed.

## Sec. 21. EFFECTIVE DATES

(a) This section and Secs. 1 (flood hazard area regulation), 2 (stream alteration; definitions), 4 (stream alteration permit), 5 (stream alteration; rulemaking), 6 (stormwater; emergency permit), 7 (river corridor policy), 8 (river corridor definitions), 9 (river corridor mapping; sensitivity assessment), 10 (river corridor protection), 11 (municipal planning definitions), 12 (municipal planning; zoning bylaw districts), 13 (zoning bylaws; hazard areas), 14 (municipal planning; variances), 15 (municipal enumeration of powers), 16 (conforming amendment; municipal planning reference), 18 (ANR appeals), 19 (transition), and 20 (repeal of general municipal authority relating to rivers and streams) of this act shall take effect on passage.

(b) Sec. 3 (stream alteration; prohibitions and exceptions) of this act shall take effect on January 1, 2013.

(c) Sec. 17 (ANR enforcement) of this act shall take effect on July 1, 2013.

After passage, the title of the bill is to be amended to read:

An act relating to regulation of flood hazard areas, river corridors, and stream alteration.

And that when so amended the bill ought to pass.

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

**Consideration Resumed; Bill Amended; Bill Passed**

**S. 106.**

Consideration was resumed on Senate bill entitled:

An act relating to miscellaneous changes to municipal government law.

Thereupon, pending the question, Shall the bill pass? Senator Flory moved to amend the bill by adding a new section to be numbered Sec. 4a to read as follows:

Sec. 4a. 20 V.S.A. § 3622 is amended to read:

§ 3622. FORM OF WARRANT

Such warrant shall be in the following form:

State of Vermont: )

)

\_\_\_\_\_ County, ss. )

To \_\_\_\_\_, constable or police officer of the town or city of \_\_\_\_\_:

By the authority of the state of Vermont, you are hereby commanded forthwith to impound ~~and destroy in a humane way or cause to be destroyed in a humane way~~ all dogs and wolf-hybrids not duly licensed according to law, except as exempted by ~~section 20 V.S.A. § 3587 of 20 V.S.A.~~; and you are further required to make and return complaint against the owner or keeper of any such dog or wolf-hybrid. A dog or wolf-hybrid that is impounded may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home for the dog or wolf-hybrid. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days, or a greater number of days established by the municipality, the dog or wolf-hybrid may be destroyed in a humane way.

Hereof fail not, and due return make of this warrant, with your doings thereon, within 90 days from the date hereof, stating the number of dogs or wolf-hybrids destroyed and the names of the owners or keepers thereof, and whether all unlicensed dogs or wolf-hybrids in such town (or city) have been destroyed, and the names of persons against whom complaints have been made under the provisions of 20 V.S.A. chapter 193, subchapters 1, 2, and 4 of chapter 193 of 20 V.S.A., and whether complaints have been made and returned against all persons who have failed to comply with the provisions of such subchapter.

Given under our (my) hands at \_\_\_\_\_ aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 19 20 \_\_\_\_\_.

\_\_\_\_\_  
Legislative Body

Which was agreed to.

Thereupon the recurring question, Shall the bill pass?, was decided in the affirmative.

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, March 21, 2012.

\_\_\_\_\_  
**WEDNESDAY, MARCH 21, 2012**

The Senate was called to order by the President *pro tempore*.

### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

**Message from the House No. 37**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 272.** An act relating to maintenance of private roads.

**H. 600.** An act relating to mandatory mediation in foreclosure proceedings.

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

**Joint Resolution Placed on Calendar****J.R.S. 52.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators McCormack, Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman and White,

**J.R.S. 52.** Joint resolution relating to the issuance of a commemorative United States postage stamp in honor of former United States Senator George D. Aiken.

*Whereas*, George D. Aiken served his state and nation as a distinguished public servant with honor and humility for over four decades, and

*Whereas*, he began his elected career in the Vermont House of Representatives and rose to the positions of House Speaker, Lieutenant Governor, and then Governor of Vermont, and ultimately from 1941 to 1975 served as United States Senator from the State of Vermont, and

*Whereas*, United States Senator George D. Aiken served Vermont and the nation well with his support of such measures as the St. Lawrence Seaway, Aid for Women, Infants, and Children, Rural Electrification, the 1964 Civil Rights Act, and other legislation which improved our lives and our country, and

*Whereas*, his independence and candor as a United States Senator, exemplified by his early and politically courageous criticism of public policies during both the McCarthy era and the Vietnam War, won him respect and admiration from Americans across the political spectrum, and



*Whereas*, George D. Aiken was a pioneering environmentalist through his numerous botanical contributions to Vermont, and

*Whereas*, his love for Vermont was best demonstrated by his lifelong devotion to his native Putney, and

*Whereas*, a man of truth and simplicity, George D. Aiken represented the best qualities of Vermont, and

*Whereas*, he dedicated his life to the betterment of Vermont, and

*Whereas*, George D. Aiken strove to elevate American public life and policy to a height that would merit dignity and respect both at home and abroad, and

*Whereas*, when Vermonters tackle the issues of today, his commonsense approach to problems and wise counsel are sorely missed, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly respectfully requests that the Vermont Congressional Delegation make every possible effort to secure the issuance of a United States postage stamp in honor of the life and accomplishments of former United States Senator George D. Aiken, *and be it further*

***Resolved:*** That the Secretary of State be directed to send a copy of this resolution to the United States Postal Service's Citizens Stamp Advisory Committee in Washington, D.C. and to the Vermont Congressional Delegation.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**Bills Referred**

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

**H. 272.**

An act relating to maintenance of private roads.

To the Committee on Judiciary.

**H. 600.**

An act relating to mandatory mediation in foreclosure proceedings.

To the Committee on Judiciary.

**Bill Passed**

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

**S. 201.** An act relating to expanding public school choice for elementary and high school students.

**Third Reading Ordered****S. 252.**

Senate committee bill entitled:

An act relating to the repeal or revision of reporting requirements.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be read a third time?, Senators Sears and Fox moved to amend the bill as follows:

First: In Sec. 38, by striking out subsection (a) (repeal of joint corrections oversight committee report under 2 V.S.A. § 802(b)) in its entirety and inserting in lieu thereof the following:

(a) [DELETED]

Second: In Sec. 38, by striking out subdivision (z)(3) (repeal of joint corrections oversight committee recommendations under Sec. 25(b) of No. 58 of the Acts of 2009) and inserting in lieu thereof the following:

(3) [DELETED]

Which was agreed to.

Thereupon, third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered****S. 211.**

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

An act relating to securing propane tanks in natural disasters.

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

Sec. 1. 30 V.S.A. § 34 is added to read:

§ 34. PUBLIC EDUCATION ON PROPANE TANK SAFETY

The general assembly finds that there is a need for a coordinated public safety message on the storage, handling, and recovery of propane tanks that are

displaced by natural disaster, such as flooding. The department of public service and the division of fire safety shall cooperate with the Vermont League of Cities and Towns and the Vermont Fuel Dealers Association, Inc. to develop a variety of educational materials for distribution to the public to provide information on any special treatment of propane tanks that might be required in the case of a natural disaster, such as flooding.

And that when so amended the bill ought to pass.

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

### **Joint Resolutions Adopted in Concurrence**

Joint House resolutions entitled:

**J.R.H. 30.** Joint resolution authorizing 2012 Green Mountain Girls' State to conduct a civic education program at the State House.

**J.R.H. 31.** Joint resolution urging Congress to designate March 29 as Vietnam Veterans Day.

Having been placed on the Calendar for action, were taken up.

Thereupon, the resolutions were severally adopted in concurrence.

### **Bill Passed**

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

**S. 148.** An act relating to a pilot project on expediting development of small hydroelectric plants.

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

#### **S. 93.**

Senator Kittell, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to labeling maple products.

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

#### § 481. DEFINITIONS

As used in this chapter:

(1) "Advertisement" means any method used to call attention to a product which is intended to arouse a desire to purchase that product. It shall include, but is not limited to, signs, displays, radio and television broadcasts,

newspapers and periodicals, direct mail, other printed forms, and any electronic media.

(2) "Bulk maple syrup" means maple syrup packed in containers of more than five gallons.

(3) "Secretary" means the secretary for the Vermont agency of agriculture, food and markets or his or her designee.

(4) "Dealer" means a person who annually buys, or otherwise acquires from another person, 1,000 gallons of maple syrup or more for purposes of packaging for resale, or for resale in bulk.

(5) "Agency" means the Vermont agency of agriculture, food and markets.

(6) "Grade" or "grades" means the standards for maple syrup promulgated through regulation by the secretary. Those standards shall be the official grades of maple syrup for the state of Vermont.

(7) "Inspector" means any person designated by the secretary to carry out the secretary's duties under this chapter.

(8) "Maple products" means only maple syrup, maple sugar, maple cream, or any other product in which the sugar content is entirely derived from pure maple sap and to which nothing has been added.

(9) "Maple sap" means the unprocessed liquid derived from the maple tree (*Acer*).

(10) "Maple sap hydrometer" means a floating instrument which measures the specific gravity of a liquid and which contains a scale designed to determine the sugar content of maple sap.

(11) "Maple sugar" means the solid, crystalline produce of maple tree sap only.

(12) "Maple syrup" means pure maple syrup which is the liquid derived by concentration and heat treatment of the sap of the maple tree (*Acer*). Maple syrup shall not be processed in any manner which adds or removes naturally occurring soluble materials. This limitation does not preclude the use of approved filter aids used for the sole purpose of assisting the removal of suspended material or the use of defoaming agents approved by the secretary. Maple syrup shall comply with Vermont state grades, density, and flavor requirements.

(13) "Maple syrup hydrometer" means a floating instrument which measures the specific gravity of a liquid and which contains a scale designed to determine the density of maple syrup.

(14) "Packaged maple syrup" means maple syrup packed in containers of five gallons or less.

(15) "Person" means individuals, groups of individuals, partnerships, limited partnerships, corporations, companies, cooperatives, and associations.

(16) "Principal display panel" shall be construed to mean that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

(17) "Produced in Vermont" shall mean only that maple syrup or other maple products which are manufactured in their entirety from pure, unprocessed maple sap within the state of Vermont pursuant to standards established by this chapter and the regulations promulgated hereunder.

(18) "Public eating place" means any person or establishment engaged in the business of preparing and selling food for the general public's consumption on premises and who is subject to the license requirement of 18 V.S.A. § 4351.

(19) "Processor" means a person who annually buys, or otherwise acquires from another person, 2,500 gallons of maple syrup or more for purposes of packaging for resale, processing into associated products, or for resale in bulk.

\* \* \*

#### § 487. ~~STANDARDS~~ CLASSIFICATIONS AND STANDARDS

(a) ~~Grade standards~~ Color classification. The secretary shall establish by rule ~~grade standards~~ consumer-friendly color classifications for maple syrup. In establishing ~~grade standards~~ color classifications, the secretary may, in his or her discretion, utilize the color ~~standards and grade designations~~ classifications established by the ~~United States Department of Agriculture~~ International Maple Syrup Institute for the testing and ~~grading~~ classification of maple syrup, ~~or develop different color standards and designations~~. The secretary may also establish flavor and clarity requirements as a part of the ~~grading standards~~ classification rule.

(b) Density standards. The secretary may establish by rule the density standards for maple syrup. The density standards must be at least as stringent as existing density requirements for comparable color classification standards.

§ 488. CERTIFICATION OF SAMPLING, TESTING, AND GRADING CLASSIFICATION DEVICES;—CERTIFICATION AND VOLUNTARY MAPLE SYRUP PRODUCTION AND INSPECTION CERTIFICATION PROGRAM

(a) The secretary may procure accurate sampling, testing, and ~~grading classification~~ devices in a quantity sufficient to meet the anticipated requirements under this chapter.

(b) In addition to the mandatory inspection program conducted under this chapter, the secretary may ~~provide~~ establish by rule, a voluntary program for maple syrup production and inspection certification which shall be made available upon request of a dealer, processor, or person engaged in producing maple syrup or maple products. The secretary may obtain from the dealer, processor, or person engaged in producing maple syrup or maple products, reimbursement for the cost of the inspection certification incurred by the agency.

\* \* \*

§ 490. LABELS

(a) Maple syrup. Every shipment, package, or container of maple syrup packed, sold, offered, or exposed for sale or distribution by any person shall be plainly marked in accordance with 9 V.S.A. § 2633(c), for packaging and labeling regulations and shall include:

~~(1) the name, address, and zip code of the packer;~~

~~(2) the true name of the product;~~

~~(3) the grade; and~~

~~(4) the volume of the contents at 68 degrees Fahrenheit or 20 degrees Celsius.~~

(1) the words “grade A” and “pure maple syrup”;

(2) the name;

(3) the name, address, and zip code of the packer;

(4) the color classification;

(5) the words “no additives”;

(6) the intensity of the flavor.

(b) All other pure maple products. Every shipment, package, or container of maple products other than maple syrup packed, sold, offered, or exposed for

sale or distribution by any person shall be plainly marked in accordance with 9 V.S.A. § 2633(c), for packaging and labeling regulations and shall include:

- (1) the name, address, and zip code of the packer;
- (2) the true name of the product; and
- (3) the volume of the contents at 68 degrees Fahrenheit or 20 degrees Celsius if the product is a liquid or with the net weight if the product is not a liquid.

(c) Any labeling on bulk or packaged maple syrup which indicates "State of Vermont pure maple syrup," "Vermont maple syrup," "Vermont syrup," or any other words which imply that the syrup so marked was produced in Vermont shall be used exclusively upon 100 percent maple syrup which is entirely produced within the state of Vermont in compliance with the terms of this chapter and the regulations promulgated hereunder.

(d) Any labeling on all other maple products which states or implies that those products were produced in Vermont shall be used exclusively upon 100 percent pure maple products which are entirely produced within the state of Vermont in compliance with the terms of this chapter and the regulations promulgated hereunder.

(e) Notwithstanding any provision of this chapter, a dealer, processor, or person shall not be prohibited from using appropriate market descriptors as the secretary may define by rule.

\* \* \*

And that when so amended the bill ought to pass.

Senator Kittell moved to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Agriculture which was agreed to and is as follows:

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

Sec. 1. 6 V.S.A. § 481 is amended to read:

§ 481. DEFINITIONS

As used in this chapter:

\* \* \*

(6) ~~"Grade"~~ "Classification" or ~~"grades"~~ "classifications" means the standards for maple syrup promulgated through regulation by the secretary. Those standards shall be the official ~~grades~~ classifications of maple syrup for the state of Vermont.

\* \* \*

Sec. 2. 6 V.S.A. § 487 is amended to read:

§ 487. ~~STANDARDS~~ CLASSIFICATIONS AND STANDARDS

(a) ~~Grade standards~~ Color classifications. The secretary shall establish by rule ~~grade standards~~ consumer-friendly color classifications for maple syrup. In establishing ~~grade standards~~ color classifications, the secretary may, in his or her discretion, utilize the color ~~standards and grade designations~~ classifications established by the ~~United States Department of Agriculture~~ International Maple Syrup Institute for the testing and ~~grading classification~~ of maple syrup, ~~or develop different color standards and designations~~. The secretary may also establish flavor and clarity requirements as a part of the ~~grading standards~~ classification rule.

(b) Density standards. The secretary may establish by rule the density standards for maple syrup. The density standards must be at least as stringent as existing density requirements for comparable color classification standards.

Sec. 3. 6 V.S.A. § 488 is amended to read:

§ 488. CERTIFICATION OF SAMPLING, TESTING, AND GRADING CLASSIFICATION DEVICES;—CERTIFICATION AND VOLUNTARY MAPLE SYRUP PRODUCTION AND INSPECTION CERTIFICATION PROGRAM

(a) The secretary may procure accurate sampling, testing, and ~~grading classification~~ classification devices in a quantity sufficient to meet the anticipated requirements under this chapter.

(b) In addition to the mandatory inspection program conducted under this chapter, the secretary may ~~provide~~ establish by rule a voluntary program for maple syrup production and inspection certification which shall be made available upon request of a dealer, processor, or person engaged in producing maple syrup or maple products. The secretary may obtain from the dealer, processor, or person engaged in producing maple syrup or maple products reimbursement for the cost of the inspection certification incurred by the agency.

Sec. 4. 6 V.S.A. § 490 is amended to read:

§ 490. LABELS

(a) Maple syrup. Every shipment, package, or container of maple syrup packed, sold, offered, or exposed for sale or distribution by any person shall be plainly marked in accordance with 9 V.S.A. § 2633(c), for packaging and labeling regulations and shall include:



(1) ~~the name, address, and zip code of the packer~~ the words “grade A” and “pure maple syrup”;

(2) ~~the true name of the product~~ the true name of the product;

(3) ~~the grade; and~~ the name, address, and zip code of the packer;

(4) ~~the volume of the contents at 68 degrees Fahrenheit or 20 degrees Celsius.~~ the color classification;

(5) the words “no additives”;

(6) the intensity of the flavor;

(7) the volume of the contents at 68 degrees Fahrenheit or 20 degrees Celsius.

(b) All other pure maple products. Every shipment, package, or container of maple products other than maple syrup packed, sold, offered, or exposed for sale or distribution by any person shall be plainly marked in accordance with 9 V.S.A. § 2633(c), for packaging and labeling regulations and shall include:

(1) the name, address, and zip code of the packer;

(2) the true name of the product; and

(3) the volume of the contents at 68 degrees Fahrenheit or 20 degrees Celsius if the product is a liquid or with the net weight if the product is not a liquid.

(c) Any labeling on bulk or packaged maple syrup which indicates “State of Vermont pure maple syrup,” ~~Vermont maple syrup, Vermont syrup,~~ “Vermont maple syrup,” “Vermont syrup,” or any other words which imply that the syrup so marked was produced in Vermont shall be used exclusively upon 100 percent maple syrup which is entirely produced within the state of Vermont in compliance with the terms of this chapter and the regulations promulgated hereunder.

(d) Any labeling on all other maple products which states or implies that those products were produced in Vermont shall be used exclusively upon 100 percent pure maple products which are entirely produced within the state of Vermont in compliance with the terms of this chapter and the regulations promulgated hereunder.

(e) Notwithstanding any provision of this chapter, a dealer, processor, or person shall not be prohibited from using appropriate market descriptors as the secretary may define by rule.

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1 (definition; classification), 2 (rulemaking; classification), and 3 (voluntary certification) of this act shall take effect upon passage.

(b) Sec. 4 of this act shall take effect 45 days after the agency of agriculture, food and markets adopts rules under 6 V.S.A. § 487 regarding the classification and standards of maple syrup.

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

**Bills Amended; Third Readings Ordered**

**S. 114.**

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

An act relating to the size of accessory dwelling units.

Reported recommending that the bill be amended in Sec. 1, 24 V.S.A. § 4412(1), in subdivision (E)(ii), by striking out the following: “750” and inserting in lieu thereof the following: 600

And that when so amended the bill ought to pass.

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

**S. 151.**

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

An act relating to veterans’ grave markers.

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

Sec. 1. 9 V.S.A. chapter 86 is added to read:

**CHAPTER 86. PURCHASE OF GRAVE MARKERS**

**§ 3221. GRAVE MARKERS AND ORNAMENTS**

(a) A business or metal dealer shall not purchase, accept, or give anything of value in exchange for a metal grave marker, or any ornament or flag holder bearing a description or an emblem from any branch of the United States

armed services or a police or fire department or which bears the designation “veteran.”

(b) A business or metal dealer that violates this section shall be fined up to \$5,000.00 per violation.

(c) For purposes of this section, “metal dealer” means any individual, firm, corporation, or partnership engaged in the business of purchasing and reselling recyclable metal either at a permanently established place of business or in connection with a business of an itinerant nature, including a junk shop, a junkyard, or a junk store.

After passage, the title of the bill is to be amended to read:

An act relating to grave markers.

And that when so amended the bill ought to pass.

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

#### **S. 215.**

Senator Pollina, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to evaluating net costs of government purchasing.

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

#### **Sec. 1. ECONOMETRIC ANALYSIS PILOT PROJECT**

(a) The secretary of administration and the legislative economist shall design and implement a one-year pilot project to conduct an econometric analysis when evaluating government contracts for goods and services by the department of buildings and general services, the agency of natural resources, and the department of corrections. Each agency and department participating in the pilot project shall have the discretion to determine which contracts are appropriate for econometric analysis.

(b) When considering applicable contract bids for goods or services, each agency and department participating in the pilot project shall consider the interests of the state relating to the proximity of the supplier and the costs of transportation, and relating to the economy of the state and the need to maintain and create jobs in the state. The commissioner or secretary, as applicable, shall utilize an econometric model that shall:

(1) account for the net fiscal impact to the state of all significant elements of bids, including the level of local employment, wages and benefits, source of goods, and domicile of bidder;

(2) be designed to be easily updated from year to year; and

(3) be designed such that state employees administering bid processes can easily utilize the model in an expedient fashion.

## Sec. 2. REPORT

On or before January 15, 2014, the secretary of administration shall submit a report to the house and senate committees on government operations on the results of the econometric analysis pilot project and any further legislative or policy recommendations for expansion, adaptation, or elimination of econometric analysis in government contracting.

## Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

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

## **Adjournment**

On motion of Senator Mazza, the Senate adjourned until one o'clock and thirty minutes in the afternoon on Thursday, March 22, 2012.

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## **THURSDAY, MARCH 22, 2012**

The Senate was called to order by the President *pro tempore*.

## **Devotional Exercises**

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

## **Rules Suspended; Bill Committed**

On motion of Senator Cummings, the Committee on Finance was relieved of further consideration of Senate bill entitled:

**S. 137.** An act relating to workers' compensation and unemployment compensation.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator Cummings moved that Senate Rule 49 be suspended in

order to commit the bill to the Committee on Judiciary with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

**Bill Amended; Third Reading Ordered**

**S. 115.**

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

An act relating to malpractice claims against public defender contract attorneys.

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

Sec. 1. 13 V.S.A. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

After passage, the title of the bill is to be amended to read:

An act relating to ineffective assistance claims against assigned counsel.

And that when so amended the bill ought to pass.

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

**Bill Amended; Third Reading Ordered**

**S. 138.**

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

An act relating to the record keeping of search warrants.

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

Sec. 1. Vermont Rules of Criminal Procedure, Rule 41 is amended to read:

RULE 41. SEARCH AND SEIZURE

\* \* \*

(h) Record keeping. Upon the filing of a warrant and affidavit, the clerk of the court shall assign a standardized warrant identification number to the warrant and enter the warrant, its identifying details, and subsequent activity into a warrant log and standardized database maintained by the court. The warrant log and database shall be such as to permit monitoring of timely execution of warrants issued and timely filing of return and inventory following a search. A return shall be required for every warrant issued.

Sec. 2. 7 V.S.A. § 61 is amended to read:

§ 61. RESTRICTIONS; EXCEPTIONS

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits by a person in his or her private dwelling, ~~unless to an habitual drunkard, or~~ unless such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided the same is delivered and removed from the vendor's premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the liquor control board as hereinafter provided, nor to the furnishing of such beverages or spirits by the Vermont criminal justice training council to drinking subjects during DUI enforcement courses of instruction at the Vermont police academy.

Sec. 3. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be

more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody ~~in connection with the offense for which sentence was imposed~~ as follows:

(1) The period of credit shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and ending on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at such time.

Sec. 4. 13 V.S.A. § 7032(c) is amended to read:

(c) In all cases where multiple or additional sentences have been or are imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following definitions.

(1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(2) When terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. No person shall serve more time on consecutive minimum sentences than the sum of the minimum terms, regardless of whether the sentences are imposed on the same or different dates. If a person serves a minimum term, and subsequently incurs another criminal charge, the time the person spends in custody awaiting disposition of the new charge shall count toward the minimum term of the new sentence, if one is imposed. This subdivision shall not require the department of corrections to release a person from incarceration to community supervision at the person's minimum term.

Sec. 5. 18 V.S.A. § 4216 is amended to read:

§ 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice; ~~and further that all.~~

(b)(1) Except as otherwise provided in subdivision (2) of this subsection, all amounts of the drug are shall be retained in the lawful container in which it was delivered to him the patient by the person selling or dispensing the same; provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.

(2) A patient may possess an amount of regulated drugs of not more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container.

Sec. 6. 18 V.S.A. § 4230(b)(2) is amended to read:

(2) A person knowingly and unlawfully selling or dispensing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ~~one half ounce~~ two ounces or more containing any marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.



Sec. 7. 28 V.S.A. § 808a(a) is amended to read:

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough with recommendation of the department to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

Sec. 8. FEASIBILITY STUDY FOR A STATEWIDE ONLINE SENTENCING TOOL

(a) The general assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. In its report, the committee expressed concern regarding "the varying degrees of justice meted out by the different counties in Vermont," and concluded that "any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense."

(b) The committee believes that judicial discretion is the cornerstone of sentencing in Vermont courts, and sentencing is at its best when the decision-makers have accurate and timely information about the offender, the offenses, and the options available for sentencing.

(c) Evidence-based practice research suggests that sentencing of criminal defendants should be based on the seriousness of the offense, risk, and probability of recidivism. Criminal sentencing that is based on these three principles is more likely to protect the public, reduce recidivism, and reduce costs than sentencing practices that are based on anecdotal experience.

(d) The committee took testimony on a new sentencing tool developed by the Missouri Sentencing Advisory Commission which employs these principles, and which is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. According to the commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

(e) There is created a sentencing task force for the purpose of conducting a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The task force shall comprise the following members:

(1) A member of the committee on judiciary appointed by the committee on committees.

(2) A member of the committee on judiciary appointed the speaker of the house.

(3) A judge appointed by the chief justice of the Vermont supreme court.

(4) The commissioner of corrections.

(5) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(6) The defender general.

(f) The Vermont Center for Justice Research, the state's Criminal Justice Statistical Analysis Center, has been involved with the analysis of criminal sentencing data in Vermont for the past 20 years. At the direction of the task force, the center shall undertake the statistical analysis necessary to develop the policy decisions required for the sentencing matrixes which are the foundation of the project. The pilot analysis shall focus on five to ten felony or misdemeanor crimes prosecuted in Vermont during a two-year period. The center shall evaluate the availability and quality of data which would be required to generate sentencing information similar to those used in the Missouri model.

(g) The task force shall report the sentencing information for the crimes selected for the feasibility study along with a report with recommendations regarding the feasibility of a Vermont online sentencing tool to the senate and house committees on judiciary by March 15, 2013.

Sec. 9. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses and to study whether records produced by public agencies in the course of the detection and investigation of crime should be open to public inspection or confidential.

\* \* \*

(c) Powers and duties.

\* \* \*

(2) The committee shall study whether records produced by public agencies in the course of the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by law enforcement, should be open to public inspection or confidential. The committee's study shall include:

(A) A determination of which records dealing with the detection and investigation of a crime should be public records and which records should be confidential.

(B) Consideration of the need to balance public safety and privacy when determining which criminal investigation records should be public and which records should be confidential.

(C) Legislation to implement the policy recommended by the committee.

(2)(3) The committee shall consult with stakeholders ~~while engaging in its mission,~~ including the following:

(A) The secretary of human services or designee.

(B) The secretary of state or designee.

(C) The executive director of the American Civil Liberties Union of Vermont or designee.

(D) A representative of the Vermont Press Association.

(E) The defender general or designee.

(F) The attorney general or designee.

(G) The executive director of the Vermont association of chiefs of police or designee.

(H) The executive director of the Vermont Bar Association or designee.

(I) A representative from the department of public safety.

(J) The executive director of the state's attorneys and sheriffs' association or designee.

(K) A member of the supreme court public access to court records advisory rules committee appointed by the chief justice.

(L) The executive director of the Vermont Center for Crime Victims Services or designee.

~~(3)~~(4) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than ~~five~~ seven times annually and shall cease to exist on January 1, ~~2012~~ 2014.

\* \* \*

#### Sec. 10. APPROPRIATION

The amount of \$33,600.00 is appropriated from the general fund to the Vermont Center for Justice Research in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont.

After passage, the title of the bill is to be amended to read:

An act relating to calculation of criminal sentences and record keeping for search warrants.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported as follows:

First: In Sec. 8, by adding a new subsection (h) to read as follows:

(h) The secretary of administration shall seek sources of grants and funding in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The cost is currently estimated to be \$33,600.00.

Second: By striking out Sec. 10 in its entirety.

And that when so amended the bill ought to pass.

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

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

#### **Bills Passed**

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

**S. 93.** An act relating to labeling maple products.

**S. 114.** An act relating to the size of accessory dwelling units.

**S. 211.** An act relating to securing propane tanks in natural disasters.

#### **Bill Amended; Bill Passed**

##### **S. 215.**

Senate bill entitled:

An act relating to evaluating net costs of government purchasing.

Was taken up.

Thereupon, pending third reading of the bill, Senator Hartwell on behalf of the Committee on Institutions moved to amend the bill in Sec. 2, after the words “government operations” by inserting the following: and on natural resources and energy, the house committee on corrections and institutions, and the senate committee on institutions

Which was agreed to.

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

#### **Bill Passed**

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

**S. 252.** An act relating to the repeal or revision of reporting requirements.

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

##### **H. 630.**

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

To the Senate and House of Representatives:

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

An act relating to reforming Vermont’s mental health system.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

(a) It is the intent of the general assembly to strengthen Vermont's existing mental health care system by offering a continuum of community and peer services, as well as a range of acute inpatient beds throughout the state. This system of care shall be designed to provide flexible and recovery-oriented treatment opportunities and to ensure that the mental health needs of Vermonters are served.

(b) It is also the intent of the general assembly that the agency of human services fully integrate all mental health services with all substance abuse, public health, and health care reform initiatives, consistent with the goals of parity.

Sec. 1a. 18 V.S.A. chapter 174 is added to read:

CHAPTER 174. MENTAL HEALTH SYSTEM OF CARE

§ 7251. PRINCIPLES FOR MENTAL HEALTH CARE REFORM

The general assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

(1) The state of Vermont shall meet the needs of individuals with mental health conditions, including the needs of individuals in the custody of the commissioner of corrections, and the state's mental health system shall reflect excellence, best practices, and the highest standards of care.

(2) Long-term planning shall look beyond the foreseeable future and present needs of the mental health community. Programs shall be designed to be responsive to changes over time in levels and types of needs, service delivery practices, and sources of funding.

(3) Vermont's mental health system shall provide a coordinated continuum of care by the departments of mental health and of corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with mental health conditions receive care in the most integrated and least restrictive settings available. Individuals' treatment choices shall be honored to the extent possible.

(4) The mental health system shall be integrated into the overall health care system.

(5) Vermont's mental health system shall be geographically and financially accessible. Resources shall be distributed based on demographics and geography to increase the likelihood of treatment as close to the patient's home as possible. All ranges of services shall be available to individuals who need them, regardless of individuals' ability to pay.

(6) The state's mental health system shall ensure that the legal rights of individuals with mental health conditions are protected.

(7) Oversight and accountability shall be built into all aspects of the mental health system.

(8) Vermont's mental health system shall be adequately funded and financially sustainable to the same degree as other health services.

(9) Individuals with a mental health condition who are in the custody of the commissioner of mental health and who receive treatment in an acute inpatient hospital, intensive residential recovery facility, or a secure residential facility shall be afforded at least the same rights and protections as those individuals cared for at the former Vermont State Hospital.

#### § 7252. DEFINITIONS

As used in this chapter:

(1) "Adult outpatient services" means flexible services responsive to individuals' preferences, needs, and values that are necessary to stabilize, restore, or improve the level of social functioning and well-being of individuals with mental health conditions, including individual and group treatment, medication management, psychosocial rehabilitation, and case management services.

(2) "Designated agency" means a designated community mental health and developmental disability agency as described in subsection 8907(a) of this title.

(3) "Designated area" means the counties, cities, or towns identified by the department of mental health that are served by a designated agency.

(4) "Enhanced programming" means targeted, structured, and specific intensive mental health treatment and psychosocial rehabilitation services for individuals in individualized or group settings.

(5) "Intensive residential recovery facility" means a licensed program under contract with the department of mental health that provides a safe, therapeutic, recovery-oriented residential environment to care for individuals with one or more mental health conditions who need intensive clinical interventions to facilitate recovery in anticipation of returning to the

community. This facility shall be for individuals not in need of acute inpatient care and for whom the facility is the least restrictive and most integrated setting.

(6) “Mobile support team” means professional and peer support providers who are able to respond to an individual where he or she is located during a crisis situation.

(7) “Noncategorical case management” means service planning and support activities provided for adults by a qualified mental health provider, regardless of program eligibility criteria or insurance limitations.

(8) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provide high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(9) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

(10) “Peer” means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(11) “Peer services” means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

(12) “Psychosocial rehabilitation” means a range of social, educational, occupational, behavioral, and cognitive interventions for increasing the role performance and enhancing the recovery of individuals with serious mental illness, including services that foster long-term recovery and self-sufficiency.

(13) “Recovery-oriented” means a system or services that emphasize the process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(14) “Serious bodily injury” means the same as in section 1912 of this title.

(15) “Warm line” means a nonemergency telephone response line operated by trained peers for the purpose of active listening and assistance with problem-solving for persons in need of such support.

#### § 7253. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

The commissioner of mental health, in consultation with health care providers as defined in section 9432 of this title, including designated hospitals, designated agencies, individuals with mental health conditions, and



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other stakeholders, shall design and implement a clinical resource management system that ensures the highest quality of care and facilitates long-term, sustained recovery for individuals in the custody of the commissioner.

(1) For the purpose of coordinating the movement of individuals across the continuum of care to the most appropriate services, the clinical resource management system shall:

(A) ensure that all individuals in the care and custody of the commissioner receive the highest quality and least restrictive care necessary;

(B) develop a process for receiving direct patient input on treatment opportunities and the location of services;

(C) use state-employed clinical resource management coordinators to work collaboratively with community partners, including designated agencies, hospitals, individuals with mental health conditions, and peer groups, to ensure access to services for individuals in need. Clinical resource management coordinators or their designees shall be available 24 hours a day, seven days a week to assist emergency service clinicians in the field to access necessary services;

(D) use an electronic, web-based bed board to track in real time the availability of bed resources across the continuum of care;

(E) use specific level-of-care descriptions, including admission, continuing stay, and discharge criteria, and a mechanism for ongoing assessment of service needs at all levels of care;

(F) specify protocols for medical clearance, bed location, transportation, information sharing, census management, and discharge or transition planning;

(G) coordinate transportation resources so that individuals may access the least restrictive mode of transport consistent with safety needs;

(H) ensure that to the extent patients' protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law is used within the clinical resource management system, the health information exchange privacy standards and protocols as described in subsection 9351(e) of this title shall be followed;

(I) review the options for the use of ambulance transport, with security as needed, as the least restrictive mode of transport consistent with safety needs required pursuant to section 7511 of this title; and

(J) ensure that individuals under the custody of the commissioner being served in designated hospitals, intensive residential recovery facilities,

and the secure residential recovery facility shall have access to a mental health patient representative. The patient representative shall advocate for patients and shall also foster communication between patients and health care providers. The department of mental health shall contract with an independent, peer-run organization to staff the full-time equivalent of a patient representative.

(2) For the purpose of maintaining the integrity and effectiveness of the clinical resource management system, the department of mental health shall:

(A) require a designated team of clinical staff to review the treatment received and clinical progress made by individuals within the commissioner's custody;

(B) coordinate care across the mental and physical health care systems as well as ensure coordination within the agency of human services, particularly the department of corrections, the department of health's alcohol and drug abuse programs, and the department of disabilities, aging, and independent living;

(C) coordinate service delivery with Vermont's Blueprint for Health and health care reform initiatives, including the health information exchange as defined in section 9352 of this title and the health benefit exchange as defined in 33 V.S.A. § 1803;

(D) use quality indicators, manageable data requirements, and quality improvement processes to monitor, evaluate, and continually improve the outcomes for individuals and the performance of the clinical resource management system;

(E) actively engage stakeholders and providers in oversight processes; and

(F) provide mechanisms for dispute resolution.

#### § 7254. INTEGRATION OF THE TREATMENT FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND PHYSICAL HEALTH

(a) The director of health care reform and the commissioners of mental health, of health, and of Vermont health access and the Green Mountain Care board or designees shall ensure that the redesign of the mental health delivery system established in this act is an integral component of the health care reform efforts established in 3 V.S.A. § 2222a. Specifically, the director, commissioners, and board shall confer on planning efforts necessary to ensure that the following initiatives are coordinated and advanced:

(1) any health information technology projects;

(2) the integration of health insurance benefits in the Vermont health benefit exchange to the extent feasible under federal law;

(3) the integration of coverage under Green Mountain Care;

(4) the Blueprint for Health;

(5) the reformation of payment systems for health services to the extent allowable under federal law or under federal waivers; and

(6) other initiatives as necessary.

(b) The department of banking, insurance, securities, and health care administration shall ensure that private payers are educated about their obligation to reimburse providers for less restrictive and less expensive alternatives to hospitalization.

#### § 7255. SYSTEM OF CARE

The commissioner of mental health shall coordinate a geographically diverse system and continuum of mental health care throughout the state that shall include at least the following:

(1) comprehensive and coordinated community services, including prevention, to serve children, families, and adults at all stages of mental illness;

(2) peer services, which may include:

(A) a warm line;

(B) peer-provided transportation services;

(C) peer-supported crisis services; and

(D) peer-supported hospital diversion services;

(3) alternative treatment options for individuals seeking to avoid or reduce reliance on medications;

(4) recovery-oriented housing programs;

(5) intensive residential recovery facilities;

(6) appropriate and adequate psychiatric inpatient capacity for voluntary patients;

(7) appropriate and adequate psychiatric inpatient capacity for involuntary inpatient treatment services, including patients receiving treatment through court order from a civil or criminal court; and

(8) a secure residential recovery facility.

§ 7256. REPORTING REQUIREMENTS

Notwithstanding 2 V.S.A. § 20(d), the department of mental health shall report annually on or before January 15 to the senate committee on health and welfare and the house committee on human services regarding the extent to which individuals with mental health conditions receive care in the most integrated and least restrictive setting available. The report shall address:

(1) Utilization of services across the continuum of mental health services;

(2) Adequacy of the capacity at each level of care across the continuum of mental health services;

(3) Individual experience of care and satisfaction;

(4) Individual recovery in terms of clinical, social, and legal outcomes; and

(5) Performance of the state's mental health system of care as compared to nationally recognized standards of excellence.

§ 7257. REPORTABLE ADVERSE EVENTS

An acute inpatient hospital, an intensive residential recovery facility, a designated agency, or a secure residential facility shall report to the department of mental health instances of death or serious bodily injury to individuals with a mental health condition in the custody of the commissioner.

§ 7258. REVIEW OF ADVERSE COMMUNITY EVENTS

The department of mental health shall establish a system that ensures the comprehensive review of a death or serious bodily injury occurring outside an acute inpatient hospital when the individual causing or victimized by the death or serious bodily injury is in the custody of the commissioner or had been in the custody of the commissioner within six months of the event. The department shall review each event for the purpose of determining whether the death or serious bodily injury was the result of inappropriate or inadequate services within the mental health system and, if so, how the failure shall be remedied.

Sec. 2. DELETED

Sec. 3. DELETED

Sec. 4. DELETED

Sec. 5. DELETED

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## Sec. 6. PEER SERVICES

The commissioner of mental health is authorized to contract for new peer services and to expand existing programs managed by peers that provide support to individuals living with or recovering from mental illness. Peer services shall be aimed at helping individuals with mental illness achieve recovery through improved physical and mental health, increased social and community connections and supports, and the avoidance of mental health crises and psychiatric hospitalizations. The commissioner of mental health shall:

(1) Establish a warm line or warm lines accessible statewide which shall be staffed at all times to ensure that individuals with a mental health condition have access to peer support;

(2) Establish new peer services focused on reducing the need for inpatient services;

(3) Improve the quality, infrastructure, and workforce development of peer services; and

(4) Develop peer-run transportation services.

## Sec. 7. COMMUNITY SERVICES

To improve existing community services and to create new opportunities for community treatment, the commissioner of mental health is authorized to:

(1) Improve emergency responses, mobile support teams, noncategorical case management, adult outpatient services, and alternative residential opportunities at designated agencies.

(A) Each designated agency shall provide the scope and category of services most responsive to the needs of designated areas, as determined by the commissioner of mental health.

(B) Designated agencies shall work collaboratively with law enforcement officials, corrections, local hospitals, the department of disabilities, aging, and independent living, and peers to integrate services and expand treatment opportunities for individuals living with or recovering from mental illness.

(2) Contract for at least four additional short-term crisis beds in designated agencies for the purpose of preventing or diverting individuals from hospitalization when clinically appropriate and for the purpose of increasing regional access to crisis beds.

(3) Contract for a voluntary five-bed residence for individuals seeking to avoid or reduce reliance on medication or having an initial episode of

psychosis. The residence shall be peer supported and noncoercive, and treatment shall be focused on a nontraditional, interpersonal, and psychosocial approach, with minimal use of psychotropic medications to facilitate recovery in individuals seeking an alternative to traditional hospitalization.

(4) Provide housing subsidies to individuals living with or recovering from mental illness for the purpose of fostering stable and appropriate living conditions. If necessary to achieve successful housing outcomes, housing subsidies may be provided without an agreement to accept certain services as a condition of assistance. The department of mental health shall ensure that housing subsidies are monitored and managed in coordination with other relevant community services and supports.

#### Sec. 8. INTENSIVE RESIDENTIAL RECOVERY FACILITIES

(a) To support the development of intensive residential recovery facilities, the commissioner of mental health is authorized to contract for:

- (1) Fifteen beds located in northwestern Vermont;
- (2) Eight beds located in southeastern Vermont; and
- (3) Eight beds located in either central or southwestern Vermont or both.

(b) Notwithstanding 18 V.S.A. § 9435(b), all facilities contracted for under subsection (a) of this section shall be subject to the certificate of approval process, which shall take into consideration the recommendations of a panel of stakeholders appointed by the commissioner to review each proposal and conduct a public hearing.

#### Sec. 9. INPATIENT HOSPITAL BEDS

(a) To replace the services provided at the Vermont State Hospital, the department of mental health shall oversee the delivery of emergency examination and involuntary inpatient treatment services at four acute inpatient hospitals throughout the state:

(1) The department of mental health shall enter into contracts that meet the requirements of subdivision (2) of this subsection with a hospital in southeastern Vermont and a hospital in southwestern Vermont for the establishment of a 14-bed unit and a six-bed unit, respectively, contingent upon receipt by the hospitals of certificates of need pursuant to 18 V.S.A. chapter 221, subchapter 5. Certificate of need applications for the 14-bed unit and the six-bed unit, whether prepared jointly by a hospital and the department or solely by a hospital, shall be reviewed by the commissioner of mental health prior to a certificate of need approval to ensure the architectural and program proposals meet industry standards for quality of care and emotional and physical safety standards and otherwise protect patients' rights.

(2) Initial contract terms for the 14-bed unit and the six-bed unit shall require participation in the no refusal system for four years and until the facility has recouped its initial investment. Contracts referenced in subdivision (1) of this subsection shall apply to participating hospitals, notwithstanding their status as designated hospitals, and shall contain the following requirements:

(A) Funding shall be based on the ability to treat patients with high acuity levels;

(B) Units shall be managed as part of a statewide no refusal system;

(C) Reimbursement by the state shall cover reasonable actual costs for enhanced programming and staffing in accordance with Sec. 33b of this act;

(D) Units shall be managed to ensure access to peer supports;

(E) Participating hospitals shall maintain a stakeholder advisory group with nonexclusionary membership to ensure high quality and appropriate levels of care;

(F) The department shall be solely responsible for responding to requests for records concerning the implementation of this contract between the department and the hospital. The hospital and its employees shall cooperate and provide reasonable assistance to the department in producing records that are within the custody of the hospital that are responsive to records requests and that are not confidential by law; and

(G) The state shall retain the option to renew the contract upon expiration of the initial four-year term.

(b)(1)(A) The department of buildings and general services, with broad involvement from the department of mental health and stakeholders, shall design a 25-bed hospital owned and operated by the state in central Vermont and proximate to an existing hospital. Applying the most expeditious methodology possible, the department of buildings and general services shall supervise the construction of the hospital with an expressed goal of completing the project in 24 months. The operations of the hospital shall be under the jurisdiction of the commissioner of mental health.

(B)(i) The general assembly finds that the Centers for Medicare and Medicaid Services (CMS) advised the state of Vermont on March 14, 2012 that:

(I) any newly constructed hospital owned and operated by the state that exceeds 16 beds will be eligible to receive federal matching funds for

services rendered at the hospital under the state's current Global Commitment waiver, which is set to expire on December 31, 2013.

(II) although CMS was unable to provide a definitive answer as to whether a new hospital owned and operated by the state with 25 beds would be eligible for federal matching funds after December 31, 2013, the state will be able to cease use of nine beds at that time and amend the hospital's license from 25 beds to 16 beds if the Global Commitment waiver is not renewed or extended and a new waiver is not granted under similar terms and conditions.

(ii) In the event the hospital owned and operated by the state loses or is no longer eligible for federal matching funds after December 31, 2013, the commissioner of mental health shall cease use of nine beds within the time frame set by CMS and reduce the hospital's license from 25 to 16 beds. At that time, the commissioner of mental health shall begin planning for an orderly transition to a 16-bed hospital that shall proceed in a manner that protects the health, safety, and integrity of individuals treated at the state owned and operated hospital. The commissioner's transition plan shall ensure the nine-bed deficit in acute inpatient beds be addressed by expanding acute inpatient capacity elsewhere in the state if necessary and that the nine decommissioned beds in the state owned and operated hospital be repurposed in a manner that does not jeopardize federal matching funds for the remaining 16 beds. If the loss or denial of federal matching funds occurs while the general assembly is in session, the commissioner shall notify and seek approval of the transition plan from the senate committees on health and welfare and on institutions and the house committees on human services and on corrections and institutions before proceeding with the transition plan. If the loss or denial of federal matching funds occurs while the general assembly is not in session, the commissioner shall notify and seek approval of the transition plan from a special committee composed of members of the joint fiscal committee and the chairs and vice chairs of the senate committees on health and welfare and on institutions and the house committees on human services and on corrections and institutions before proceeding with the transition plan. The special committee shall be entitled to per diem and expenses as provided in 32 V.S.A. § 1010.

(2) To foster coordination between the judiciary and mental health systems, the hospital owned and operated by the state shall contain:

(A) adequate capacity to accept individuals receiving a court order of hospitalization pursuant to 18 V.S.A. chapter 181; and

(B) a private room used and outfitted for the purpose of judicial proceedings.



(3) The commissioner of buildings and general services may purchase, lease for a period of up to 99 years plus any contracted for renewal options, or enter into a lease-purchase agreement for property in central Vermont for the purpose described in this subsection.

(4) The commissioner of buildings and general services shall inform the chairs and vice chairs of the senate committee on institutions and house committee on corrections and institutions prior to entering into an agreement pursuant to subdivision (3) of this subsection, upon substantial completion of a design pursuant to this section, prior to the commencement of construction, and when any other substantial step is taken in furtherance of this section.

(c)(1) The commissioner is authorized to contract for seven to 12 involuntary acute inpatient beds at Fletcher Allen Health Care until the hospital owned and operated by the state described in subsection (b) of this section is operational, to cover the increased cost of care; and

(2)(A) If a viable setting is identified by the commissioner and licensed by the department of health, the commissioner is authorized to provide acute inpatient services at a temporary hospital and shall discontinue services at that hospital when the hospital owned and operated by the state described in subsection (b) of this section is operational. The department shall pursue Medicare and Medicaid certification for any such temporary hospital.

(B) If the temporary hospital identified under subdivision (2)(A) of this subsection (c) is located in Morrisville, acute inpatient services shall be discontinued at the facility when the hospital owned and operated by the state described in subsection (b) of this section is operational, but no later than September 1, 2015. At that time, the temporary hospital shall revert to prior permitted uses. The temporary hospital shall be initially licensed for eight acute inpatient beds. Before an expansion of the number of beds at the temporary Morrisville hospital may occur, the department shall confer with the host community to seek permission for such expansion.

(d) To the extent amounts of potential funding from various sources are not clear upon passage of this act, the legislative intent for funding the capital costs of this section to the extent practicable is first through insurance funds that may be available for these purposes; second through the Federal Emergency Management Agency (FEMA) funds that may be available for these purposes and any required state match; third, in the case of the 14-bed unit and the six-bed unit, through a rate payment with clearly defined terms of services; and last with state capital or general funds. It is also the intent of the general assembly that, notwithstanding 32 V.S.A. §§ 134 and 135, any capital funds expended for projects described in this act that are reimbursed at a later date by

insurance or FEMA shall be reallocated to fund capital projects in a future act relating to capital construction and state bonding.

Sec. 10. SECURE RESIDENTIAL RECOVERY PROGRAM

(a) The commissioner of mental health is authorized to establish and oversee a secure seven-bed residential facility owned and operated by the state for individuals no longer requiring acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents.

(b) The opening of the facility described in subsection (a) of this section is contingent upon the passage of necessary statutory amendments authorizing judicial orders for commitment to such a facility, which shall parallel or be included in 18 V.S.A. § 7620 (related to applications for continuation of involuntary treatment), and shall include the same level of statutory protections for the legal rights of the residents as provided for individuals at inpatient facilities.

\* \* \* Vermont Employees Retirement System \* \* \*

Sec. 11. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this subchapter shall have the following meanings:

\* \* \*

(28) "Successor in interest" means the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 12. 3 V.S.A. § 459(d)(2)A is amended to read:

(2)(A) Upon early retirement, a group F member, except facility employees of the department of corrections and department of corrections employees who provide direct security and treatment services to offenders under supervision in the community and Woodside facility employees, shall receive an early retirement allowance which shall be equal to the normal retirement allowance reduced by one-half of one percent for each month the member is under age 62 at the time of early retirement. Group F members who have 20 years of service as facility employees of the department of corrections, as department of corrections employees who provide direct security and treatment services to offenders under supervision in the community or as

Woodside facility employees or as Vermont ~~state hospital~~ State Hospital employees, or as employees of its successor in interest, who provide direct patient care shall receive an early retirement allowance which shall be equal to the normal retirement allowance at age 55 without reduction; provided the 20 years of service occurred in one or more of the following capacities as an employee of the department of corrections, Woodside facility~~],~~ or the Vermont ~~state hospital~~ State Hospital, or its successor in interest: facility employee, community service center employee, or court and reparative service unit employee.

\* \* \* Executive: Human Services \* \* \*

Sec. 13. 3 V.S.A. § 3089 is amended to read:

§ 3089. DEPARTMENT OF MENTAL HEALTH

The department of mental health is created within the agency of human services as the successor to and the continuation of the division of mental health services of the department of health. The department of mental health shall be responsible for the operation of the Vermont ~~state hospital~~ State Hospital, or its successor in interest as defined in subdivision 455(28) of this title.

\* \* \* Crimes and Criminal Procedure: Escape \* \* \*

Sec. 14. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

\* \* \*

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

\* \* \*

(4) escapes or attempts to escape from the Vermont ~~state hospital~~ State Hospital, or its successor in interest or a participating hospital, when confined by court order pursuant to chapter 157 of ~~Title 13 or chapter 199 of Title 18~~ this title, or when transferred there pursuant to ~~section 28 V.S.A. § 703 of Title 28~~ and while still serving a sentence, shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

\* \* \*

(d) As used in this section:

(1) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit

any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(2) "Participating hospital" means a hospital under contract with the department of mental health to participate in the no refusal system.

(3) "Successor in interest" shall mean the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

\* \* \* Crimes and Criminal Procedure: Insanity as a Defense \* \* \*

Sec. 15. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

\* \* \*

(b) The order for examination may provide for an examination at any jail or correctional center, or at the state hospital, or at its successor in interest, or at such other place as the court shall determine, after hearing a recommendation by the commissioner of mental health.

\* \* \*

(g)(1) Inpatient examination at the ~~state hospital~~ Vermont State Hospital, or its successor in interest, or a designated hospital. The court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

\* \* \*

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the commissioner of mental health.

(A) If a Vermont ~~state hospital~~ State Hospital psychiatrist, or a psychiatrist of its successor in interest, or a designated hospital psychiatrist determines that the defendant is not in need of inpatient hospitalization prior to admission, the commissioner shall release the defendant pursuant to the terms governing the defendant's release from the commissioner's custody as ordered by the court. The commissioner of mental health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~state hospital~~ State Hospital psychiatrist, or a psychiatrist of its successor in interest, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~state hospital~~ State Hospital, or its successor in interest, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

\* \* \*

(i) As used in this section:

(1) "No refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(2) "Successor in interest" shall mean the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 15a. 13 V.S.A. § 4822(c) is amended to read:

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the commissioner of ~~developmental and~~ mental health services shall give notice thereof to the committing court and state's attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing court issuing the order under that section. In all other cases, when the committing court orders a hearing under subsection (a) of this section or when, in the discretion of the commissioner of ~~developmental and~~ mental health services, a hearing should be held prior to the discharge, the hearing shall be held in the ~~criminal family~~ division of the superior court, ~~Waterbury circuit~~ to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the commissioner, the state's attorney of the county where the prosecution originated, the committed person and the person's attorney. Prior to the hearing, the state's attorney may enter an appearance in the proceedings

and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

Sec. 16. DELETED

\* \* \* General Provisions (Pertaining to Mental Health) \* \* \*

Sec. 17. 18 V.S.A. § 7101 is amended to read:

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

\* \* \*

(26) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(27) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

(28) “Successor in interest” means the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 18. 18 V.S.A. § 7108 is amended to read:

§ 7108. CANTEENS

The ~~superintendents~~ chief executive officer of the Vermont State Hospital ~~and the Training School~~, or its successor in interest, may conduct a canteen or commissary, which shall be accessible to patients, ~~students~~, employees, and visitors of the ~~state hospital and training school~~ Vermont State Hospital, or its successor in interest, at designated hours and shall be operated by employees of the hospital ~~and the school~~. A revolving fund for this purpose is authorized. The salary of an employee of the hospital ~~or training school~~ shall be charged against the canteen fund. Proceeds from sales may be used for operation of the canteen and the benefit of the patients, ~~students~~ and employees of the hospital ~~or training school~~ under the direction of the ~~superintendents~~ chief executive officer and subject to the approval of the commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the commissioner.

Sec. 19. 18 V.S.A. § 7110 is amended to read:

§ 7110. CERTIFICATION OF MENTAL ILLNESS

A certification of mental illness by a licensed physician required by section 7504 of this title shall be made by a board eligible psychiatrist, a board certified psychiatrist or a resident in psychiatry, under penalty of perjury. In areas of the state where board eligible psychiatrists, board certified psychiatrists or residents in psychiatry are not available to complete admission certifications to the Vermont ~~state hospital~~ State Hospital, or its successor in interest, the commissioner may designate other licensed physicians as appropriate to complete certification for purposes of section 7504 of this title.

\* \* \* The Department of Mental Health \* \* \*

Sec. 20. 18 V.S.A. § 7205 is amended to read:

§ 7205. SUPERVISION OF INSTITUTIONS

(a) The department of mental health shall operate the Vermont State Hospital, or its successor in interest, and shall be responsible for patients receiving involuntary treatment ~~at a hospital designated by the department of mental health~~.

(b) The commissioner of the department of mental health, in consultation with the secretary, shall appoint a chief executive officer of the Vermont State Hospital, or its successor in interest, to oversee the operations of the hospital. The chief executive officer position shall be an exempt position.

Sec. 21. DELETED

Sec. 22. DELETED

\* \* \* The Commissioner of Mental Health \* \* \*

Sec. 23. 18 V.S.A. § 7401 is amended to read:

§ 7401. POWERS AND DUTIES

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the commissioner shall be charged with its administration. The commissioner may:

\* \* \*

(5) supervise the care and treatment of ~~patients at the Retreat in the same manner and with the same authority that he supervises patients at the Vermont State Hospital~~ individuals within his or her custody;

\* \* \*

(16) contract with accredited educational or health care institutions for psychiatric services at the Vermont State Hospital, or its successor in interest;

\* \* \*

\* \* \* Admission Procedures \* \* \*

Sec. 24. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, including escorts within a designated hospital or the Vermont ~~state hospital~~ State Hospital, or its successor in interest, or otherwise being transported under the jurisdiction of the commissioner in any manner which:

(1) prevents physical and psychological trauma;

(2) respects the privacy of the individual; and

(3) represents the least restrictive means necessary for the safety of the patient.

(b) The commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the commissioner's care and custody.

(c) When a professional or law enforcement officer designated pursuant to subsection (b) of this section decides an individual is in need of secure transport with mechanical restraints, the reasons for such determination shall be documented in writing.

\* \* \*

\* \* \* Care and Treatment \* \* \*

Sec. 25. 18 V.S.A. § 7703 is amended to read:

§ 7703. TREATMENT

(a) Outpatient or partial hospitalization shall be preferred to inpatient treatment. Emergency involuntary treatment shall be undertaken only when clearly necessary. Involuntary treatment shall be utilized only if voluntary treatment is not possible.

(b) The department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint.



## \* \* \* Transfer of Patients \* \* \*

Sec. 26. 18 V.S.A. § 7901 is amended to read:

§ 7901. INTRASTATE TRANSFERS

The commissioner may authorize the transfer of patients between the Vermont ~~state hospital~~ State Hospital, or its successor in interest, and designated hospitals if the commissioner determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice shall be given to the patient's ~~attorney~~, legal guardian or agent, if any, ~~spouse, parent, or parents, or, if none be known, to any other interested party in that order, and any other person with the consent of the patient.~~ In all such transfers, due consideration shall be given to the relationship of the patient to his or her family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Due consideration shall also be given to the separation of functions and to the divergent purposes of the Vermont ~~state hospital~~ State Hospital, or its successor in interest, and designated hospitals. No patient may be transferred to a correctional institution without the order of a court of competent jurisdiction. No patient may be transferred to a designated hospital outside the no refusal system unless the head of the hospital or his or her designee first accepts the patient.

## \* \* \* Support and Expense \* \* \*

Sec. 27. 18 V.S.A. § 8101(b) is amended to read:

(b) The commissioner shall promulgate, pursuant to 3 V.S.A. chapter 25 of Title 3, regulations which set forth in detail the levels of income, resources, expenses, and family size at which persons are deemed able to pay given amounts for the care and treatment of a patient, and the circumstances, if any, under which the rates of payment so established may be waived or modified. A copy of the payment schedule so promulgated shall be made available in the admissions office ~~and in the office of each supervisor at the state hospital Vermont State Hospital, or its successor in interest.~~

Sec. 28. 18 V.S.A. § 8105 is amended to read:

§ 8105. COMPUTATION OF CHARGE FOR CARE AND TREATMENT

The charge for the care and treatment of a patient at the Vermont ~~state hospital~~ State Hospital, or its successor in interest, shall be established at least annually by the commissioner. The charge shall reflect the current cost of the care and treatment, including depreciation and overhead, for the Vermont ~~state hospital~~ State Hospital, or its successor in interest. Depreciation shall include but not be limited to costs for the use of the plant and permanent

improvements, and overhead shall include but not be limited to costs incurred by other departments and agencies for the operation of the hospital. Accounting principles and practices generally accepted for hospitals shall be followed by the commissioner in establishing the charges.

Sec. 29. 18 V.S.A. § 8010 is amended to read:

§ 8010. VOLUNTARY PATIENTS; DISCHARGE; DETENTION

~~(a) If a voluntary patient gives notice in writing to the head of the hospital of a desire to leave the hospital, he or she shall promptly be released unless he or she agreed in writing at the time of his admission that his or her release could be delayed.~~

~~(b) In that event and if the head of the hospital determines that the patient is a patient in need of further treatment, the head of the hospital may detain the patient for a period not to exceed four days from receipt of the notice to leave. Before expiration of the four day period the head of the hospital shall either release the patient or apply to the family division of the superior court in the unit in which the hospital is located for the involuntary admission of the patient. The patient shall remain in the hospital pending the court's determination of the case.~~

~~(c) If the patient is under 18 years of age, the notice to leave may be given by the patient or his or her attorney or the person who applied for admission, provided the minor consents thereto. [Repealed.]~~

\* \* \* Municipal and County Government \* \* \*

Sec. 29a. 24 V.S.A. § 296 is amended to read:

§ 296. TRANSPORTATION OF PRISONERS AND MENTAL PATIENTS

All commitments to a state correctional facility ~~or state mental institution~~ or to any other place named by the commissioner of corrections, ~~commissioner of mental health~~ or committing court, shall be made by any sheriff, deputy sheriff, state police officer, police officer, or constable in the state, or the commissioner of corrections or his or her authorized agent.

\* \* \* Professions and Occupations: Nursing \* \* \*

Sec. 30. 26 V.S.A. § 1583 is amended to read:

§ 1583. EXCEPTIONS

This chapter does not prohibit:

\* \* \*

~~(6) The work and duties of psychiatric technicians and other care attendants employed in the Vermont state hospital at Waterbury. The agency~~

~~of human services shall consult with the board regarding standards for the education of the technicians and care attendants.~~

~~(7)~~ The work and duties of attendants in attendant care services programs.

~~(8)~~<sup>(7)</sup> The practice of any other occupation or profession licensed under the laws of this state.

~~(9)~~<sup>(8)</sup> The providing of care for the sick in accordance with the tenets of any church or religious denomination by its adherents if the individual does not hold himself or herself out to be a registered nurse, licensed practical nurse, or licensed nursing assistant and does not engage in the practice of nursing as defined in this chapter.

\* \* \* Public Institutions and Corrections: Juveniles \* \* \*

Sec. 31. 28 V.S.A. § 1105 is amended to read:

#### § 1105. TRANSFER OF JUVENILES TO STATE HOSPITAL

~~The transfer of any child committed to the custody of the commissioner from a facility of or supported by the department to the state hospital shall be conducted pursuant to the same procedures established for the transfer of adult inmates by sections 703-706 of this title. [Repealed.]~~

\* \* \* Regulation of Long-Term Care Facilities \* \* \*

Sec. 32. 33 V.S.A. § 7102 is amended to read:

#### § 7102. DEFINITIONS

For the purposes of this chapter:

\* \* \*

(11) “Therapeutic community residence” means a place, however named, excluding ~~a hospital~~ hospitals as defined by statute ~~or the Vermont state hospital~~ which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

\* \* \*

#### Sec. 33. REPORTS

(a) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committees on human services and on judiciary on issues and protections relating to decentralizing high intensity inpatient mental health care. The commissioner of mental health shall:

(1) Recommend whether any statutory changes are needed to preserve the rights afforded to patients in the Vermont State Hospital. In so doing, the commissioner shall consider 18 V.S.A. §§ 7705 and 7707, the Vermont Hospital Patient Bill of Rights as provided in 18 V.S.A. § 1852, the settlement order in Doe, et al. v. Miller, et al., docket number S-142-82-Wnc dated May 1984, and other state and federal regulatory and accreditation requirements related to patient rights.

(2) Work with designated hospitals and stakeholders to develop a process to ensure public involvement with policy development relevant to individuals in the care and custody of the commissioner.

(3) Develop consistent definitions and measurement specifications for measures relating to seclusion and restraint and other key indicators, in collaboration with the designated hospitals. The commissioner shall prioritize the use of measures developed by national organizations such as the Joint Commission and the Centers for Medicare and Medicaid Services.

(4) Report on the efficacy of the department of mental health's housing subsidies program on the status of stable housing.

(b) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committee on human services regarding the department's efforts to date to plan for implementation, quality improvement, and innovation of Vermont's mental health system and how the department recommends that it proceed in its efforts to improve the system. The recommendation shall be based on an assessment of outcome and financial measures focused on at least the following criteria for individuals with a mental health condition:

(1) the development of sufficient capacity for inpatient and community psychiatric services and peer supports across the continuum of care;

(2) the support of individuals in accessing the services nearest to their home;

(3) the reduction in emergency department usage and law enforcement intervention;

(4) the reduction in hospital admissions and length of inpatient stays, including any impact on readmissions;

(5) the implementation of quality assessment tools for evaluation of services at all levels, including those needed to measure the effectiveness of the care management system;

(6) the department's use of current financial data to conduct a fiscal analysis of the capital and annual operating costs associated with the plan as enacted; and

(7) individuals' satisfaction with provided services.

(c) Prior to submitting the reports required by subsections (a) and (b) of this section, the department of mental health shall solicit comments from the department's patient representative described in 18 V.S.A. § 7253, Vermont Legal Aid, and Disability Rights Vermont, and shall append any comments received to the respective report.

(d) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committee on human services with a plan for streamlining overlapping state and federal reporting requirements for providers in the mental health system, including recommendations for any statutory changes needed to do so.

(e) A special committee consisting of the members of the joint fiscal committee and the chairs and vice chairs of the senate committee on health and welfare and the house committee on human services, in consultation with the commissioner of mental health shall contract with an independent consultant who has expertise in the field of mental health and psychiatric hospital services to evaluate the structure, services, and financial implications of Vermont's proposed mental health system. The joint fiscal office shall administer the contract for the special committee. The department of mental health shall transfer to the joint fiscal committee one-half the cost of this contract and the joint fiscal committee is authorized to transfer one-half the cost of this contract from the legislative budget to the joint fiscal committee. The independent consultant shall submit a report to the general assembly by December 1, 2012 and shall specifically address:

(1) Whether Vermont's proposed mental health system appropriately serves the needs of individuals with mental health conditions throughout the state and, if any unmet needs are identified, how they may be addressed;

(2) The data and evaluation mechanisms necessary to manage and improve the quality of care and outcomes for individuals in Vermont with a mental health condition.

#### Sec. 33a. RULEMAKING

On or before September 1, 2012, the commissioner of mental health shall initiate a rulemaking process that establishes standards that meet or exceed and are consistent with standards set by the Centers for Medicare and Medicaid Services and the Joint Commission for the use and reporting of the emergency involuntary procedures of seclusion or restraint on individuals within the

custody of the commissioner and that require the personnel performing emergency involuntary procedures to receive training and certification on the use of these procedures. Standards established by rule shall be consistent with the recommendations made pursuant to Sec. 33(a)(1) and (3) of this act.

Sec. 33b. COST-BASED REIMBURSEMENT FOR ACUTE HOSPITAL SERVICES

(a) The department of mental health shall ensure that hospitals are paid reasonable actual costs for providing necessary care to persons who otherwise would have been cared for at the Vermont State Hospital as defined by the department. The department shall contract with a third party with experience in psychiatric hospital care and expenses to conduct a comprehensive fiscal review to determine if the department's cost reimbursement methodology reflects reasonable actual costs.

(b) The department of mental health shall report to the joint fiscal committee regarding the fiscal review described in subsection (a) of this section on or before September 1, 2012.

Sec. 34. TRANSFER OF APPROPRIATIONS

To continue the training program established in Sec. 13 of No. 80 of the Acts of the 2003 Adj. Sess. (2004) (amending Sec. 57 of No. 66 of the Acts of 2003), for assisting selected law enforcement officers during the performance of their duties in their interactions with persons exhibiting mental health conditions, \$20,000.00 of the general funds appropriated to the department of mental health for fiscal year 2012 shall be transferred to the office of the attorney general.

(1) The office of the attorney general, in consultation with the Vermont coalition for disability rights and other organizations, shall implement this training program.

(2) By January 15 of each year and until funds are fully expended, the attorney general shall submit to the secretary of administration and the house and senate committees on appropriations a report summarizing how the funds have been used and how the trainings have progressed.

(3) Unexpended funds shall be carried forward and used for the purpose of this section in future years.

Sec. 34a. Sec. 33 of No. 43 of the Acts of 2009 (amending Sec. 124d(e) of No. 65 of the Acts of 2007) is amended to read:

(e) For purposes of this section, the council shall cease to exist when the development of the alternatives to the Vermont state hospital is completed, but no later than ~~July~~ September 1, 2012 2015.

## \* \* \* Fiscal Year 2012 Appropriations \* \* \*

Sec. 35. Sec. B.301 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 14 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

## Sec. B.301 Secretary's office - global commitment

Grants	<u>1,080,785,264</u>	<u>1,107,604,567</u>
Total	<u>1,080,785,264</u>	<u>1,107,604,567</u>
Source of funds		
General fund	139,267,121	135,947,833
Special funds	18,630,961	19,052,361
Tobacco fund	36,978,473	36,978,473
State health care resources fund	221,579,040	234,205,524
Catamount fund	23,948,700	25,226,979
Federal funds	639,692,834	655,505,262
Interdepartmental transfers	<u>688,135</u>	<u>688,135</u>
Total	<u>1,080,785,264</u>	<u>1,107,604,567</u>

Sec. 36. Sec. B.314 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 24 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

## Sec. B.314 Mental health - mental health

Personal services	5,486,339	5,482,633
Operating expenses	1,117,984	1,040,984
Grants	<u>124,369,250</u>	<u>139,483,645</u>
Total	<u>130,973,573</u>	<u>146,007,262</u>
Source of funds		
General fund	811,295	961,295
Special funds	6,836	6,836
Federal funds	6,555,971	6,552,154
Global Commitment fund	123,579,471	138,466,977
Interdepartmental transfers	<u>20,000</u>	<u>20,000</u>
Total	<u>130,973,573</u>	<u>146,007,262</u>

Sec. 37. Sec. B.315 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 25 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

## Sec. B.315 Mental health – Vermont state hospital

Personal services	20,479,188	20,228,969
Operating expenses	<u>2,056,312</u>	1,394,734
Grants	<u>82,335</u>	<u>82,335</u>

Total	22,617,835	21,706,038
Source of funds		
General fund	17,016,067	5,963,977
Special funds	835,486	0
Federal funds	213,564	93,117
Global Commitment fund	4,252,718	15,648,944
Interdepartmental transfers	300,000	0
Total	22,617,835	21,706,038

Sec. 37a. REDUCTION IN FORCE OF VERMONT STATE HOSPITAL EMPLOYEES

(a) Permanent status classified employees who were officially subjected to a reduction in force from their positions with the Vermont State Hospital on or after February 6, 2012, whose reemployment rights have not otherwise terminated and who have not been reemployed with the state during the two-year reduction in force reemployment rights period, shall be granted a continuation of their reduction in force reemployment rights, in accordance with the provisions of the applicable collective bargaining agreement, but solely to vacant classified bargaining unit positions at any new state-owned and -operated psychiatric hospital which management intends to fill. All other contractual reduction in force reemployment terms and conditions shall apply.

(b) Permanent status classified employees employed by the Vermont State Hospital as of February 6, 2012 who are employed by the state shall, in accordance with the provisions of the applicable collective bargaining agreement, be eligible to receive one mandatory offer of reemployment to any new state-owned and -operated psychiatric hospital, solely to the job classification that they last occupied at the Vermont State Hospital, provided management intends to fill positions within that job classification. An employee who accepts such mandatory offer of reemployment shall be appointed in accordance with the provisions of the applicable collective bargaining agreement. If an employee who accepts a mandatory offer of reemployment fails the associated working test period, he or she shall be separated from employment and granted full reduction in force reemployment rights in accordance with the applicable collective bargaining agreement.

(c)(1) Participating hospitals and designated agencies developing acute inpatient, secure residential, and intensive residential recovery services, as described in Secs. 8–10 of this act, shall provide the department of human resources with a description of the minimum qualifications for those open positions related to the care of individuals with mental health conditions. Participating hospitals and designated agencies shall be encouraged to hire former state employees who meet minimum requirements or have equivalent



experience. The department shall use the most effective method to notify former employees of the Vermont State Hospital of these positions.

(2) The general assembly encourages the administration through its contracting process with participating hospitals and designated agencies to provide former employees of the Vermont State Hospital with the opportunity to apply for available positions.

(3) The provisions of this subsection shall not affect any existing collective bargaining agreement.

(d) Subsections (a) and (b) of this section are repealed one year after the opening of any new state-owned and -operated psychiatric hospital.

Sec. 37aa. VERMONT STATE HOSPITAL EMPLOYEE RETIREMENT INCENTIVE

(a) An individual who was employed by the department of mental health as of March 1, 2012, who was employed at the Vermont State Hospital on August 28, 2011, who participates in either the defined benefit or defined contribution plan, and who does not initiate the purchase of any additional service credit after March 1, 2012 shall be eligible for the retirement incentive outlined in subsection (b) of this section if the individual has:

(1) 30 years of creditable retirement service as of April 13, 2012;

(2) five years of creditable retirement service as of April 13, 2012 and is 62 years of age or older on April 13, 2012; or

(3) 20 years of creditable retirement service as of April 13, 2012 as a facility employee who provides or who has provided direct security and treatment services as provided in 3 V.S.A. § 459(2)(A) and is 55 years of age or older on April 12, 2012.

(b) If the employee applies for retirement on or before April 13, 2012 for a retirement effective on or before May 1, 2012, the employee shall be entitled to payment by the state of at least 80 percent of the cost of the premium for health insurance coverage offered by the state of Vermont to retirees, provided that the employee continues to meet the eligibility requirements for at least seven years following retirement unless the employee elects the premium reduction option under 3 V.S.A. § 479(e) and:

(1) \$750.00 per complete year of service if the employee has five years of creditable service or more and fewer than 15 years of creditable service; or

(2) \$1,000.00 per complete year of service if the employee has 15 years of creditable service or more.

(c) The cash incentive set forth in subsection (b) of this section shall not exceed \$15,000.00 per employee. The employee shall receive the cash portion of the incentive in two equal payments in fiscal years 2013 and 2014. The first payment shall be made within 90 days of the retirement date. The second payment shall be made within 90 days of the one-year anniversary of the retirement date. The retirement incentive shall not be paid from the Vermont state retirement fund, as outlined in 3 V.S.A. § 473.

(d) No employee who receives the incentive set forth in subsection (b) of this section may return to permanent or limited classified service with the state for at least two full fiscal years from the date of his or her retirement unless the secretary of administration expressly approves otherwise. The joint fiscal committee shall be notified of any employee who received the incentive set forth in subsection (b) of this section and returned to state employment within two years.

(e) An employee who receives the incentive set forth in subsection (b) of this section is not entitled to receive any mandatory reemployment rights to a successor state facility and will not be eligible for any rights under Sec. 37a of this act.

(f) The retirement incentive set forth in subsection (b) of this section shall be treated as a severance payment under 21 V.S.A. § 1344(a)(5)(C) and shall be a disqualifying remuneration.

#### Sec. 37b. LEGISLATIVE INTENT

(a) It is the intent of the general assembly that the department of mental health contract with the Brattleboro Retreat for a 14-bed unit and with Rutland Regional Medical Center for a six-bed facility pursuant to Sec. 9(a) of this act.

(b) It is the understanding of the general assembly that the proposed temporary hospital in Sec. 9(c)(2) of this act, the Brattleboro Retreat, Rutland Regional Medical Center, and an interim secure residential facility are to temporarily meet the immediate needs of the state.

#### Sec. 38. EFFECTIVE DATES

This act shall take effect on passage, except for Sec. 34 of this act which shall take effect on July 1, 2012.

*CLAIRE D. AYER  
ROBERT M. HARTWELL  
KEVIN J. MULLIN*

*Committee on the part of the Senate*

ANN D. PUGH  
SANDY J. HAAS  
ALICE M. EMMONS

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 25, Nays 0.

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

### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Pollina, Sears, Snelling, Starr, Westman, White.

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

**Those Senators absent or not voting were:** Baruth, Campbell (presiding), Illuzzi, Miller, Nitka.

### **Adjournment**

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning on Friday, March 23, 2012.

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### **FRIDAY, MARCH 23, 2012**

The Senate was called to order by the President *pro tempore*.

### **Devotional Exercises**

A moment of silence was observed in lieu of devotions.

### **Message from the House No. 38**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 78.** An act relating to wages for laid-off employees.

**H. 157.** An act relating to restrictions on tanning beds.

- H. 412.** An act relating to harassment and bullying in educational settings.
- H. 459.** An act relating to approval of amendments to the charter of the town of Brattleboro.
- H. 468.** An act relating to the Vermont Energy Act of 2012.
- H. 484.** An act relating to amendment to the Windham solid waste district charter.
- H. 498.** An act relating to parity for primary mental health care services.
- H. 550.** An act relating to the Vermont administrative procedure act.
- H. 627.** An act relating to an opiate addiction treatment system.
- H. 640.** An act relating to promoting tourism and marketing.
- H. 691.** An act relating to prohibiting collusion as an antitrust violation.
- H. 699.** An act relating to scrap metal processors.
- H. 730.** An act relating to miscellaneous consumer protection laws.
- H. 745.** An act relating to the Vermont prescription monitoring system.
- H. 747.** An act relating to cigarette manufacturers.
- H. 751.** An act relating to jurisdiction of delinquency proceedings.
- H. 759.** An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.
- H. 768.** An act relating to ignition interlock restricted driver's licenses and civil suspensions.
- H. 769.** An act relating to department of environmental conservation fees.
- H. 770.** An act relating to the state's transportation program.
- H. 771.** An act relating to making technical corrections and other miscellaneous changes to education law.
- H. 772.** An act relating to allocation of federal rental subsidies.
- In the passage of which the concurrence of the Senate is requested.
- The House has considered joint resolution originating in the Senate of the following title:
- J.R.S. 51.** Joint resolution relating to weekend adjournment.
- And has adopted the same in concurrence.

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The House has considered Senate proposal of amendment to the following House bill:

**H. 512.** An act relating to banking, insurance, securities, and health care administration.

And has severally concurred therein.

**Bill Referred to Committee on Appropriations**

**S. 99.**

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to agricultural economic development.

**Bill Referred to Committee on Rules**

**S. 142.**

Senate bill of the following title, appearing on the Calendar for notice, and not having met the crossover deadline was referred to the Committee on Rules:

An act relating to pet merchants.

**Bills Referred**

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

**H. 78.**

An act relating to wages for laid-off employees.

To the Committee on Economic Development, Housing and General Affairs.

**H. 157.**

An act relating to restrictions on tanning beds.

To the Committee on Health and Welfare.

**H. 412.**

An act relating to harassment and bullying in educational settings.

To the Committee on Education.

**H. 459.**

An act relating to approval of amendments to the charter of the town of Brattleboro.

To the Committee on Government Operations.

**H. 468.**

An act relating to the Vermont Energy Act of 2012.

To the Committee on Natural Resources and Energy.

**H. 484.**

An act relating to amendment to the Windham solid waste district charter.

To the Committee on Government Operations.

**H. 498.**

An act relating to parity for primary mental health care services.

To the Committee on Health and Welfare.

**H. 550.**

An act relating to the Vermont administrative procedure act.

To the Committee on Government Operations.

**H. 627.**

An act relating to an opiate addiction treatment system.

To the Committee on Health and Welfare.

**H. 640.**

An act relating to promoting tourism and marketing.

To the Committee on Economic Development, Housing and General Affairs.

**H. 691.**

An act relating to prohibiting collusion as an antitrust violation.

To the Committee on Judiciary.

**H. 699.**

An act relating to scrap metal processors.

To the Committee on Economic Development, Housing and General Affairs.

**H. 730.**

An act relating to miscellaneous consumer protection laws.

To the Committee on Economic Development, Housing and General Affairs.

**H. 745.**

An act relating to the Vermont prescription monitoring system.

To the Committee on Health and Welfare.

**H. 747.**

An act relating to cigarette manufacturers.

To the Committee on Economic Development, Housing and General Affairs.

**H. 751.**

An act relating to jurisdiction of delinquency proceedings.

To the Committee on Judiciary.

**H. 759.**

An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment.

To the Committee on Health and Welfare.

**H. 768.**

An act relating to ignition interlock restricted driver's licenses and civil suspensions.

To the Committee on Judiciary.

**H. 769.**

An act relating to department of environmental conservation fees.

To the Committee on Finance.

**H. 770.**

An act relating to the state's transportation program.

To the Committee on Transportation.

**H. 771.**

An act relating to making technical corrections and other miscellaneous changes to education law.

To the Committee on Education.

**H. 772.**

An act relating to allocation of federal rental subsidies.

To the Committee on Economic Development, Housing and General Affairs.

**Message from the Governor  
Appointments Referred**

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

Barry, Virginia of Barre - Member of the State Lottery Commission, - from March 13, 2012, to February 28, 2015.

To the Committee on Economic Development, Housing and General Affairs.

Scala, Thomas of Brattleboro - Member of the State Lottery Commission, - from March 14, 2012, to February 28, 2015.

To the Committee on Economic Development, Housing and General Affairs.

Neubauer, Kate of Burlington - Member of the VT Citizens' Advisory Council on Lake Champlain's Future, - from March 13, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Hoerr, Roland of Colchester - Member of the VT Citizens' Advisory Council on Lake Champlain's Future, - from March 13, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Ehlers, James of Colchester - Member of the VT Citizens' Advisory Council on Lake Champlain's Future, - from March 13, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.



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Marsh, Donald of Montpelier - Member of the Natural Gas and Oil Conservation Board, - from March 13, 2012, to February 28, 2014.

To the Committee on Natural Resources and Energy.

Skinner, Mary Just of Middlesex - Member of the Natural Gas and Oil Conservation Board, - from March 13, 2012, to February 28, 2015.

To the Committee on Natural Resources and Energy.

Evslin, Mary of Stowe - Member of the Capitol Complex Commission, - from March 13, 2012, to February 28, 2015.

To the Committee on Institutions.

Johnson-Aten, Bonnie of Montpelier - Member of the State Board of Education, - from March 15, 2012, to February 28, 2018.

To the Committee on Education.

### **Rules Suspended; Bill Committed**

On motion of Senator White, the Committee on Rules was relieved of further consideration of Senate bill entitled:

**S. 142.** An act relating to pet merchants.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator White moved that Senate Rule 49 be suspended and the bill be committed to the Committee on Finance with the report of the Committee on Government Operations *intact*,

Which was agreed to.

### **Committee Relieved of Further Consideration; Bill Committed**

#### **H. 765.**

On motion of Senator Hartwell, the Committee on Institutions was relieved of further consideration of House bill entitled:

An act relating to the mental health needs of the corrections population, and the bill was committed to the Committee on Judiciary.

### **Bills Amended; Bills Passed**

#### **S. 202.**

Senate bill entitled:

An act relating to regulation of flood hazard areas.

Was taken up.

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the bill in Sec. 1, 10 V.S.A. § 754, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) Rulemaking authority.

(1) On or before July 1, 2013, the secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to development that is:

(A) exempt from municipal land use regulation under 24 V.S.A. chapter 117; and

(B) located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(2) The secretary shall not adopt rules under this subsection that regulate agricultural activities without the consent of the secretary of agriculture, food and markets, provided that the secretary of agriculture, food and markets shall not withhold consent under this subdivision when lack of such consent would result in the state's noncompliance with the National Flood Insurance Program.

Which was agreed to.

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

**S. 214.**

Senate bill entitled:

An act relating to customer rights regarding smart meters.

Was taken up.

Thereupon, pending third reading of the bill, Senator MacDonald on behalf of the Committee on Finance moved to amend the bill as follows:

First: In Sec. 1, 30 V.S.A. § 2811, in subsection (c), by striking out the word "Upon" and inserting in lieu thereof Beginning April 15, 2013, upon

Second: In Sec. 1, 30 V.S.A. § 2811, in subsection (d), after the word "Reports." by adding a new first sentence to read as follows: On or before March 1, 2013, the commissioner of public service shall publish a report itemizing the opt-out wireless smart meter removal fees and the opt-out wireless smart meter reading fees authorized for each electric company under subsection (c) of this section.

Which was agreed to.

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

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**Bill Amended; Third Reading Ordered****S. 179.**

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

An act relating to amending perpetual conservation easements.

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

Sec. 1. 10 V.S.A. § 302 is amended to read:

§ 302. POLICY, FINDINGS, AND PURPOSE

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, forestland, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, and to support farm, forest, and related enterprises, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural land, forestland, historic properties, important natural areas and recreational lands, and in keeping conserved agricultural land in production and affordable for future generations of farmers.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section.

Sec. 2. 10 V.S.A. § 6301 is amended to read:

§ 6301. PURPOSE

It is the purpose of this chapter to encourage and assist the maintenance of the present uses of Vermont's agricultural, forest, and other undeveloped land and to prevent the accelerated residential and commercial development thereof; to preserve and to enhance Vermont's scenic natural resources; to strengthen the base of the recreation industry and to increase employment, income, business, and investment; ~~and~~ to enable the citizens of Vermont to plan its orderly growth in the face of increasing development pressures in the interests of the public health, safety, and welfare; and to encourage the use of conservation and preservation tools to support farm, forest, and related enterprises, thereby strengthening Vermont's economy to improve the quality

of life for Vermonters, and to maintain the historic settlement pattern of compact village and urban centers separated by rural countryside.

Sec. 3. 10 V.S.A. § 6307 is amended to read:

§ 6307. ENFORCEMENT

(a) Injunction. In any case where rights and interests in real property are held by a municipality, state agency, or qualified organization under the authority of this chapter, the legislative body of the municipality, the state agency, or the qualified organization may institute injunction proceedings to enforce the rights of the municipality, state agency, or qualified organization, in accordance with the provisions of this chapter, and may take all other proceedings as are available to an owner of real property under the laws of this state to protect and conserve its right or interest.

(b) Liquidated damages. Any contract or deed establishing or relating to the sale or transfer of rights or interests in real property under the authority of this chapter may provide for specified liquidated damages, actual damages, costs, and reasonable attorney fees in the event of a violation of the rights of the municipality, state agency, or qualified organization thereunder.

(c) Conservation rights. The holder of conservation rights and interests may seek injunctive relief and damages against any person who damages the holder's rights and interests, irrespective of whether the owner of the land is a party to the proceeding.

Sec. 4. 10 V.S.A. § 6308 is amended to read:

§ 6308. ~~TERMINATION OF RIGHTS~~ RIGHTS IN PERPETUITY UNLESS LIMITED

(a) If the legislative body of a municipality in the case of municipal rights or interests, or a state agency, in the case of state-owned rights or interests, finds that the retention of the rights or interests is no longer needed to carry out the purposes of this chapter, the rights or interests may be released and conveyed to the co-owner, to another public agency, to another party holding other rights or interests in the land, or to a third party. Where the conveyance is to a party other than another public agency or qualified organization, the municipality or state agency shall receive adequate compensation from that party for the conveyance of the rights or interests.

~~(b) Wherever possible, in order to promote the interests of the state, municipalities, qualified organizations, or private landowners involved, agreements for the conveyance of rights or interests in real property less than fee simple, entered into under the authority of this chapter, shall contain a provision limiting the agreement to a specified number of years except where~~

~~both parties agree, such agreements may provide for the conveyance of rights and interests in perpetuity.~~

The conveyance of rights or interests in real property less than fee simple made under the authority of this chapter shall be perpetual, except if the conveyance is limited by its terms to a specific period.

Sec. 5. 10 V.S.A. § 823 is amended to read:

§ 823. INTERESTS IN REAL PROPERTY

Conservation and preservation rights and interests shall be deemed to be interests in real property and shall run with the land. A document creating such a right or interest shall be deemed to be a conveyance of real property and shall be recorded under 27 V.S.A. chapter 5 of Title 27. Such a right or interest shall be subject to the requirement of filing a notice of claim within the 40- year period as provided in 27 V.S.A. § 603. Such a right or interest shall be enforceable in law or in equity. Any subsequent transfer, mortgage, lease, or other conveyance of the real property or an interest in the real property shall reference the grant of conservation rights and interests in the real property, provided, however, that the failure to include a reference to the grant shall not affect the validity or enforceability of the conservation rights and interests.

Sec. 6. 27 V.S.A. § 604(a) is amended to read:

(a) This subchapter shall not bar or extinguish any of the following interests, by reason of failure to file the notice provided for in section 605 of this title:

\* \* \*

(7) Any easement or interest in the nature of an easement, or any rights appurtenant thereto granted, excepted or reserved by a recorded instrument creating such easement or interest, ~~including any rights for future use, except rights and interests created pursuant to chapter 34 of Title 10.~~

(8) Any conservation rights or interests created pursuant to 10 V.S.A. chapter 155.

Sec. 7. 10 V.S.A. § 6303(a) is amended to read:

(a) The rights and interests in real property which may be acquired, used, encumbered, and conveyed by a municipality, state agency, or qualified organization shall include, but not be limited to, the following:

\* \* \*

(7) ~~Option~~ Preemptive rights and options to purchase. The acquisition of preemptive rights such as a right of first refusal or an option to purchase land or rights and interests therein.

Sec. 8. 32 V.S.A. § 9606 is amended to read:

§ 9606. PROPERTY TRANSFER RETURN

\* \* \*

(e) The property transfer return required under this section shall also contain a certificate in such form as the secretary of the agency of natural resources shall prescribe and shall be signed under oath on affirmation by each of the parties or their legal representatives. The certificate shall indicate that each party has investigated and disclosed all of his or her knowledge relating to the flood regulations, if any, affecting the property.

(f) The property transfer return required under this section shall also contain a certificate in such form as the commissioner of taxes shall prescribe and shall be signed under oath on affirmation by each of the parties or their legal representatives. The certificate shall indicate that the transfer, mortgage, deed, lease, or other conveyance references all grants of conservation rights or interests in the real property, as required by 10 V.S.A. § 823.

(g) The property transfer tax return shall not be required of properties qualified for the exemption stated in subdivision 9603(17) of this title. A public utility shall notify the listers of a municipality of the grantors, grantees, consideration, date of execution, and location of the easement when it files for recording a deed transferring a utility line easement that does not require a transfer tax return.

~~(g)~~(h) The commissioner of taxes is authorized to disclose to any person any information appearing on a property transfer tax return, including statistical information derived therefrom, and such information derived from research into information appearing on property transfer tax returns as is necessary to determine if the property being transferred is subject to 10 V.S.A. chapter 151.

Sec. 9. WORKING GROUP ON CONSERVATION EASEMENTS

(a) Creation of working group. There is created a working group on perpetual conservation easements to study the issues relating to the creation of a formal and transparent public process for the amendment of perpetual conservation easements, the criteria for approving such amendments, and the entity most appropriate to review and approve such amendments.

(b) Membership. The conservation easements working group (the working group) shall be composed of the following members:

(1) The secretary of agriculture, food and markets or designee.

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(2) A representative of the Vermont housing and conservation board, designated by the board.

(3) The commissioner of forests, parks and recreation or designee.

(4) One member of the legal staff in the Vermont office of the attorney general, designated by the attorney general.

(5) A representative of Vermont Land Trust, designated by its board.

(6) A representative of Upper Valley Land Trust, designated by its board.

(7) A representative of the Vermont Federation of Sportsmen's Clubs, designated by its board.

(8) A representative of the Vermont Green Mountain Club, designated by its board.

(9) A representative of the Vermont chapter of The Nature Conservancy, designated by its director.

(10) A representative of a regional land trust in Vermont, appointed by the governor.

(11) An attorney licensed in Vermont and practicing in or knowledgeable about both federal tax law and real estate law, including land conservation, appointed by the Vermont Bar Association.

(12) A representative from a farming organization who is knowledgeable about agricultural conservation, appointed by the governor.

(13) A representative of the Vermont Association of Snow Travelers, designated by its board.

(c) Structure; decision-making. The working group shall elect a chair from its membership. The provisions of 1 V.S.A. § 172 (joint authority to three or more) shall apply to the meetings and decision-making of the working group.

(d) Issues. The working group shall:

(1) Investigate the options for conservation easement amendment approval laid out in S.179 and H.553 of 2012 and during the course of consideration of those bills in the relevant standing committees of the general assembly, including the following options:

(A) creating an easement amendment panel within the natural resources board to provide administrative oversight and approval for the amendment of conservation easements;

(B) requiring the housing and conservation board, in conjunction with the agency of agriculture, food and markets, to provide administrative oversight and approval for the amendment of conservation easement amendments;

(C) requiring all qualified holders to individually run a transparent public process for the approval of conservation easement amendments and to issue a written decision. Under this option, the working group should consider whether the decision should be revocable or appealable, and if so, by whom;

(D) requiring all qualified holders to get court approval for amendments that may have a significant effect on the conservation values protected by the easement.

(2) Investigate any other options for conservation easement amendment approval that the working group believes are relevant.

(3) Consider any other issues it identifies as relevant to the amendment of perpetual conservation easements.

(4) Develop a proposal setting out a transparent process or processes for the amendment of perpetual conservation easements held by land trusts, state agencies, and other entities qualified to hold perpetual conservation easements in Vermont.

(5) Develop proposed statutory provisions setting out criteria to be used by an administrative body, a court, or an easement holder in approving proposed amendments to perpetual conservation easements, which will ensure that conservation values protected by easement are protected in perpetuity, and that conservation easement holders in Vermont are in compliance with federal law.

(e) Report. On or before January 15, 2013, the working group shall submit to the general assembly its findings, recommendations, and proposed statutory revisions regarding the issues identified in subsection (d) of this section.

(f) Assistance. For the purpose of its study of the issues identified in subsection (d) of this section and the preparation of its recommendations pursuant to subsection (e) of this section, the working group shall have the administrative and technical assistance of the housing and conservation board.

(g) Meetings. The member from the housing and conservation board shall convene the first meeting of the working group no later than July 15, 2012.

(h) Appointments. Within 30 days of the effective date of this section, each entity required to submit a list of names to the governor pursuant to subsection (b) of this section shall make such submission. Within 60 days of this section's effective date, the appointing or designating authority shall



appoint or designate each member of the working group under subsection (b) of this section and shall report the member so appointed or designated to the housing and conservation board.

Sec. 10. EFFECTIVE DATES

(a) Sec. 9 of this act and this section shall take effect on passage.

(b) All remaining sections of this act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Benning on behalf of the Committee on Natural Resources and Energy moved to amend the recommendation of the Committee on Natural Resources and Energy as follows:

First: In Sec. 9, subsection (b), by inserting a new subdivision (14) to read:

(14) A Vermont landowner owning land subject to a conservation easement, appointed by the governor.

Second: In Sec. 9, subsection (d), by inserting new subdivisions (6) and (7) to read:

(6) Study the issue and make recommendations as to whether conservation rights and interests should be excluded from the requirements of 27 V.S.A. § 603 concerning the re-recording of interests in land within a 40-year period.

(7) Investigate whether there is an existing online or other database appropriate for the storage of information about conservation easements alongside other information relevant to a specific property or parcel of land. This database should be available to an individual completing a title search.

Which was agreed to.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered**

**S. 222.**

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

An act relating to cost-sharing for employer-sponsored insurance assistance plans.

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

Sec. 1. 33 V.S.A. § 1974(c)(3) is amended to read:

(3) The premium assistance program under this subsection shall provide a subsidy of premiums or cost-sharing amounts based on the household income of the eligible individual, with greater amounts of financial assistance provided to eligible individuals with lower household income and lesser amounts of assistance provided to eligible individuals with higher household income. Until an approved employer-sponsored plan is required to meet the standard in subdivision (4)(B)(ii) of this subsection, the subsidy shall include premium assistance and assistance to cover cost-sharing amounts for chronic care health services covered by the Vermont health access plan that are related to evidence-based guidelines for ongoing prevention and clinical management of the chronic condition specified in the ~~blueprint~~ Blueprint for health ~~Health~~ in 18 V.S.A. § 702, and until an employer-sponsored plan meets the standard in subdivision (4)(A) of this subsection, the subsidy shall include supplemental prescription drug coverage equivalent to the benefits offered by the Vermont health access plan. Notwithstanding any other provision of law, when an individual is enrolled in Catamount Health solely under the high deductible standard outlined in 8 V.S.A. § 4080f(a)(9), the individual shall not be eligible for premium assistance for the 12-month period following the date of enrollment in Catamount Health.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

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

#### **S. 238.**

Senator Baruth, for the Committee on Agriculture, to which was referred Senate bill entitled:

An act relating to establishing the Vermont farm guest worker program.

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

Sec. 1. 23 V.S.A. § 603 is amended to read:

§ 603. APPLICATION FOR AND ISSUANCE OF LICENSE

\* \* \*

(d) In addition to any other requirement of law or rule, a citizen of a foreign country shall produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence for inspection and copying as a part of the application process for an operator license, junior operator license, or learner permit. Notwithstanding any other law or rule to the contrary, an operator license, junior operator license, or learner permit issued to a citizen of a foreign country shall expire coincidentally with his or her authorized duration of stay.

(e) Notwithstanding subsection (d) of this section:

(1) a citizen of Mexico, Guatemala, or such other country as the secretary determines meets or exceeds the security standards and protocols adopted by Mexico and Guatemala for issuing identification documents, may submit as a part of the application process for an operator license, junior operator license, or learner permit:

(A) a valid passport and consular identification card issued by the government of the country of which the applicant is a citizen; and

(B) proof of continuous residence in Vermont for the six month period immediately preceding the date of application, which shall include:

(i) two pieces of mail with the applicant's current name and address;

(ii) two of the following that show the applicant's current name and address:

(I) utility bill;

(II) property tax bill with physical location;

(III) lease;

(IV) Vermont EBT card or AIM identification card;

(V) a homeowners or renters insurance policy or proof of claim;

(VI) if the applicant resides with another Vermont resident and gets no mail at his or her street address, a signed statement from the Vermont resident with whom he or she resides and two residency documents permitted by this subdivision demonstrating the legal residence of the Vermont resident;  
or

(iii) such other documentation as the secretary shall allow by rule;

(2) an applicant who submits documentation that meets the requirements of this subsection shall not be required to produce his or her passport and visa, alien registration receipt card (green card), or other proof of legal presence pursuant to subsection (d) of this section; and

(3) an operator license, junior operator license, or learner permit issued pursuant to this subsection shall be subject to the standards for the expiration and renewal of licenses in section 601 of this title.

## Sec. 2. REPEAL; EFFECT OF REPEAL

(a) 23 V.S.A. § 603(e) shall be repealed on the date on which the Secretary of the U.S. Department of Homeland Security requires the State of Vermont to be in full compliance with the provisions of the Real ID Act of 2005.

(b) Notwithstanding any provision of law to the contrary, a driver's license issued pursuant to 23 V.S.A. § 603(e) shall become invalid upon repeal of this Sec. 2.

## Sec. 3. EFFECTIVE DATE

This act shall take effect January 15, 2013.

The Committee further recommends that after passage of the bill the title be amended to read as follows:

An act relating to expanding access to driving privileges in Vermont.

And that when so amended the bill ought to pass.

Senator Mazza, for the Committee on Transportation, to which the bill was referred, reported that the recommendation of amendment of the Committee on Agriculture be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

## Sec. 1. STUDY COMMITTEE ON MIGRANT WORKER ACCESS TO DRIVER'S LICENSES AND NON-DRIVER IDENTIFICATION CARDS

(a) Findings. The general assembly finds that migrant workers in Vermont face significant challenges based on their current inability to apply for Vermont driver's licenses and non-driver identification cards, including the inability to travel and access services, medical care, and purchase basic necessities, to officially identify themselves or be identified, and to fulfill typical responsibilities of their employment that require them to legally drive.

(b) Creation of committee; composition. There is created a study committee on migrant worker access to driver's licenses and non-driver identification cards, composed of the following seven members:

(1) One member of the senate, who shall serve as chair, appointed by the senate committee on committees.

(2) One member of the house of representatives appointed by the speaker.

(3) The commissioner of motor vehicles or designee.

(4) The secretary of agriculture, food and markets or designee.

(5) The commissioner of public safety or designee.

(6) One member appointed by Migrant Justice.

(7) One member appointed by the Vermont human rights commission.

(c) Powers and duties.

(1) The committee shall review current procedures of the department of motor vehicles to recommend legislation that will enable access to Vermont driver's licenses and non-driver identification cards for Vermont residents without Social Security numbers. The committee shall specifically consider the following:

(A) The statutory language proposed by the senate committee on agriculture amending 23 V.S.A. § 603 and creating a contingent repeal based on the implementation of the federal REAL ID Act.

(B) The current licensing and identification framework and procedures utilized in other states.

(C) The comparative costs and benefits, including potential conflicts with federal law, of adopting one or more licensing and identification frameworks in Vermont.

(2) On or before January 15, 2013, the committee shall submit a report of its findings and recommendations to the house and senate committees on transportation and on agriculture.

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage, and shall be repealed on January 15, 2013.

After passage, the title of the bill is to be amended to read:

An act relating to expanding access to driving privileges in Vermont.

And that when so amended the bill ought to pass.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, recommended that the bill be amended as recommended by the

Committee on Transportation with further recommendation of amendment as follows:

First: In Sec. 1, by adding a new subsection (d) to read as follows:

(d) Number of meetings; term of committee; reimbursement. The committee may meet no more than four times, and shall cease to exist on January 15, 2013.

Second: In Sec. 2, by striking out the following: “, and shall be repealed on January 15, 2013”

And that when so amended the bill ought to pass

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

Thereupon, the recommendation of amendment of the Committee on Agriculture, as amended was amended as recommended by the Committee on Appropriations.

Thereupon, the question, Shall the bill be amended as recommended by the Committee on Agriculture, as amended was decided in the affirmative

Thereupon, third reading of the bill was ordered on a roll call, Yeas 26, Nays 0.

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

#### **Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Pollina, Sears, Snelling, Starr, Westman, White.

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

**Those Senators absent or not voting were:** Campbell (presiding), Illuzzi, Miller, Nitka.

#### **Bill Amended; Bill Order to Lie**

#### **S. 138.**

Senate bill entitled:

An act relating to the record keeping of search warrants.

Was taken up.

Thereupon, pending third reading of the bill, Senators Lyons, Benning and McCormack moved to amend the bill by striking out Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. 18 V.S.A. § 4216 is amended to read:

§ 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice; ~~and further that all amounts of. Except as otherwise provided in subsection (b) of this subsection, the drug are may be retained for personal use in the lawful any container in which it was delivered to him by the person selling or dispensing the same, provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.~~

(b) A person to whom or for whose use a schedule IV drug has been prescribed, sold, or dispensed may retain for personal use in any container an amount of the drug of not more than seven days' individual prescribed dosage.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Benning and Baruth moved to amend the bill by adding two new sections to be numbered Secs. 6a and 6b to read as follows:

Sec. 6a. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less shall be imprisoned not more than six months or fined not more than \$500.00, or both assessed a civil penalty of not more than \$100.00. If a person suspected of violating this subdivision (a)(1)(A) challenges the presence of cannabinoids, the person may request that the state crime laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the state shall reimburse the person at state expense.

~~(B)~~ A person ~~convicted of a second or subsequent offense under this subdivision~~ knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041, except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

(2) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ~~two~~ four ounces or more containing any marijuana or knowingly and unlawfully cultivating more than ~~three~~ six plants of marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one pound or more containing any marijuana or knowingly and unlawfully cultivating more than ten plants of marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ten pounds or more or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

\* \* \*

Sec. 6b. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

\* \* \*

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(22) Violations of 18 V.S.A. §§ 4230a(1)(A), relating to possession of one ounce or less of marijuana.



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\* \* \*

Thereupon, pending the question, Shall the bill be amended as moved by Senators Benning and Baruth?, Senator Sears, on behalf of the Committee on Judiciary, moved to substitute as follows:

By striking out Sec. 6 in its entirety and inserting in lieu thereof the following:

Sec. 6. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

~~(1)(A)~~ A person knowingly and unlawfully possessing marijuana shall be imprisoned not more than six months or fined not more than \$500.00, or both in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less shall be fined not more than \$500.00 for a first offense and \$750.00 for a second offense, and shall be imprisoned not more than six months and fined not more than \$750.00, or both, for a third or subsequent offense. Notwithstanding any provision to the contrary, a person charged under this subdivision (1)(A) for a first or second offense shall have the option of participating in a diversion program subject to approval of the diversion board. If a person has completed diversion pursuant to this subdivision on two prior occasions, the person may participate in diversion a third or subsequent time only upon referral by the state's attorney.

~~(B) A person convicted of a second or subsequent offense under this subdivision knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce but less than two ounces shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in section 7041 of Title 13 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.~~

(2) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of two ounces or more containing any marijuana or knowingly and unlawfully cultivating more than three plants of

marijuana shall be imprisoned not more than three years or fined not more than \$10,000.00, or both.

(3) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one pound or more containing any marijuana or knowingly and unlawfully cultivating more than ten plants of marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ten pounds or more or knowingly and unlawfully cultivating more than 25 plants of marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling marijuana shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ~~one-half ounce~~ two ounces or more containing any marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one pound or more containing any marijuana shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

\* \* \*

Thereupon, pending the question, Shall the amendment of Senators Benning and Baruth be substituted as moved by Senator Sears, on behalf of the Committee on Judiciary?, Senator Ashe moved that the bill be ordered to lie.

Thereupon, pending the question, Shall the bill be ordered to lie?, Senator MacDonald moved to suspend the rules to make a nondebatable question debatable which was disagreed on a division of the Senate Yeas 12, Nays 14.

Thereupon, the pending question, Shall the bill be ordered to lie?, was decided in the affirmative on a roll call, Yeas, 13, Nays 13.

There being a tie, the Secretary took the casting vote of the Presiding Officer the President *pro tempore*, who voted "Yea".

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

### Roll Call

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Brock, Cummings, Doyle, Flory, Fox, Giard, Kitchel, Mazza, Mullin, Snelling, Starr.

**Those Senators who voted in the negative were:** Baruth, Benning, Carris, Galbraith, Hartwell, Kittell, Lyons, MacDonald, McCormack, Pollina, Sears, Westman, White.

**Those Senators absent and not voting were:** Illuzzi, Miller, Nitka.

### Message from the House No. 39

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 440.** An act relating to creating an agency and secretary of education and amending the membership and purpose of the state board of education.

**H. 467.** An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

**H. 781.** An act relating to making appropriations for the support of government.

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

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 304.** House concurrent resolution congratulating the 2012 Essex High School Division I and Northern Vermont Athletic Conference championship cheerleading team.

**H.C.R. 305.** House concurrent resolution congratulating the Essex High School Hornets 2012 Division I championship girls' ice hockey team.

**H.C.R. 306.** House concurrent resolution congratulating the Williamstown High School Blue Devils 2012 Division III championship boys' basketball team.

**H.C.R. 307.** House concurrent resolution congratulating Sophia Hadeka of Fair Haven on being named Miss Vermont's Outstanding Teen 2011.

**H.C.R. 308.** House concurrent resolution congratulating the Essex High School Hornets on winning the 2012 state gymnastics championship.

**H.C.R. 309.** House concurrent resolution in memory of Alan D. Overton.

**H.C.R. 310.** House concurrent resolution designating March 21 as Vermont Energy Independence Day.

**H.C.R. 311.** House concurrent resolution congratulating the U-32 Raiders 2012 Lake Division championship boys' ice hockey team.

**H.C.R. 312.** House concurrent resolution honoring Alice Hafner of Danville for her outstanding public service on behalf of the Vermont criminal justice system.

**H.C.R. 313.** House concurrent resolution congratulating Middlebury Union Middle School students Ronan Howlett and Meigan Clark on their success at the 2012 Vermont Spelling Bee.

**H.C.R. 314.** House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I championship boys' basketball team.

**H.C.R. 315.** House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I championship boys' Nordic skiing team.

**H.C.R. 316.** House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I girls' alpine state championship team.

**H.C.R. 317.** House concurrent resolution honoring the federal TRIO programs in Vermont.

**H.C.R. 318.** House concurrent resolution congratulating Vermont Railway on its selection as the 2012 Shortline Railroad of the Year.

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

#### **House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having

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requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were severally adopted in concurrence:

By Representative Myers and others,

**H.C.R. 304.**

House concurrent resolution congratulating the 2012 Essex High School Division I and Northern Vermont Athletic Conference championship cheerleading team.

By Representative Myers and others,

**H.C.R. 305.**

House concurrent resolution congratulating the Essex High School Hornets 2012 Division I championship girls' ice hockey team.

By Representatives Winters and Davis,

**H.C.R. 306.**

House concurrent resolution congratulating the Williamstown High School Blue Devils 2012 Division III championship boys' basketball team.

By Representative Canfield and others,

By Senators Carris, Flory and Mullin,

**H.C.R. 307.**

House concurrent resolution congratulating Sophia Hadeka of Fair Haven on being named Miss Vermont's Outstanding Teen 2011.

By Representative Myers and others,

**H.C.R. 308.**

House concurrent resolution congratulating the Essex High School Hornets on winning the 2012 state gymnastics championship.

By Representative Myers and others,

**H.C.R. 309.**

House concurrent resolution in memory of Alan D. Overton.

By Representative Edwards and others,

By Senators Lyons, MacDonald and McCormack,

**H.C.R. 310.**

House concurrent resolution designating March 21 as Vermont Energy Independence Day.

By Representative Klein and others,  
By Senators Cummings, Doyle and Pollina,

**H.C.R. 311.**

House concurrent resolution congratulating the U-32 Raiders 2012 Lake Division championship boys' ice hockey team.

By Representative Toll and others,  
By Senators Kitchel and Benning,

**H.C.R. 312.**

House concurrent resolution honoring Alice Hafner of Danville for her outstanding public service on behalf of the Vermont criminal justice system.

By Representative Jewett and others,

**H.C.R. 313.**

House concurrent resolution congratulating Middlebury Union Middle School students Ronan Howlett and Meigan Clark on their success at the 2012 Vermont Spelling Bee.

By Representative Till and others,  
By Senators Ashe, Baruth, Fox, Lyons and Snelling,

**H.C.R. 314.**

House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I championship boys' basketball team.

By Representative Till and others,  
By Senators Ashe, Baruth, Fox, Lyons and Snelling,

**H.C.R. 315.**

House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I championship boys' Nordic skiing team.

By Representative Till and others,  
By Senators Ashe, Baruth, Fox, Lyons and Snelling,

**H.C.R. 316.**

House concurrent resolution congratulating the Mt. Mansfield Union High School Cougars 2012 Division I girls' alpine state championship team.

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By Representative French and others,

**H.C.R. 317.**

House concurrent resolution honoring the federal TRIO programs in Vermont.

By Representative Bohi and others,

By Senators Cummings, Flory, Hartwell, Kitchel, Mazza and Westman,

**H.C.R. 318.**

House concurrent resolution congratulating Vermont Railway on its selection as the 2012 Shortline Railroad of the Year.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned, to reconvene on Tuesday, March 27, 2012, at nine o'clock in the forenoon pursuant to J.R.S. 51.

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**TUESDAY, MARCH 27, 2012**

In the absence of the President (who was Acting Governor in the absence of the Governor) the Senate was called to order by the President *pro tempore*.

**Devotional Exercises**

Devotional exercises were conducted by the Rabbi Tobie Weisman of Montpelier.

**Pledge of Allegiance**

Page Thomas DeMag then led the members of the Senate in the pledge of allegiance.

**Bill Called Up**

**S. 138.**

Senate bill of the following title was called up by Senator Benning, and, under the rule, placed on the Calendar for action the next legislative day:

An act relating to the record keeping of search warrants.

**Bills Referred**

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

**H. 440.**

An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

To the Committee on Education.

**H. 467.**

An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

To the Committee on Judiciary.

**H. 781.**

An act relating to making appropriations for the support of government.

To the Committee on Appropriations.

**Bills Referred to Committee on Appropriations**

Senate bills of the following titles, appearing on the Calendar for notice, and carrying an appropriation or requiring the expenditure of funds, under the rule were severally referred to the Committee on Appropriations:

**S. 143.** An act relating to disclosing building energy performance and promoting thermal energy efficiency.

**S. 180.** An act relating to the universal service fund and establishment of a high-cost program.

**S. 204.** An act relating to creating an expert panel on the creation of a state bank.

**Joint Senate Resolution Adopted on the Part of the Senate**

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

**J.R.S. 53.** Joint resolution relating to weekend adjournment.

***Resolved by the Senate and House of Representatives:***

That when the two Houses adjourn on Thursday, March 29, 2012, or, Friday, March 30, 2012, it be to meet again no later than Tuesday, April 3, 2012.



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**Bill Passed**

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

**S. 115.** An act relating to malpractice claims against public defender contract attorneys.

on a roll call, Yeas 20, Nays 6.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, Brock, Carris, Cummings, Doyle, Flory, Kittell, Lyons, Mazza, McCormack, Miller, Mullin, Pollina, Sears, Snelling, Westman, White.

**Those Senators who voted in the negative were:** Galbraith, Giard, Hartwell, Illuzzi, MacDonald, Starr.

**Those Senators absent or not voting were:** Campbell (presiding), Fox, Kitchel, Nitka.

**Bill Amended; Third Reading Ordered****S. 89.**

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

An act relating to Medicaid for Working Persons with Disabilities.

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

**Sec. 1. ANALYSIS OF COSTS AND SAVINGS**

(a) The agency of human services, in consultation with the legislative joint fiscal office, shall analyze the costs or savings associated with the following options:

(1) Entering into an agreement with the Social Security Administration in which the state pays the Medicare Part B premium for individuals enrolled in the Medicaid for Working People with Disabilities program.

(2) Increasing or eliminating the income limits or asset limits or both for eligibility for the Medicaid for Working People with Disabilities program.

(3) Disregarding spousal income or spousal assets or both when determining eligibility for the Medicaid for Working People with Disabilities program.

(4) Disregarding the income of a spouse enrolled in the Medicaid for Working People with Disabilities program when determining the other spouse's eligibility to receive Medicaid benefits.

(5) Permitting an individual receiving Medicaid pursuant to 33 V.S.A. § 1901(b) immediately preceding a hospitalization or period of temporary unemployment to maintain his or her Medicaid eligibility during that period, as long as the period of hospitalization or unemployment does not exceed 90 days.

(6) Allowing an individual's enrollment in the Medicaid for Working People with Disabilities program to establish his or her eligibility for services under Vermont's developmental services waiver, provided that the individual must meet clinical eligibility and funding priority criteria in order to receive services pursuant to the waiver.

(7) Using benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and other work incentives for individuals with disabilities.

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results of the analysis conducted pursuant to subsection (a) of this section, as well as recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

## Sec. 2. STATE PLAN AMENDMENT; SPOUSAL INCOME DISREGARD; RULEMAKING

(a) If supported by the analysis performed pursuant to Sec. 1 of this act, the secretary of human services shall apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that the income of an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) shall be disregarded in determining the eligibility of such person's spouse to receive medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act.

(b) The secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the income disregard will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

(c) Upon approval of the state plan amendment pursuant to subsection (a) of this section, the secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the income disregard.

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Sec. 3. STATE PLAN AMENDMENT; DEVELOPMENTAL SERVICES WAIVER

(a) If supported by the analysis performed pursuant to Sec. 1 of this act, the secretary of human services shall apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that an individual's enrollment in the Medicaid for Working People with Disabilities program establishes his or her financial eligibility for services under the state's developmental services waiver; provided that the individual shall still be required to meet clinical eligibility and funding priority criteria in order to receive services pursuant to the waiver.

(b) The secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the financial eligibility criteria will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported recommending that the report of the Committee on Health and Welfare be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. ANALYSIS OF COSTS AND SAVINGS

(a) The agency of human services, in consultation with the legislative joint fiscal office, shall analyze the costs or savings associated with the following options:

(1) Entering into an agreement with the Social Security Administration in which the state pays the Medicare Part B premium for individuals enrolled in the Medicaid for Working People with Disabilities program.

(2) Increasing or eliminating the income limits or asset limits or both for eligibility for the Medicaid for Working People with Disabilities program.

(3) Disregarding spousal income or spousal assets or both when determining eligibility for the Medicaid for Working People with Disabilities program.

(4) Disregarding the income of a spouse enrolled in the Medicaid for Working People with Disabilities program when determining the other spouse's eligibility to receive Medicaid benefits.

(5) Permitting an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) immediately preceding a hospitalization or period of temporary unemployment to maintain his or her Medicaid eligibility during that period, as long as the period of hospitalization or unemployment does not exceed 90 days.

(6) Allowing an individual's enrollment in the Medicaid for Working People with Disabilities program to establish his or her eligibility for developmental disability services under Vermont's Global Commitment to Health waiver.

(7) Using benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and other work incentives for individuals with disabilities.

(b) No later than January 15, 2013, the secretary of human services shall report to the house committees on human services and on appropriations and the senate committees on health and welfare and on appropriations the results of the analysis conducted pursuant to subsection (a) of this section, as well as recommendations about whether and how to pursue any or all of the options described in subdivisions (a)(1) through (7) of this section.

## Sec. 2. STATE PLAN AMENDMENT; SPOUSAL INCOME DISREGARD; RULEMAKING

(a) If the general assembly is not in session upon completion of the analysis required pursuant to subdivision (a)(4) of Sec. 1 of this act and if the agency's cost-benefit analysis supports implementation of the spousal income disregard, the secretary of human services shall request approval from the joint fiscal committee to apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that the income of an individual receiving Medicaid pursuant to 33 V.S.A. § 1902(b) shall be disregarded in determining the eligibility of such person's spouse to receive medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act.

(b) Upon approval by the joint fiscal committee, the secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the income disregard will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

(c) Upon approval of the state plan amendment pursuant to subsection (a) of this section, the secretary of human services shall adopt rules pursuant to 3 V.S.A. chapter 25 necessary to implement the income disregard.

Sec. 3. STATE PLAN AMENDMENT; DEVELOPMENTAL SERVICES WAIVER

(a) If the general assembly is not in session upon completion of the analysis required pursuant to subdivision (a)(6) of Sec. 1 of this act and if the agency's cost-benefit analysis supports implementation of the presumptive eligibility, the secretary of human services shall request approval from the joint fiscal committee to apply to the Centers for Medicare and Medicaid Services for an amendment to the state Medicaid plan pursuant to 42 CFR § 430.12 to specify that an individual's enrollment in the Medicaid for Working People with Disabilities program establishes his or her financial eligibility for developmental disability services under the state's Medicaid Section 1115 Global Commitment to Health waiver.

(b) Upon approval by the joint fiscal committee, the secretary shall apply for a state plan amendment pursuant to subsection (a) of this section in a timely manner in order to ensure that the financial eligibility criteria will be in place as soon as practicable when the new Medicaid eligibility and enrollment system is operational.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

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

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

**Bill Amended; Third Reading Ordered**

**S. 209.**

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

An act relating to naturopathic physicians.

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

Sec. 1. 8 V.S.A. § 4088d(a) is amended to read:

(a) A health insurance plan shall provide coverage for medically necessary health care services covered by the plan when provided by a naturopathic physician licensed in this state for treatment within the scope of practice described in ~~chapter 81 of Title 26 V.S.A.~~ chapter 81 and shall recognize naturopathic physicians who practice primary care to be primary care physicians. Health care services provided by naturopathic physicians may be subject to reasonable deductibles, co-payment and co-insurance amounts, and fee or benefit limits, consistent with those applicable to other primary care physicians under the plan, as well as practice parameters, cost-effectiveness and clinical efficacy standards, and utilization review consistent with any applicable regulations published by the department of banking, insurance, securities, and health care administration. Any amounts, limits, standards, and review shall not function to direct treatment in a manner unfairly discriminative against naturopathic care, and collectively shall be no more restrictive than those applicable under the same policy to care or services provided by other primary care physicians, but may allow for the management of the benefit consistent with variations in practice patterns and treatment modalities among different types of health care providers. A health insurance plan may require that the naturopathic physician's services be provided by a licensed naturopathic physician under contract with the insurer or shall be covered in a manner consistent with out-of-network provider reimbursement practices for primary care physicians; however, this shall not relieve a health insurance plan from compliance with the applicable Rule ~~10 H-2009-3~~ network adequacy requirements adopted by the commissioner. Nothing contained herein shall be construed as impeding or preventing either the provision or the coverage of health care services by licensed naturopathic physicians, within the lawful scope of naturopathic practice, in hospital facilities on a staff or employee basis.

Sec. 2. 8 V.S.A. § 4080f is amended to read:

§ 4080f. CATAMOUNT HEALTH

(a) As used in this section:

\* \* \*

(8) "Primary care" means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include prenatal care and the treatment of mental illness.

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\* \* \*

Sec. 3. 18 V.S.A. § 704 is amended to read:

§ 704. MEDICAL HOME

(a) Consistent with federal law to ensure federal financial participation, a health care professional providing a patient's medical home shall:

\* \* \*

(b) A naturopathic physician licensed pursuant to 26 V.S.A. chapter 81 may serve as a patient's medical home.

Sec. 4. 18 V.S.A. § 706(c) is amended to read:

(c)(1) The Blueprint payment reform methodologies shall include per-person per-month payments to medical home practices by each health insurer and Medicaid for their attributed patients and for contributions to the shared costs of operating the community health teams. Per-person per-month payments to practices shall be based on the official National Committee for Quality Assurance's Physician Practice Connections - Patient Centered Medical Home (NCQA PPC-PCMH) score to the extent practicable and shall be in addition to their normal fee-for-service or other payments.

(2) Consistent with the recommendation of the Blueprint expansion design and evaluation committee, the director of the Blueprint may implement changes to the payment amounts or to the payment reform methodologies described in subdivision (1) of this subsection, including by providing for enhanced payment to health care professional practices which operate as a medical home, including primary care naturopathic physicians' practices; payment toward the shared costs for community health teams; or other payment methodologies required by the Centers for Medicare and Medicaid Services (CMS) for participation by Medicaid or Medicare.

\* \* \*

Sec. 5. 26 V.S.A. § 4131 is added to read:

§ 4131. SUPERVISION

A naturopathic physician licensed pursuant to this chapter shall be authorized to work independently and shall not require supervision by any other health care professional; provided, however, that this section shall not be construed to limit the regulatory authority of the director or office of professional regulation.

Sec. 6. 33 V.S.A. § 1823 is amended to read:

§ 1823. DEFINITIONS

For purposes of this subchapter:

\* \* \*

(10) “Primary care” means health services provided by health care professionals, including naturopathic physicians licensed pursuant to 26 V.S.A. chapter 81, who are specifically trained for and skilled in first-contact and continuing care for individuals with signs, symptoms, or health concerns, not limited by problem origin, organ system, or diagnosis, and shall include family planning, prenatal care, and mental health and substance abuse treatment.

\* \* \*

Sec. 7. HEALTH INFORMATION TECHNOLOGY

Vermont’s health information technology coordinator shall actively seek to secure electronic health record funding opportunities and incentives for naturopathic physician practices comparable to those available to other health care practitioners.

Sec. 8. EFFECTIVE DATES

(a) Secs. 1 and 2 (insurance provisions) of this act shall take effect on October 1, 2012, and shall apply to all health benefit plans on and after October 1, 2012 on such date as a health insurer offers, issues, or renews the health benefit plan, but in no event later than October 1, 2013.

(b) The remaining sections of this act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator McCormack, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

**Bill Passed**

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

**S. 238.** An act relating to establishing the Vermont farm guest worker program.

on a roll call, Yeas 26, Nays 0.

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



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**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Baruth, Benning, \*Brock, Carris, Cummings, Doyle, Flory, Galbraith, Giard, Hartwell, Illuzzi, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Pollina, Sears, Snelling, Starr, Westman, White.

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

**Those Senators absent or not voting were:** Campbell (presiding), Fox, Kitchel, Nitka.

\*Senator Brock explained his vote as follows:

“Let me be clear; I support immigration reform and a rational national guest worker policy. I strongly support legal immigration, and I have gone on record calling for changes to federal law.

“I sympathize with the plight of migrant workers. I wish they could come and work here in the light of day.

“But my vote in favor of this bill does not suggest that I support granting driver’s licenses to illegal aliens. I do not.

“Today, I am simply voting for a study of an issue that to date has been inadequately scrutinized. Studies, as members of this body well know, are often places where bad bills go to die.”

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until three o’clock and thirty minutes in the afternoon on Wednesday, March 28, 2012.

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**WEDNESDAY, MARCH 28, 2012**

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. 40**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 613.** An act relating to governance of the Community High School of Vermont .

**H. 778.** An act relating to structured settlements.

**H. 779.** An act relating to the water quality of state surface waters.

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

The House has adopted joint resolution of the following title:

**J.R.H. 33.** Joint resolution authorizing the state of Vermont to accept a reprint of an engraving of Thaddeus Stevens for the state house art collection.

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

### **Bills Referred**

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

#### **H. 613.**

An act relating to governance of the Community High School of Vermont.

To the Committee on Education.

#### **H. 778.**

An act relating to structured settlements.

To the Committee on Judiciary.

#### **H. 779.**

An act relating to the water quality of state surface waters.

To the Committee on Natural Resources and Energy.

### **Joint Resolution Placed on Calendar**

#### **J.R.H. 33.**

Joint resolution originating in the House of the following title was read the first time and is as follows:

Joint resolution authorizing the state of Vermont to accept a reprint of an engraving of Thaddeus Stevens for the state house art collection.

Whereas, Thaddeus Stevens was born in Danville in 1792 and attended the University of Vermont and Dartmouth College, from which he graduated in 1814, and

Whereas, a lawyer by profession, he was sworn into the Pennsylvania Bar and in 1816 started a law practice in the town of Gettysburg, which would

---

become intimately associated with the Civil War and the abolishment of slavery, a matter of passionate concern for Thaddeus Stevens, and

Whereas, he served in the Pennsylvania legislature and later in the U.S. House of Representatives from 1849 to 1853 and returned for a second tenure of enormous historical significance from 1859 until his death in 1868, and

Whereas, as a Radical Republican, Thaddeus Stevens was one of the first members of Congress to propose, during the Civil War, that slaves be emancipated, and

Whereas, after the Civil War, he advocated strict federal supervision of the former confederacy states to assure that the newly freed slaves were assured their rights, and

Whereas, legislation he sponsored would eventually become the Fourteenth Amendment to the U.S. Constitution enshrining the rights of the newly freed slaves, and

Whereas, the Vermont state house has lacked a portrait of this distinguished native son, statesman, and unyielding abolitionist, and

Whereas, at the urging of Civil War historian Howard Coffin, the Danville Historical Society and the Danville Chamber of Commerce endeavored to locate and acquire a suitable portrait of Thaddeus Stevens for permanent display in our state's capitol, and

Whereas, the search led to a 2002 reprint of a middle 19th century engraving of Thaddeus Stevens, which will officially be presented to the state of Vermont for inclusion in the state house art collection on Wednesday, March 28, 2012 at a ceremony in the Cedar Creek Room, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes the state of Vermont to accept a reprint of an engraving of Thaddeus Stevens for inclusion in the state house art collection, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the office of the state curator, the Danville Historical Society, and the Danville Chamber of Commerce.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

**Bill Passed****S. 138.**

Senate bill entitled:

An act relating to the record keeping of search warrants.

Having been called up, was taken up.

Thereupon, pending the question, Shall the amendment of Senators Benning and Baruth be substituted as moved by Senator Sears on behalf of the Committee on Judiciary?, Senator Sears requested and was granted leave to withdraw the substitute amendment.

Thereupon, Senator Benning requested and was granted leave to withdraw the motion to amend of Senators Benning and Baruth.

Thereupon, pending the question, Shall the bill pass?, Senators Benning, Baruth, Sears and Ashe moved to amend the bill in Sec. 9 [amending the Nonviolent Misdemeanor Sentence Review Committee established in Sec. 4 of No. 41 of the Acts of 2011] as follows:

First: In subsection (c), at the end of subdivision (1) by adding new subparagraph (E) and (F) to read as follows:

(E) Examine whether the state should decriminalize the possession of small amounts of marijuana and substitute a civil penalty administered through the judicial bureau.

(F) Review current state law and policy concerning minors possessing alcoholic beverages.

Second: By striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d) Report. By ~~December 1, 2011~~ November 15 annually, the committee shall report to the general assembly on its findings and any recommendations for legislative action.

Thereupon, pending the question, Shall the bill be amended as moved by Senators Benning, Baruth, Sears and Ashe?, Senator Galbraith moved to substitute as follows:

By adding Secs. 6a and 6b to read as follows:

Sec. 6a. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1)(A) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less shall be imprisoned not more than six months or fined not more than \$500.00, or both assessed a civil penalty of not more than \$150.00. If a person suspected of violating this subdivision (1)(A) challenges the presence of cannabinoids, the person may request that the state crime laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the state shall reimburse the person at state expense.

(B) A person convicted of a second or subsequent offense under this subdivision knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041, except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of deferment. The court may, prior to sentencing, order that the defendant submit to a drug assessment screening which may be considered at sentencing in the same manner as a presentence report.

\* \* \*

Sec. 6b. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

\* \* \*

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(23) Violations of 18 V.S.A. § 4230a(1)(A), relating to possession of one ounce or less of marijuana.

\* \* \*

Thereupon, pending the question, Shall the motion of Senators Benning, Baruth, Ashe and Sears be substituted as moved by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw the motion to substitute.

Thereupon, the pending question, Shall the bill be amended as moved by Senators Benning, Baruth, Ashe and Sears?, Senator Benning requested and was granted leave to withdraw the motion to amend.

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

### **Bills Passed**

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

**S. 179.** An act relating to amending perpetual conservation easements.

**S. 222.** An act relating to cost-sharing for employer-sponsored insurance assistance plans.

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

#### **S. 183.**

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

An act relating to the testing of potable water supplies.

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

#### Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

(2) Property owners currently are not required to test groundwater sources that are a potable water supply serving one single-family residence.

(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) The state lacks a comprehensive database or map identifying where groundwater contamination is prevalent in the state.

(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should conduct education and outreach regarding the need for property owners to test the water quality of groundwater used as a potable water supply.

(6) The state should utilize tests of groundwater sources to identify groundwater contamination in the state so that the department of health can recommend treatment options to property owners in certain parts of the state.

Sec. 2. 10 V.S.A. 1396 is amended to read:

§ 1396. RECORDS AND REPORTS

(a) Each licensee shall keep accurate records and file a report with the department and well owner on each water well constructed or serviced, including but not limited to the name of the owner, location, depth, character of rocks or earth formations and fluids encountered, and other reasonable and appropriate information the department may, by rule, require.

(b) The reports required to be filed under subsection (a) of this section shall be on forms provided by the department as follows:

(1) Each licensee classified as a water well driller shall submit a well completion report within 90 days after completing the construction of a water well.

(2) Each licensee classified as a monitoring well driller shall submit a monitoring well completion or closure report or approved equivalent within 90 days after completing the construction or closure of a monitoring well. Reporting on the construction of a monitoring well shall be limited to information obtained at the time of construction and need not include the work products of others. The filing of a monitoring well completion or closure report shall be delayed for one or more six-month periods from the date of construction upon the filing of a request form provided by the department which is signed by both the licensee and well owner.

(3), (4) [Repealed.]

(c) No report shall be required to be filed with the department if the well is hand driven or is dug by use of a hand auger or other manual means.

(d) On or after January 1, 2013, a licensee drilling or developing a new water well for use as a potable water supply, as that term is defined in subdivision 1972(6) of this title, shall provide the owner of the property to be served by the groundwater source informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of contaminated groundwater; and

(2) recommended tests for specific contaminants.

Sec. 3. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The commissioner may certify a laboratory to perform the testing and monitoring required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act, and of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent.

(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction or condition of the certificate; or

(C) violated any statute, rule or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been revoked.

(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.

\* \* \*

(f) A laboratory accredited to conduct testing of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the department of health and the agency of natural resources in a format required by the department of health.

Sec. 4. 27 V.S.A. § 616 is added to read:

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF EDUCATIONAL MATERIAL

(a) Disclosure of potable water supply. Prior to the time of a purchase and sale agreement for residential housing property executed on or after January 1, 2013, the seller shall provide the buyer with a disclosure form provided by the department of health indicating whether the property has a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is used as the primary drinking water source for the residential housing on the property.



(b) Disclosure of health effects. The disclosure form required by subsection (a) of this section shall include informational materials regarding the potential health effects of the consumption of contaminated groundwater.

(c) Disclosure of opportunity to test. The disclosure form required by subsection (a) of this section shall include a statement regarding the buyer's opportunity under the purchase and sale agreement to test the potable water supply. The disclosure form shall also indicate that the buyer may obtain test kits from the department of the health.

(d) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

#### Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

#### Sec. 6. EFFECTIVE DATES

This act shall take effect on January 1, 2013.

And that when so amended the bill ought to pass.

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

Thereupon, pending the question, Shall the bill be read a third time?, Senator Brock moved to amend the bill as follows:

In Sec. 5 by designating the existing language as subsection (a) and by inserting a new subsection (b) to read:

(b) The department of health shall prepare education and outreach materials for the Vermont bar association, real estate attorneys, and realtors regarding the requirement under 27 V.S.A. § 616 that a seller of property with a potable water supply provide the buyer with informational materials regarding the health effects of untreated groundwater and the buyer's opportunity to test the

potable water supply. The department of health shall post the educational materials required by this subsection on the department website.

Which was agreed to.

Thereupon, the pending question, Shall the bill be read a third time?, was decided in the affirmative.

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

#### **S. 223.**

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

An act relating to extending health insurance coverage for autism spectrum disorders.

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

Sec. 1. 8 V.S.A. § 4088i is amended to read:

**§ 4088i. COVERAGE FOR DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM EARLY CHILDHOOD DEVELOPMENTAL DISORDERS**

(a)(1) A health insurance plan shall provide coverage for the evidence-based diagnosis and treatment of ~~autism spectrum disorders~~ early childhood developmental disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst, for children, beginning at 18 months of age and continuing until the child reaches age six or enters the first grade, whichever occurs first 21.

(2) Coverage provided pursuant to this section by Medicaid, the Vermont health access plan, or any other public health care assistance program shall comply with all federal requirements imposed by the Centers for Medicare and Medicaid Services.

(3) Any benefits required by this section that exceed the essential health benefits specified under Section 1302(b) of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended, shall not be required in a health insurance plan offered in the individual, small group, and large group markets on and after January 1, 2014.

(b) A health insurance plan shall not limit in any way the number of visits an individual eligible for coverage under subsection (a) of this section may have with an autism services provider. The amount, frequency, and duration of treatment described in this section shall be based on medical necessity and may be subject to a prior authorization requirement under the health insurance plan. A private health insurance plan may limit coverage for applied behavior

analysis treatment to a maximum benefit of \$50,000.00 a year, but shall not apply payments for coverage unrelated to early childhood disorders to any maximum benefit established under this subsection.

(c) A health insurance plan shall not impose greater coinsurance, co-payment, deductible, or other cost-sharing requirements for coverage of the diagnosis or treatment of ~~autism-spectrum~~ early childhood developmental disorders than apply to the diagnosis and treatment of any other physical or mental health condition under the plan.

(d)(1) A health insurance plan shall provide coverage for applied behavior analysis when the services are provided or supervised by a licensed provider who is working within the scope of his or her license or who is a nationally board-certified behavior analyst.

(2) A health insurance plan shall provide coverage for services under this section delivered in the natural environment when the services are furnished by a provider working within the scope of his or her license or under the direct supervision of a licensed provider or, for applied behavior analysis, by or under the supervision of a nationally board-certified behavior analyst.

(e) Except for inpatient services, if an individual is receiving treatment for an early developmental delay, a health insurance plan may review the treatment plan for children under the age of eight no more frequently than once every six months. After the child reaches the age of eight, the health insurance plan may require treatment plan reviews based on the needs of the individual beneficiary, consistent with reviews for other diagnostic areas and with rules established by the department of banking, insurance, securities, and health care administration.

(f) As used in this section:

(1) “Applied behavior analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior. The term includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

~~(2) “Autism services provider” means any licensed or certified person providing treatment of autism spectrum disorders.~~

~~(3) “Autism spectrum disorders” means one or more pervasive developmental disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including autistic disorder, pervasive developmental disorder not otherwise specified, and Asperger’s disorder.~~

(3) “Behavioral health treatment” means evidence-based counseling and treatment programs, including applied behavior analysis, that are:

(A) necessary to develop skills and abilities for the maximum reduction of physical or mental disability and for restoration of an individual to his or her best functional level, or to ensure that an individual under the age of 21 achieves proper growth and development;

(B) provided or supervised by a nationally board-certified behavior analyst or by a licensed provider, so long as the services performed are within the provider’s scope of practice and certifications.

(4) “~~Diagnosis of autism spectrum disorder~~ ~~early childhood developmental disorders~~” means medically necessary assessments, evaluations, ~~including neuropsychological evaluations; genetic testing; or other testing or tests~~ to determine whether an individual has ~~one or more~~ an early childhood developmental delay, including an autism spectrum disorders disorder.

(5) “~~Habilitative care~~” or “~~rehabilitative care~~” means professional counseling, guidance, services, and treatment programs, including applied behavior analysis and other behavioral health treatments, in which the covered individual makes clear, measurable progress, as determined by an autism services provider, toward attaining goals the provider has identified “Early childhood developmental disorder” means a childhood mental or physical impairment or combination of mental and physical impairments that results in functional limitations in major life activities, accompanied by a diagnosis defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Disease (ICD). The term includes autism spectrum disorders, but does not include a learning disability.

(6) “Evidence-based” means the same as in 18 V.S.A. § 4621.

(7) “Health insurance plan” means Medicaid, the Vermont health access plan, and any other public health care assistance program, any individual or group health insurance policy, any hospital or medical service corporation or health maintenance organization subscriber contract, or any other health benefit plan offered, issued, or renewed for any person in this state by a health insurer, as defined in 18 V.S.A. § 9402. The term does not include benefit plans providing coverage for specific diseases or other limited benefit coverage.

~~(7)(8) “Medically necessary” means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed pursuant to chapter 23 of Title 26 or by a psychologist licensed pursuant to chapter 55 of Title 26 if such treatment is consistent with the most recent~~

~~relevant report or recommendations of the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, or another professional group of similar standing~~ describes health care services that are appropriate in terms of type, amount, frequency, level, setting, and duration to the individual's diagnosis or condition, are informed by generally accepted medical or scientific evidence, and are consistent with generally accepted practice parameters. Such services shall be informed by the unique needs of each individual and each presenting situation, and shall include a determination that a service is needed to achieve proper growth and development or to prevent the onset or worsening of a health condition.

(9) "Natural environment" means a home or child care setting.

(10) "Pharmacy care" means medications prescribed by a licensed physician and any health-related services deemed medically necessary to determine the need for or effectiveness of a medication.

(11) "Psychiatric care" means direct or consultative services provided by a licensed physician certified in psychiatry by the American Board of Medical Specialties.

(12) "Psychological care" means direct or consultative services provided by a psychologist licensed pursuant to 26 V.S.A. chapter 55.

~~(8)~~(13) "Therapeutic care" means services provided by licensed or certified speech language pathologists therapists, occupational therapists, or physical therapists, or social workers.

~~(9)~~(14) "Treatment of disorders for early developmental disorders" means the following evidence-based care and related equipment prescribed, provided, or ordered for an individual diagnosed with one or more autism spectrum disorders by a licensed physician licensed pursuant to chapter 23 of Title 26 or a licensed psychologist licensed pursuant to chapter 55 of Title 26 if such physician or psychologist who determines the care to be medically necessary, including:

- (A) ~~habilitative or rehabilitative care~~ behavioral health treatment;
- (B) pharmacy care;
- (C) psychiatric care;
- (D) psychological care; and
- (E) therapeutic care.

~~(e)~~(g) Nothing in this section shall be construed to affect any obligation to provide services to an individual under an individualized family service plan,

individualized education program, or individualized service plan. A health insurance plan shall not reimburse services provided under 16 V.S.A. § 2959a.

## Sec. 2. REPORT

It is the intent of the general assembly to accept the offer of Autism Speaks to submit a report, in consultation with the agency of human services and health insurers, to the senate committee on health and welfare and the house committee on health care on or before January 15, 2014 regarding the implementation of this act, including an assessment of whether eligible individuals are receiving evidence-based services, how such services may be improved, and the fiscal impact of these services.

## Sec. 3. EFFECTIVE DATES

(a) This act shall take effect on July 1, 2012 and shall apply to Medicaid, the Vermont health access plan, and any other public health care assistance program on or after July 1, 2012.

(b) The provisions of this act shall apply to all other health insurance plans on or after October 1, 2012, on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than October 1, 2013.

After passage, the title of the bill is to be amended to read:

An act relating to health insurance coverage for early childhood developmental disorders, including autism spectrum disorders.

And that when so amended the bill ought to pass.

Senator Westman, for the Committee on Finance, to which the bill was referred, reported recommending that it has considered the same and recommends that the bill be amended as recommended by the Committee on Health and Welfare with further amendment thereto in Sec. 1, in 8 V.S.A. § 4088i, subsection (b), by striking out the following: “ . A private health insurance plan may limit coverage for applied behavior analysis treatment to a maximum benefit of \$50,000.00 a year, but shall not apply payments for coverage unrelated to early childhood disorders to any maximum benefit established under this subsection”

And that when so amended the bill ought to pass.

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

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

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

### **Bills Passed**

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

**S. 89.** An act relating to Medicaid for Working Persons with Disabilities.

**S. 209.** An act relating to naturopathic physicians.

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

#### **S. 200.**

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

An act relating to the reporting requirements of health insurers.

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

Sec. 1. 8 V.S.A. § 3561(a) is amended to read:

(a)(1) Each domestic, foreign, and alien insurance company doing business in this state shall annually submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. The statement shall be prepared in accordance with the National Association of Insurance Commissioners' Instructions Handbook and Accounting Practices and Procedures Manual and shall be in such general form and context, as approved by, and shall contain any other information required by, the National Association of Insurance Commissioners with any useful or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner.

(2)(A) In addition, a health insurance company with a minimum of 200 Vermont lives covered in the relevant reporting year or which offers a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803 shall provide the following information:

(i) the total number of claims submitted to the health insurance company;

(ii) the total number of denials of service by the health insurance company at the preauthorization level, including:

(I) the total number of denials of service at the preauthorization level appealed to the health insurance company at the first level grievance;

(II) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(III) the total number of denials of service at the preauthorization level appealed to the health insurance company at any second level grievance;

(IV) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(V) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(iii) the total number of service claims denied by the health insurance company, including:

(I) the total number of denied service claims appealed to the health insurance company at the first level grievance;

(II) the total number of denied service claims overturned at the first level grievance;

(III) the total number of denied service claims appealed to the health insurance company at any second level grievance;

(IV) the total number of denied service claims overturned at any second level grievance; and

(V) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(iv) the total number of claims denied by a health insurance company for reasons not related to network issue, medical necessity, or benefit coverage.

(B) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subdivision (2)(A) of this subsection (a), and a health insurance company shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.



(C)(i) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each health insurance company pursuant to subdivision (2)(B) of this subsection (a).

(ii) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (i) of this subdivision (2)(C).

(3) The statement of an alien insurer shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise.

(4) A foreign or alien company, upon withdrawing from the state of Vermont shall pay to the commissioner \$25.00 for the filing of its final financial statement.

Sec. 2. 8 V.S.A. § 4516 is amended to read:

§ 4516. ANNUAL REPORT TO COMMISSIONER

(a) Annually, on or before March 15, a hospital service corporation shall file with the commissioner of banking, insurance, securities, and health care administration a statement sworn to by the president and treasurer of the corporation showing its condition on December 31. The statement shall be in such form and contain such matters as the commissioner shall prescribe, including for hospital service corporations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(1) the total number of claims submitted to the hospital service corporation;

(2) the total number of denials of service by the hospital service corporation at the preauthorization level, including:

(A) the total number of denials of service at the preauthorization level appealed to the hospital service corporation at the first level grievance;

(B) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(C) the total number of denials of service at the preauthorization level appealed to the hospital service corporation at any second level grievance;

(D) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(E) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(3) the total number of service claims denied by the hospital service corporation, including:

(A) the total number of denied service claims appealed to the hospital service corporation at the first level grievance;

(B) the total number of denied service claims overturned at the first level grievance;

(C) the total number of denied service claims appealed to the hospital service corporation at any second level grievance;

(D) the total number of denied service claims overturned at any second level grievance; and

(E) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(4) the total number of claims denied by a hospital service corporation for reasons not related to network issue, medical necessity, or benefit coverage.

(b)(1) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subsection (a) of this section, and a hospital service corporation shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(2)(A) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each hospital service corporation pursuant to subdivision (1) of this subsection (b).

(B) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(A) of this subsection (b).

(c) To qualify for the tax exemption set forth in section 4518 of this title, the statement shall include a certification that the hospital service corporation operates on a nonprofit basis for the purpose of providing an adequate hospital service plan to individuals of the state, both groups and nongroups, without

discrimination based on age, gender, geographic area, industry, and medical history, except as allowed by subdivisions 4080a(h)(2)(B) and 4080b(h)(2)(B) of this title.

Sec. 3. 8 V.S.A. § 4588 is amended to read:

§ 4588. ANNUAL REPORT TO COMMISSIONER

(a) Annually, on or before March 15, a medical service corporation shall file with the commissioner of banking, insurance, securities, and health care administration a statement sworn to by the president and treasurer of the corporation showing its condition on December 31, which shall be in such form and contain such matters as the commissioner shall prescribe, including for medical service corporations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(1) the total number of claims submitted to the medical service corporation;

(2) the total number of denials of service by the medical service corporation at the preauthorization level, including:

(A) the total number of denials of service at the preauthorization level appealed to the medical service corporation at the first level grievance;

(B) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(C) the total number of denials of service at the preauthorization level appealed to the medical service corporation at any second level grievance;

(D) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(E) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(3) the total number of service claims denied by the medical service corporation, including:

(A) the total number of denied service claims appealed to the medical service corporation at the first level grievance;

(B) the total number of denied service claims overturned at the first level grievance;

(C) the total number of denied service claims appealed to the medical service corporation at any second level grievance;

(D) the total number of denied service claims overturned at any second level grievance; and

(E) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(4) the total number of claims denied by a medical service corporation for reasons not related to network issue, medical necessity, or benefit coverage.

(b)(1) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the information described in subsection (a) of this section, and a medical service corporation shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(2)(A) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each medical service corporation pursuant to subdivision (1) of this subsection (b).

(B) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(A) of this subsection (b).

(c) To qualify for the tax exemption set forth in section 4590 of this title, the statement shall include a certification that the medical service corporation operates on a nonprofit basis for the purpose of providing an adequate medical service plan to individuals of the state, both groups and nongroups, without discrimination based on age, gender, geographic area, industry, and medical history, except as allowed by subdivisions 4080a(h)(2)(B) and 4080b(h)(2)(B) of this title.

Sec. 4. 8 V.S.A. § 5106(a) is amended to read:

(a)(1) Every organization subject to this chapter, annually, within 120 days of the close of its fiscal year, shall file a report with the commissioner, said report verified by an appropriate official of the organization, showing its financial condition on the last day of the preceding fiscal year. The report shall be prepared in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual for health maintenance organizations and shall be in such general form and context, as approved by, and shall contain any other information required by the National Association of Insurance Commissioners together with any useful or necessary

modifications or adaptations thereof required, approved or accepted by the commissioner for the type of organization to be reported upon, and as supplemented by additional information required by the commissioner, including for organizations with a minimum of 200 Vermont lives covered in the relevant reporting year or which offer a plan in the Vermont health benefit exchange pursuant to 33 V.S.A. § 1803:

(A) the total number of claims submitted to the organization;

(B) the total number of denials of service by the organization at the preauthorization level, including:

(i) the total number of denials of service at the preauthorization level appealed to the organization at the first level grievance;

(ii) the total number of denials of service at the preauthorization level overturned at the first level grievance;

(iii) the total number of denials of service at the preauthorization level appealed to the organization at any second level grievance;

(iv) the total number of denials of service at the preauthorization level overturned at any second level grievance; and

(v) the total number of denials of service at the preauthorization level for which external review is sought and the number overturned by external review;

(C) the total number of service claims denied by the organization, including:

(i) the total number of denied service claims appealed to the organization at the first level grievance;

(ii) the total number of denied service claims overturned at the first level grievance;

(iii) the total number of denied service claims appealed to the organization at any second level grievance;

(iv) the total number of denied service claims overturned at any second level grievance; and

(v) the total number of denied service claims for which external review is sought and the number overturned by external review; and

(D) the total number of claims denied by an organization for reasons not related to network issue, medical necessity, or benefit coverage.

(2)(A) The department of banking, insurance, securities, and health care administration shall create a standardized form for the purpose of collecting the

information described in subdivision (1) of this subsection (a), and an organization shall use the standardized form for reporting the required information as an addendum to its annual report. Where possible, the standardized form shall require that reported information be divided into categories determined by the department, including categories for coding errors, services not covered, and out-of-network providers.

(B)(i) The department of banking, insurance, securities, and health care administration shall post on its website the standardized forms completed by each organization pursuant to subdivision (2)(A) of this subsection (a).

(ii) The department of Vermont health access shall post on the Vermont health benefit exchange an electronic link to the standardized forms posted by the department of banking, insurance, securities, and health care administration pursuant to subdivision (2)(B)(i) of this subsection (a).

#### Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Senator Westman, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

#### **Appointment Confirmed**

The following Gubernatorial appointment was confirmed by the Senate, upon full report given by the Committee to which it was referred:

Peterson, Barry of East Fairfield - Magistrate, - from February 6, 2012, to March 31, 2012.

#### **Adjournment**

On motion of Senator Campbell, the Senate adjourned until twelve o'clock and fifty-five minutes in the afternoon on Thursday, March 29, 2012.

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**THURSDAY, MARCH 29, 2012**

The Senate was called to order by the President.

#### **Devotional Exercises**

Devotional exercises were conducted by the Chaplain Calvin Kemp of Colchester.

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**Message from the House No. 41**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

**H. 535.** An act relating to racial disparities in the Vermont criminal justice system.

**H. 773.** An act relating to veterans' tax exemption.

**H. 774.** An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

**H. 780.** An act relating to compensation for certain state employees.

**H. 782.** An act relating to miscellaneous tax changes for 2012.

**H. 785.** An act relating to capital construction and state bonding budget adjustment.

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

The House has considered joint resolution originating in the Senate of the following title:

**J.R.S. 53.** Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The House has considered the report of the Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

**H. 630.** An act relating to reforming Vermont's mental health system.

And has adopted the same on its part.

**Bills Referred**

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

**H. 535.**

An act relating to racial disparities in the Vermont criminal justice system.

To the Committee on Judiciary.

**H. 773.**

An act relating to veterans' tax exemption.

To the Committee on Economic Development, Housing and General Affairs.

**H. 774.**

An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

To the Committee on Agriculture.

**H. 780.**

An act relating to compensation for certain state employees.

To the Committee on Government Operations.

**H. 782.**

An act relating to miscellaneous tax changes for 2012.

To the Committee on Finance.

**H. 785.**

An act relating to capital construction and state bonding budget adjustment.

To the Committee on Institutions.

**Committee Assignments**

Pursuant to Senate Rule 6, in the event a senator is absent from the Senate for more than two weeks, the Committee on Committees may designate any other senator to occupy temporarily a position on a standing committee to which such absent senator is assigned. Under Rule 6 such temporarily assigned Senator shall have all the powers of a regular member on such assigned committee but shall be the most junior member of the committee. Additionally, pursuant to Rule 6, the temporary assignment or assignments shall terminate absolutely upon return of the absent senator to committee duties or upon order of the Committee on Committees.

Pursuant to Rule 6, the Committee on Committees assigns Senator Carris to the Finance Committee in the absence of Senator Fox.

Pursuant to Rule 6, the Committee on Committees assigns Senator Campbell to the Health and Welfare Committee in the absence of Senator Fox.



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**Joint Assembly**

At one o'clock in the forenoon, the hour having arrived for the meeting of the two Houses in Joint Assembly pursuant to:

**J.R.S. 50.** Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges and one Magistrate.

The Senate repaired to the hall of the House.

Having returned therefrom, at two o'clock in the forenoon, the President assumed the Chair.

**Bill Amended; Bill Passed****S. 151.**

Senate bill entitled:

An act relating to grave markers.

Was taken up.

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

First: In Sec. 1, 9 V.S.A. § 3221, by striking out subsection (a) in its entirety and inserting a new subsection (a) to read as follows:

(a) A scrap metal processor as defined in 9 V.S.A. § 3021 shall not knowingly purchase or give anything of value in exchange for a metal grave marker, or any grave ornament or flag holder bearing a description or an emblem from any branch of the United States armed services or a police or fire department or which bears the designation "veteran."

Second: In Sec. 1, 9 V.S.A. § 3221 in subsection (b) by striking out the words "business or metal dealer" and inserting in lieu thereof the following: scrap metal processor

Third: In Sec. 1, 9 V.S.A. § 3221, by striking out subsection (c) in its entirety

Which was agreed to.

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

**Proposal of Amendment; Third Reading Ordered****H. 634.**

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

An act relating to remedies for failure to pay municipal tickets.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof a new Sec. 3 to read as follows:

**Sec. 3. EFFECTIVE DATES**

(a) Sec. 1 of this act shall take effect on July 1, 2012.

(b) Sec. 2 of this act and this section shall take effect on passage.

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

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

**Bills Passed**

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

**S. 183.** An act relating to the testing of potable water supplies.

**S. 200.** An act relating to the reporting requirements of health insurers.

**S. 223.** An act relating to extending health insurance coverage for autism spectrum disorders.

**Joint Resolution Adopted in Concurrence**

**J.R.H. 33.**

Joint House resolution entitled:

Joint resolution authorizing the state of Vermont to accept a reprint of an engraving of Thaddeus Stevens for the state house art collection.

Having been placed on the Calendar for action, was taken up and adopted in concurrence.

**Adjournment**

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning on Friday, March 30, 2012.

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**FRIDAY, MARCH 30, 2012**

The Senate was called to order by the President.

**Devotional Exercises**

A moment of silence was observed in lieu of devotions.

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**Pages Honored**

In appreciation of their many services to the members of the General Assembly, the President recognized the following-named pages who are completing their services today and presented them with letters of appreciation.

Marta Bartholomew of Hartland  
Kassandra Bell of Hardwick  
Alexandra Caron of South Royalton  
Taylor Chapple of St. Johnsbury  
Julie Decker of Williston  
Thomas DeMag of South Burlington  
Sage Luksevish of Underhill  
Elysia Manriquez of Barre  
Audrey Oliver of Montpelier

**Message from the House No. 42**

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has adopted House concurrent resolutions of the following titles:

**H.C.R. 319.** House concurrent resolution congratulating the University of Vermont 2012 NCAA championship skiing team.

**H.C.R. 320.** House concurrent resolution in memory of former Representative Gloria Ann Conant of Richmond.

**H.C.R. 321.** House concurrent resolution congratulating Julie Frost on winning the 2012 Golden Globe Award for Best Original song.

**H.C.R. 322.** House concurrent resolution congratulating the 2012 South Burlington High School Rebels championship girls' indoor track and field team.

**H.C.R. 323.** House concurrent resolution honoring the St. Albans Town municipal public works department employees for their exemplary public service during the spring 2011 Lake Champlain flooding.

**H.C.R. 324.** House concurrent resolution congratulating Silas Chickering-Ayers of East Montpelier on winning his first Freeskiing World Tour victory at the North American Championships at Snowbird's Northwest Baldy in Utah.

**H.C.R. 325.** House concurrent resolution in memory of Melinda Bussino.

**H.C.R. 326.** House concurrent resolution congratulating the 2011–2012 Middlebury College skiing team on its outstanding season.

**H.C.R. 327.** House concurrent resolution congratulating the 2012 University of Vermont America East championship men’s basketball team.

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

### **Rules Suspended; Bills Committed**

Senate bills entitled:

**S. 99.** An act relating to agricultural economic development.

**S. 142.** An act relating to pet merchants.

**S. 143.** An act relating to disclosing building energy performance and promoting thermal energy efficiency.

**S. 169.** An act relating to workers’ compensation liens.

**S. 180.** An act relating to the universal service fund and establishment of a high-cost program.

**S. 204.** An act relating to creating an expert panel on the creation of a state bank.

Were taken up.

Thereupon, as the bills had not made the Cross-Over deadline, Senator Campbell moved that Senate Rule 49 be suspended and the bills be committed to the Committee on Rules, with the reports of the Committees of jurisdiction *intact*.

Which was agreed to.

### **Joint Resolution Placed on Calendar**

#### **J.R.S. 54.**

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Committee on Institutions,

**J.R.S. 54.** Joint resolution approving a land exchange in Alburgh and a lease with Camp Downer, Inc.

*Whereas*, in accordance with 10 V.S.A. § 2606(b), the general assembly may adopt a resolution authorizing the commissioner of forests, parks and recreation to exchange or lease certain lands that are under the jurisdiction of the commissioner, and

*Whereas*, the general assembly has reviewed the proposed transactions and considers them to be in the best interest of the state, *now therefore be it*

***Resolved by the Senate and House of Representatives:***

That the General Assembly authorizes the commissioner of forests, parks and recreation to:

First: Enter into an exchange of a portion of Alburgh Dunes State Park in the Town of Alburgh with the South Alburgh Cemetery Association, Inc. for up to 44 +/- acres to be added to Alburgh Dunes State Park in the town of Alburgh that is of equivalent or greater value to the state. Any exchange of state parkland with the South Alburgh Cemetery Association, Inc. shall be contingent on the following: (1) the land exchange shall have the support of the selectboard of the town of Alburgh; (2) an independent appraiser shall determine the value of the parcels for exchange; (3) the South Alburgh Cemetery Association, Inc. shall be responsible for any and all associated costs of the exchange, including appraisal, survey, permitting, and legal costs; (4) the parcel conveyed to the state in exchange for the state park parcel conveyed to the South Alburgh Cemetery Association, Inc. shall be placed under the control and jurisdiction of the department of forests, parks and recreation; (5) the coholders of the conservation easement that encumbers Alburgh Dunes State Park (The Nature Conservancy and the Vermont Housing and Conservation Board) shall approve the land exchange, and the conservation easement shall be amended to reflect this land exchange.

Second: Amend the lease with Camp Downer, Inc. at Downer State Forest in Sharon to provide for two additional ten-year renewal periods.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

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

**H. 634.**

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

An act relating to remedies for failure to pay municipal tickets.

**Joint Resolution Adopted on the Part of the Senate**

**J.R.S. 52.**

Joint Senate resolution entitled:

Joint resolution relating to the issuance of a commemorative United States postage stamp in honor of former United States Senator George D. Aiken.

Having been placed on the Calendar for action, was taken up and adopted on the part of the Senate.

**Proposal of Amendment; Third Reading Ordered**

**H. 449.**

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

An act relating to the designation of brook trout and walleye pike as the state fish of Vermont.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 1, by striking out subdivision (4) in its entirety and inserting in lieu thereof the following:

(4) the original designation of these two fish was championed by the students of Cornwall Elementary School, whose efforts resulted in a Joint Resolution, approved by the General Assembly on May 3, 1978 (J.R.S. 41), designating the two state fish.

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

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

**Senate Concurrent Resolutions**

The following joint concurrent resolutions, having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were adopted on the part of the Senate:

By Senators Nitka, Campbell and McCormack,

By Representative Devereux,

**S.C.R. 41.**

Senate concurrent resolution honoring Richard Strong for his more than half-century of municipal public service in the village of Ludlow.

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By Senators Kitchel and Benning,

By Representatives Lawrence and Crawford,

**S.C.R. 42.**

Senate concurrent resolution congratulating Lyndon Rescue, Inc. on its 40th anniversary.

**House Concurrent Resolutions**

The following joint concurrent resolutions having been placed on the consent calendar on the preceding legislative day, and no Senator having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, were adopted in concurrence:

By Representative Pugh and others,

**H.C.R. 319.**

House concurrent resolution congratulating the University of Vermont 2012 NCAA championship skiing team.

By Representative O'Brien and others,

**H.C.R. 320.**

House concurrent resolution in memory of former Representative Gloria Ann Conant of Richmond.

By Representative Pugh and others,

By Senators Ayer and Giard,

**H.C.R. 321.**

House concurrent resolution congratulating Julie Frost on winning the 2012 Golden Globe Award for Best Original song.

By Representative Pugh and others,

**H.C.R. 322.**

House concurrent resolution congratulating the 2012 South Burlington High School Rebels championship girls' indoor track and field team.

By Representatives Dickinson and Howrigan,

**H.C.R. 323.**

House concurrent resolution honoring the St. Albans Town municipal public works department employees for their exemplary public service during the spring 2011 Lake Champlain flooding.

By Representative Klein,

**H.C.R. 324.**

House concurrent resolution congratulating Silas Chickering-Ayers of East Montpelier on winning his first Freeskiing World Tour victory at the North American Championships at Snowbird's Northwest Baldy in Utah.

By Representative Moran and others,

By Senators White and Galbraith,

**H.C.R. 325.**

House concurrent resolution in memory of Melinda Bussino.

By Representative Jewett and others,

**H.C.R. 326.**

House concurrent resolution congratulating the 2011–2012 Middlebury College skiing team on its outstanding season.

By Representative Pugh and others,

**H.C.R. 327.**

House concurrent resolution congratulating the 2012 University of Vermont America East championship men's basketball team.

**Consideration Interrupted by Adjournment**

**H. 21.**

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to the mutual benefit enterprise act.

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

First: In Sec. 1, in 11C V.S.A. § 203(a), in the second sentence, following the words "filed record" by striking out the words "and a receipt for the fees"

Second: In Sec. 1, in 11C V.S.A. § 207(a), by striking out the word "and" in subdivision (3), by redesignating subdivision (4) as subdivision (5), and by inserting a new subdivision (4) to read as follows:

(4) the name and business address of any director or officer; and

Third: In Sec. 1, in 11C V.S.A. § 207, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read: