

illness of a worker. Test results may not be used as evidence in any criminal or civil proceedings.

(c) The result of a test ordered pursuant to subsection (a) of this section is protected health information subject to the "Standards for Privacy of Individually Identifiable Health Information" established under the Health Insurance Portability and Accountability Act of 1996 and contained in 45 C.F.R., Parts 160 and 164, and any subsequent amendments. Test results shall be confidential except that the worker who sustained the exposure, the health care provider who ordered the test, and the source patient, upon his or her request, shall be informed of the test results. Test results reported to the worker and documented in his or her medical record shall not include any personally identifying information relative to the source patient. Test results shall be transmitted to the commissioner of health pursuant to subsection (i) of this section.

(d) Prior to laboratory testing of a source patient's blood sample for bloodborne pathogens, personal identifiers shall be removed from the sample.

(e) Unauthorized disclosures of test results obtained under this section shall be subject to the penalties provided under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. subsections 1320d-5 and 1320d-6.

(f) The results of rapid testing technologies shall be considered preliminary and may be released in accordance with the manufacturer's instructions as approved by the federal Food and Drug Administration. Corroborating or confirmatory testing must be conducted as follow-up to a positive preliminary test.

(g) The health care provider who requested the test shall provide the source patient and the worker an opportunity to receive follow-up testing and shall provide information on options for counseling, as appropriate.

(h) Records pertaining to testing performed pursuant to this section shall not be recorded in the source patient's medical record unless authorized by the source patient and shall not be maintained in the location where the test is ordered or performed for more than 60 days.

(i) A laboratory having personal knowledge of a test result under this section shall transmit within 24 hours a report thereof to the department of health pursuant to subsection 1001(k) of this title.

(j) The employer of any worker exposed to blood or bodily fluids while rendering health services to a source patient during the performance of normal job duties shall maintain an incident report with information regarding the exposure that is relevant to a workers' compensation claim. The employer

shall not be provided or have access to information personally identifying the source patient.

(k) The costs of all diagnostic tests authorized by these provisions shall be borne by the employer of the worker.

(l) Notwithstanding any other law to the contrary, a health care provider who orders or performs a test under this section shall not be subject to civil or criminal liability for doing so. A health care provider's duties under this section are not continuing but limited to testing and services performed under this section.

Sec. 2. 18 V.S.A. § 1001(k) is added to read:

(k) The commissioner shall maintain a separate database of reports received pursuant to subsection 1141(i) of this title for the limited purpose of tracking the number of tests performed pursuant to subchapter 5, chapter 21 of this title. The database shall not include any information that personally identifies a patient.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Human Services agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 806

Rep. Randall of Troy, for the committee on Fish, Wildlife and Water Resources, to which had been referred House bill, entitled

An act relating to public water systems;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 1675a is added to read:

§ 1675a. PERMITTING EXEMPTION

(a) The requirements of this chapter and the rules adopted under this chapter, except the construction permitting requirements, shall not apply to a public water system that:

(1) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(2) Obtains all of its water from, but is not owned or operated by, a public water system to which this chapter applies;

(3) Does not sell water to any person, for any other reason than the supply of water to another water system;

(4) Is not a carrier which conveys passengers in interstate commerce;
and

(5) Is served by a public water system that certifies to the secretary that:

(A) The receiving public water system is responsible for the repair and maintenance of their own water system unless otherwise agreed to by the wholesale system and

(B) The public water system supplying water to the receiving water system is responsible for:

(i) including the receiving public water system in its water quality sampling plans;

(ii) providing consumer confidence reports to the receiving system's users; and

(iii) issuing public notice to the receiving system's users if a violation of a drinking water contaminant standard exists or if the secretary determines that a condition exists that may present a risk to public health.

(b) The water system supplying water to the receiving water system is responsible for the requirements contained in subdivision (a)(5)(B) of this section until 180 days after the water system supplying water to the receiving water system files a notice with the secretary of natural resources and the receiving system of its intent to withdraw from any obligation made under subdivision (a)(5)(B) of this section.

(c) Notwithstanding the exemption contained in subsection (a) of this section, the secretary of natural resources may take any reasonable steps that are necessary to abate a public health threat at a public water system that is otherwise exempt.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Fish, Wildlife and Water Resources agreed to and third reading ordered.

**Rules Suspended; Senate Proposal of Amendment Agreed to;
Rules Suspended; Action Ordered Messaged to Senate Forthwith
and Bill Delivered to the Governor Forthwith**

H. 737

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Adams of Hartland**, the rules were suspended and House bill, entitled

An act relating to fiscal year 2008 budget adjustment;

Was taken up for immediate consideration.

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

Sec. 1. SHORT TITLE

(a) This bill shall be known and shall be cited as the "Budget Adjustment Act-Fiscal Year 2008."

Sec. 2. Sec. 5 of No. 65 of the Acts of 2007 is amended to read:

Sec. 5. Secretary of administration - secretary's office

Personal services	792,281	942,281
Operating expenses	46,494	46,494
Grants	<u>150,000</u>	<u>150,000</u>
Total	988,775	1,138,775
Source of funds		
General fund	769,743	919,743
Interdepartmental transfer	<u>219,032</u>	<u>219,032</u>
Total	988,775	1,138,775

* * *

(e) Of the above appropriation, \$150,000 is a one-time appropriation to be used to by the secretary of administration to contract for an independent evaluation of law enforcement service provision statewide. The secretary shall consult with the chairs of the committees on appropriations and government operations in both the house and the senate prior to issuing a request for proposal for this evaluation and prior to selecting a contractor.

Sec. 3. Sec. 7(a) of No. 65 of the Acts of 2007 is amended to read:

(a) The secretary of administration shall reduce general fund appropriations by ~~\$250,000~~ \$235,982 and special fund appropriations by \$158,671 in the executive branch of state government in fiscal year 2008 through the elimination of exempt positions, or leaving exempt positions vacant.

Sec. 4. Sec. 12 of No. 65 of the Acts of 2007 is amended to read:

Sec. 12. Human resources-operations

Personal services	1,812,341	1,774,825
Operating expenses	<u>234,848</u>	<u>234,848</u>
Total	2,047,189	2,009,673
Source of funds		
General fund	1,619,098	1,581,582

Interdepartmental transfer	<u>428,091</u>	<u>428,091</u>
Total	<u>2,047,189</u>	<u>2,009,673</u>

Sec. 5. Sec. 20 of No. 65 of the Acts of 2007 is amended to read:

Sec. 20. Buildings and general services-information centers

* * *

(a) Of the above appropriation, \$50,000 in special funds is appropriated to the friends of the state house to facilitate private fund raising for improvements to the state house in accordance with the conceptual plan dated January 13, 2006. No naming opportunities shall be offered in connection with fund raising efforts. These funds may not be used to supplant any existing personal service or operating expenses in state government.

Sec. 6. Sec. 32 of No. 65 of the Acts of 2007 is amended to read:

Sec. 32. Buildings and general services – fee for space

Personal services	<u>11,047,932</u>	11,464,922
Operating expenses	<u>10,976,702</u>	<u>12,429,611</u>
Total	<u>22,024,634</u>	<u>23,894,533</u>

Source of funds

Internal service funds	<u>22,024,634</u>	<u>23,894,533</u>
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(a) Pursuant to 29 V.S.A. § 160a(b)(3), facilities operations fund charges not to exceed ~~\$22,024,634~~ \$23,894,533, plus the costs of fiscal year 2008 salary increases bargained as part of the state/VSEA agreement, are hereby approved.

* * *

Sec. 7. Sec. 36 of No. 65 of the Acts of 2007 is amended to read:

Sec. 36. Legislative council

Personal services	<u>1,924,939</u>	1,966,939
Operating expenses	<u>153,500</u>	<u>153,500</u>
Total	<u>2,078,439</u>	<u>2,120,439</u>

Source of funds

General fund	<u>2,078,439</u>	<u>2,120,439</u>
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Sec. 8. Sec. 37 of No. 65 of the Acts of 2007 is amended to read:

Sec. 37. Legislature

Personal services	<u>3,904,123</u>	3,940,323
Operating expenses	<u>2,899,885</u>	<u>2,920,885</u>
Total	<u>6,804,008</u>	<u>6,861,208</u>

Source of funds

General fund	6,804,008	6,861,208
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* * *

Sec. 9. Sec. 38 of No. 65 of the Acts of 2007 is amended to read:

Sec. 38. Legislative information technology

Personal services	404,005	407,005
Operating expenses	<u>217,253</u>	<u>217,253</u>
Total	621,258	624,258
Source of funds		
General fund	621,258	624,258

Sec. 10. Sec. 40 of No. 65 of the Acts of 2007 is amended to read:

Sec. 40. Sergeant at arms

Personal services	530,079	550,579
Operating expenses	<u>68,292</u>	<u>68,292</u>
Total	598,371	618,871
Source of funds		
General fund	598,371	618,871

Sec. 11. Sec. 43 of No. 65 of the Acts of 2007 is amended to read:

Sec. 43. State treasurer

Personal services	2,316,050	2,316,050
Operating expenses	354,787	354,787
Grants	<u>100,000</u>	<u>100,000</u>
Total	2,770,837	2,770,837
Source of funds		
General fund	1,130,214	1,130,214
Special funds	1,542,265	1,542,265
Private purpose trust funds	98,358	
<u>Interdepartmental transfer</u>		<u>98,358</u>
Total	2,770,837	2,770,837

* * *

Sec. 12. Sec. 49 of No. 65 of the Acts of 2007 is amended to read:

Sec. 49. VOSHA review board

Personal services	32,052	38,052
Operating expenses	<u>8,330</u>	<u>8,330</u>
Total	40,382	46,382
Source of funds		
General fund	20,192	23,192

Federal funds	20,190	20,190
<u>Interdepartmental transfer</u>		<u>3,000</u>
Total	40,382	46,382

Sec. 13. Sec. 50a of No. 65 of the Acts of 2007 is amended to read:

Sec. 50a. Tax department-municipal tax - homeowner rebate

Grants	6,506,140	11,206,140
Source of funds		
General Fund	6,506,140	11,206,140

* * *

(b) This appropriation includes the \$4,700,000 transfer to the general fund in Sec. 79(a)(4) of this act.

Sec. 14. Sec. 55 of No. 65 of the Acts of 2007 is amended to read:

Sec. 55. Total general government ~~150,453,836~~ 157,120,266

Source of funds

General fund	60,834,990	65,787,192
Special funds	7,313,681	7,155,010
Tobacco Fund	58,000	58,000
Global Commitment fund	105,000	105,000
Federal funds	2,496,325	2,496,325
Enterprise funds	2,674,518	2,674,518
Internal service funds	46,386,483	48,256,382
Pension trust funds	25,912,834	25,912,834
Private purpose trust funds	997,598	899,240
Interdepartmental transfer	<u>3,674,407</u>	<u>3,775,765</u>
Total	150,453,836	157,120,266

Sec. 15. Sec. 56 of No. 65 of the Acts of 2007 is amended to read:

Sec. 56. Protection to persons and property - attorney general

Personal services	7,094,267	7,431,970
Operating expenses	<u>1,069,612</u>	<u>1,069,612</u>
Total	8,163,879	8,501,582
Source of funds		
General fund	4,530,747	4,868,450
Special funds	1,100,000	1,100,000
Tobacco fund	290,000	290,000
Federal funds	763,000	763,000
Interdepartmental transfer	<u>1,480,132</u>	<u>1,480,132</u>
Total	8,163,879	8,501,582

* * *

Sec. 16. Sec. 58 of No. 65 of the Acts of 2007 is amended to read:

Sec. 58. Defender general – public defense

Personal services	6,270,658	6,362,158
Operating expenses	<u>768,028</u>	<u>768,028</u>
Total	7,038,686	7,130,186
Source of funds		
General fund	6,531,219	6,622,719
Special funds	502,467	502,467
Interdepartmental transfer	<u>5,000</u>	<u>5,000</u>
Total	7,038,686	7,130,186

Sec. 17. Sec. 60 of No. 65 of the Acts of 2007 is amended to read:

Sec. 60. Judiciary

Personal services	26,882,091	27,532,091
Operating expenses	8,048,252	8,048,252
Grants	<u>70,000</u>	<u>70,000</u>
Total	35,000,343	35,650,343
Source of funds		
General fund	30,267,034	30,917,034
Special funds	2,335,772	2,335,772
Tobacco fund	40,000	40,000
Federal funds	414,327	414,327
Interdepartmental transfer	<u>1,943,210</u>	<u>1,943,210</u>
Total	35,000,343	35,650,343

* * *

(c) The Vermont judiciary shall continue to deploy at additional locations interactive video technology to enable an increase in the number of status conferences, calendar calls, and other events to be conducted using this technology.

Sec. 18. Sec. 65 of No. 65 of the Acts of 2007 is amended to read:

Sec. 65. Sheriffs

Personal services	2,848,849	2,948,849
Operating expenses	<u>413,608</u>	<u>439,082</u>
Total	3,262,457	3,387,931
Source of funds		
General fund	3,262,457	3,387,931

* * *

Sec. 19. Sec. 68 of No. 65 of the Acts of 2007 is amended to read:

Sec. 68. Public safety - state police

Personal services	<u>38,085,058</u>	39,011,180
Operating expenses	<u>6,590,315</u>	6,590,315
Grants	<u>975,634</u>	<u>975,634</u>
Total	<u>45,651,007</u>	46,577,129
Source of funds		
General fund	<u>8,320,468</u>	9,246,590
Transportation fund	<u>30,385,796</u>	30,385,796
Special funds	<u>2,825,423</u>	2,825,423
Federal funds	<u>3,558,334</u>	3,558,334
Interdepartmental transfer	<u>560,986</u>	<u>560,986</u>
Total	<u>45,651,007</u>	46,577,129

* * *

Sec. 20. Sec. 75 of No. 65 of the Acts of 2007 is amended to read:

Sec. 75. Military - army service contract

Personal services	<u>3,300,460</u>	3,360,460
Operating expense	<u>5,780,134</u>	<u>5,780,134</u>
Total	<u>9,080,594</u>	9,140,594
Source of funds		
General fund	<u>107,064</u>	167,064
Federal funds	<u>8,973,530</u>	<u>8,973,530</u>
Total	<u>9,080,594</u>	9,140,594

Sec. 21. Sec. 76 of No. 65 of the Acts of 2007 is amended to read:

Sec. 76. Military - building maintenance

Personal services	<u>975,531</u>	915,531
Operating expenses	<u>441,925</u>	<u>441,925</u>
Total	<u>1,417,456</u>	1,357,456
Source of funds		
General fund	<u>1,417,456</u>	1,357,456

Sec. 22. Sec. 81 of No. 65 of the Acts of 2007 is amended to read:

Sec. 81. Agriculture, food and markets – food safety and consumer protection

Personal services	<u>2,620,156</u>	2,620,156
Operating expenses	<u>495,573</u>	495,573
Grants	<u>2,600,000</u>	<u>2,630,000</u>
Total	<u>5,715,729</u>	5,745,729
Source of funds		

(a) Of the above special fund appropriation, \$180,000 shall be used to support the Vermont spay and neuter incentive program.

Sec. 103. Total protection to persons and property

Sec. 24. Sec. 104 of No. 65 of the Acts of 2007 is amended to read:

Sec. 104. Human services-agency of human services - secretary's office

* * *

Sec. 25. Sec. 105 of No. 65 of the Acts of 2007 is amended to read:

Sec. 105. Secretary's office - Global Commitment

Grants	871,278,097	810,542,092
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Source of funds

General fund	119,412,816	114,928,643
Special fund	15,270,557	15,270,557
Tobacco Fund	29,609,240	29,609,240
State health care resources fund	157,186,147	148,325,411
Catamount fund	7,168,430	3,726,530
Federal funds	540,351,704	498,202,508
Interdepartmental transfer	<u>2,279,203</u>	<u>479,203</u>
Total	871,278,097	810,542,092

* * *

(b) In addition to the state funds appropriated in this section, a total estimated sum of ~~\$34,539,006~~ \$34,695,908 is anticipated to be certified as state matching funds under the Global Commitment as follows:

(1) \$17,283,434 certified state match available from local education agencies. This amount combined with \$24,881,566 of federal funds appropriated in this section equals a total estimated expenditure of \$42,165,000 for eligible special education school-based Medicaid services under the Global Commitment. An amount equal to the amount of the federal matching funds for eligible special education school-based Medicaid services under Global Commitment shall be transferred from the Global Commitment fund to the Medicaid reimbursement special fund created in 16 V.S.A. § 2959a.

(2) \$8,956,247 certified state match available from local education agencies for eligible services under the Global Commitment provided to students through school-based health services, including school nurses.

(3) ~~\$4,215,210~~ 4,419,798 certified state match available from local education and social service agencies for eligible services provided to eligible persons through children's collaborative services programs.

* * *

Sec. 26. GLOBAL COMMITMENT APPROPRIATIONS; TRANSFER; REPORT

(a) In order to facilitate the end-of-year closeout for fiscal year 2008, the secretary of the agency of human services, with approval from the secretary of administration, may make transfers among the appropriations authorized for Medicaid and Medicaid-waiver program expenses, including Global Commitment appropriations outside of the agency of human services. At least three business days prior to any transfer, the agency shall submit a proposal of transfers to be made pursuant to this section to the joint fiscal office. A final report on all transfers made under this section shall be made to the joint fiscal committee for review at the September 2008 meeting. The purpose of this

section is to provide the agency with limited authority to modify the appropriations to comply with the terms and conditions of the Global Commitment for Health waiver approved by the Centers for Medicare and Medicaid Services under Section 1115 of the Social Security Act.

Sec. 27. Sec. 107 of No. 65 of the Acts of 2007 is amended to read:

Sec. 107. Rate setting

Personal services	739,407	739,407
Operating expenses	<u>69,762</u>	<u>69,762</u>
Total	809,169	809,169
Source of funds		
Interdepartmental transfer	809,169	
<u>Global Commitment fund</u>		809,169

Sec. 28. Sec. 110 of No. 65 of the Acts of 2007 is amended to read:

Sec. 110. Office of Vermont health access - administration

Personal services	28,851,926	28,605,683
Operating expenses	<u>1,561,980</u>	1,816,980
Grants	<u>980,000</u>	<u>1,000,000</u>
Total	31,393,906	31,422,663
Source of funds		
General fund	50,000	50,000
Global Commitment fund	<u>30,281,112</u>	30,672,663
Federal funds	700,000	700,000
Interdepartmental transfer	362,794	
Total	31,393,906	31,422,663

* * *

Sec. 29. Sec. 111 of No. 65 of the Acts of 2007 is amended to read:

Sec. 111. Office of Vermont health access-Medicaid program-Global Commitment

Grants	442,025,956	399,946,836
Source of funds		
Global Commitment fund	442,025,956	399,946,836

* * *

Sec. 30. Sec. 112 of No. 65 of the Acts of 2007 is amended to read:

Sec. 112. Office of Vermont health access - Medicaid program-long-term care waiver

Grants	187,675,107	189,793,638
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Source of funds

General fund	76,928,027	77,796,413
Federal funds	<u>110,747,080</u>	<u>111,997,225</u>
Total	187,675,107	189,793,638

Sec. 31. Sec. 113 of No. 65 of the Acts of 2007 is amended to read:

Sec. 113. Office of Vermont health access – Medicaid nonwaiver matched

Grants	58,390,811	57,243,502
Source of funds		
General funds	21,845,389	21,516,111
Federal funds	<u>36,545,422</u>	<u>35,727,391</u>
Total	58,390,811	57,243,502

Sec. 32. Sec. 114 of No. 65 of the Acts of 2007 is amended to read:

Sec. 114. Office of Vermont health access – Medicaid program – state only

Grants	29,124,517	34,015,211
Source of funds		
General funds	28,869,330	32,771,132
Global Commitment fund	<u>255,187</u>	<u>1,244,079</u>
Total	29,124,517	34,015,211

Sec. 33. Sec. 115 of No. 65 of the Acts of 2007 is amended to read:

Sec. 115. Health - administration and support

Personal services	5,623,417	6,134,359
Operating expenses	2,268,996	2,268,996
Grants	<u>50,000</u>	<u>50,000</u>
Total	7,942,413	8,453,355
Source of funds		
General fund		59,976
Special funds	24,525	24,525
Global Commitment fund	1,812,709	2,195,675
Federal funds	6,101,179	6,101,179
Interdepartmental transfer	<u>4,000</u>	<u>72,000</u>
Total	7,942,413	8,453,355

Sec. 34. Sec. 117 of No. 65 of the Acts of 2007 is amended to read:

Sec. 117. Health - Blueprint for Health

Personal services	2,851,522	2,464,127
Operating expenses	385,783	385,783
Grants	<u>1,570,403</u>	<u>1,570,403</u>
Total	4,807,708	4,420,313

Source of funds

Global Commitment fund	<u>2,933,398</u>	2,546,003
Catamount fund	1,846,713	1,846,713
Federal funds	<u>27,597</u>	<u>27,597</u>
Total	4,807,708	4,420,313

* * *

Sec. 35. Sec. 119 of No. 65 of the Acts of 2007 is amended to read:

Sec. 119. Health - health surveillance

Personal services	9,710,579	9,710,579
Operating expenses	2,471,432	2,471,432
Grants	<u>2,524,499</u>	<u>2,524,499</u>
Total	14,706,510	14,706,510

Source of funds

General fund	<u>1,901,636</u>	2,251,636
Special funds	1,307,500	1,307,500
Global Commitment fund	<u>2,498,893</u>	2,148,893
Federal funds	8,923,937	8,923,937
Permanent trust funds	10,000	10,000
Interdepartmental transfer	<u>64,544</u>	<u>64,544</u>
Total	14,706,510	14,706,510

* * *

Sec. 36. Sec. 120 of No. 65 of the Acts of 2007 is amended to read:

Sec. 120. Health - health improvement

Personal services	8,051,727	8,051,727
Operating expenses	1,038,409	1,038,409
Grants	<u>12,101,405</u>	<u>12,234,405</u>
Total	<u>21,191,541</u>	21,324,541

Source of funds

General fund	<u>1,432,640</u>	1,358,640
Special funds	729,800	729,800
Tobacco funds	2,780,225	2,780,225
Global Commitment fund	<u>7,990,718</u>	8,197,718
Federal funds	8,251,158	8,251,158
Interdepartmental transfer	<u>7,000</u>	<u>7,000</u>
Total	21,191,541	21,324,541

* * *

Sec. 37. Sec. 121 of No. 65 of the Acts of 2007 is amended to read:

Sec. 121. Health - community public health

Personal services	14,449,064	14,449,064
Operating expenses	2,127,292	2,127,292
Grants	<u>21,581,824</u>	<u>16,536,143</u>
Total	<u>38,158,180</u>	<u>33,112,499</u>

Source of funds

General fund	900,638	900,638
Special funds	<u>3,231,400</u>	231,400
Global Commitment fund	<u>15,830,919</u>	11,910,238
Catamount fund	4,000,000	4,000,000
Federal funds	<u>14,080,223</u>	15,955,223
Interdepartmental transfer	<u>115,000</u>	<u>115,000</u>
Total	<u>38,158,180</u>	<u>33,112,499</u>

Sec. 38. Sec. 122 of No. 65 of the Acts of 2007 is amended to read:

Sec. 122. Health - alcohol and drug abuse programs

Personal services	9,360,208	9,360,208
Operating expenses	1,097,983	1,097,983
Grants	<u>20,712,146</u>	<u>20,793,530</u>
Total	<u>31,170,337</u>	<u>31,251,721</u>

Source of funds

General fund	3,229,571	3,229,571
Special funds	235,499	235,499
Tobacco funds	2,382,834	2,382,834
Global Commitment fund	<u>16,461,136</u>	16,542,520
Federal funds	8,711,297	8,711,297
Interdepartmental transfer	<u>150,000</u>	<u>150,000</u>
Total	<u>31,170,337</u>	<u>31,251,721</u>

* * *

Sec. 39. Sec. 123 of No. 65 of the Acts of 2007 is amended to read:

Sec. 123. Health - mental health

Personal services	4,653,064	4,885,308
Operating expenses	640,626	640,626
Grants	<u>126,737,194</u>	<u>126,361,789</u>
Total	<u>132,030,884</u>	<u>131,887,723</u>

Source of funds

General fund	698,116	768,752
Global Commitment fund	<u>127,296,709</u>	127,040,132
Federal funds	<u>4,036,059</u>	<u>4,078,839</u>
Total	<u>132,030,884</u>	<u>131,887,723</u>

* * *

Sec. 40. Sec. 124 of No. 65 of the Acts of 2007 is amended to read:

Sec. 124. Health - Vermont state hospital

Personal services	19,039,338	19,233,580
Operating expenses	1,819,499	1,819,499
Grants	<u>3,000</u>	<u>3,000</u>
Total	20,861,837	21,056,079
Source of funds		
General fund	20,341,837	20,446,079
Special funds	170,000	220,000
Federal funds	50,000	90,000
Interdepartmental transfer	<u>300,000</u>	<u>300,000</u>
Total	20,861,837	21,056,079

Sec. 41. Sec. 126 of No. 65 of the Acts of 2007 is amended to read:

Sec. 126. Department for children and families - administration & support services

Personal services	33,748,978	33,315,719
Operating expenses	6,094,778	6,619,778
Grants	<u>1,150,215</u>	<u>1,150,215</u>
Total	40,993,971	41,085,712
Source of funds		
General fund	12,377,866	11,799,897
Global Commitment fund	12,890,508	15,474,478
Federal funds	14,815,041	13,811,337
Interdepartmental transfer	<u>910,556</u>	
Total	40,993,971	41,085,712

* * *

Sec. 42. Sec. 127 of No. 65 of the Acts of 2007 is amended to read:

Sec. 127. Department for children and families - family services

Personal services	20,267,158	20,312,853
Operating expenses	3,118,322	3,293,322
Grants	<u>63,287,929</u>	<u>61,583,451</u>
Total	86,673,409	85,189,626
Source of funds		
General fund	16,270,209	16,820,778
Special funds	1,756,152	1,756,152
Tobacco funds	75,000	75,000
Global Commitment fund	41,832,990	39,694,460

Federal funds	26,059,058	26,163,236
Interdepartmental transfer	<u>680,000</u>	<u>680,000</u>
Total	86,673,409	85,189,626

* * *

Sec. 43. Sec. 128 of No. 65 of the Acts of 2007 is amended to read:

Sec. 128. Department for children and families - child development

Personal services	2,943,906	3,145,206
Operating expenses	762,228	767,228
Grants	<u>48,629,569</u>	<u>49,946,240</u>
Total	52,335,703	53,858,674

Source of funds

General fund	21,585,001	21,504,371
Special funds	865,000	865,000
Global Commitment fund	3,040,746	4,644,347
Federal funds	26,619,204	26,619,204
Interdepartmental transfer	<u>225,752</u>	<u>225,752</u>
Total	52,335,703	53,858,674

Sec. 44. Sec. 129 of No. 65 of the Acts of 2007 is amended to read:

Sec. 129. Department for children and families - office of child support

Personal services	9,027,353	8,546,984
Operating expenses	<u>3,797,607</u>	<u>3,852,607</u>
Total	12,824,960	12,399,591

Source of funds

General fund	2,535,052	2,405,894
Special funds	455,718	455,718
Federal funds	9,446,590	9,150,379
Interdepartmental transfer	<u>387,600</u>	<u>387,600</u>
Total	12,824,960	12,399,591

Sec. 45. Sec. 133 of No. 65 of the Acts of 2007 is amended to read:

Sec. 133. Department for children and families - Woodside rehabilitation center

Personal services	2,632,506	2,870,216
Operating expenses	<u>624,317</u>	<u>624,317</u>
Total	3,256,823	3,494,533

Source of funds

General fund	3,201,931	3,439,641
Interdepartmental transfer	<u>54,892</u>	<u>54,892</u>
Total	3,256,823	3,494,533

Sec. 46. Sec. 134 of No. 65 of the Acts of 2007 is amended to read:

Sec. 134. Department for children and families - disability determination services

Personal services	3,221,300	3,221,300
Operating expenses	<u>574,946</u>	<u>574,946</u>
Total	3,796,246	3,796,246
Source of funds		
Global Commitment fund		246,517
Federal funds	3,549,729	3,549,729
Interdepartmental transfer	<u>246,517</u>	
Total	3,796,246	3,796,246

Sec. 47. Sec. 135 of No. 65 of the Acts of 2007 is amended to read:

Sec. 135. Department for children and families - aid to aged, blind and disabled

Personal services	1,570,699	1,570,699
Grants	<u>9,791,580</u>	<u>9,966,910</u>
Total	11,362,279	11,537,609
Source of funds		
General fund	<u>7,612,279</u>	7,787,609
Global Commitment fund	<u>3,750,000</u>	<u>3,750,000</u>
Total	11,362,279	11,537,609

* * *

Sec. 48. Sec. 136 of No. 65 of the Acts of 2007 is amended to read:

Sec. 136. Department for children and families - general assistance

Grants	<u>4,376,259</u>	4,676,259
Source of funds		
General fund	<u>2,854,939</u>	3,224,939
Global Commitment fund	410,000	340,000
Federal funds	<u>1,111,320</u>	<u>1,111,320</u>
Total	4,376,259	4,676,259

* * *

(b) ~~Of the The~~ above appropriation, ~~an amount not to exceed \$150,000 (\$75,000 in federal TANF and \$75,000 in general funds)~~ may be expended for temporary housing assistance to individuals and families that have reached the 28-day maximum allowed under department regulations and have a continued need for this type of emergency assistance. Assistance shall be limited to an additional 56 cumulative days beyond the current 28-day maximum.

* * *

Sec. 49. Sec. 137 of No. 65 of the Acts of 2007 is amended to read:

Sec. 137. GENERAL ASSISTANCE BENEFITS; FLEXIBILITY PILOT PROGRAM

* * *

(c) The pilot program may operate in up to ~~three~~ five districts designated by the secretary of human services, to include Chittenden and Rutland Counties. This program will be budget neutral. For each district in which the agency operates the program, it shall establish procedures for evaluating the pilot and its effects. The agency shall report annually to the general assembly on its findings from the programs, its recommendations for changes in the general assistance program, and a plan for further implementation of the program.

* * *

Sec. 50. Sec. 138 of No. 65 of the Acts of 2007 is amended to read:

Sec. 138. Department for children and families - reach up

Grants	39,205,606	42,303,606
Source of funds		
General fund	12,677,114	14,770,799
Special funds	19,403,000	18,200,000
Global Commitment fund	45,685	
Federal funds	<u>7,079,807</u>	<u>9,332,807</u>
Total	39,205,606	42,303,606

Sec. 51. Sec. 146 of No. 65 of the Acts of 2007 is amended to read:

Sec. 146. Disabilities, aging and independent living - administration & support

Personal services	23,442,892	23,315,862
Operating expenses	<u>3,702,406</u>	<u>3,702,406</u>
Total	27,145,298	27,018,268
Source of funds		
General fund	6,467,588	6,640,558
Special Funds	952,910	952,910
Global Commitment fund	5,940,176	5,540,176
Federal funds	11,352,141	11,352,141
Interdepartmental transfer	<u>2,432,483</u>	<u>2,532,483</u>
Total	27,145,298	27,018,268

* * *

Sec. 52. Sec. 148 of No. 65 of the Acts of 2007 is amended to read:

Sec. 148. Disabilities, aging and independent living - advocacy and independent living grants

Grants	21,295,486	21,097,705
Source of funds		
General fund	10,059,299	9,861,518
Global Commitment fund	3,142,896	3,142,896
Federal funds	7,655,791	7,655,791
Interdepartmental transfer	<u>437,500</u>	<u>437,500</u>
Total	21,295,486	21,097,705

* * *

Sec. 53. Sec. 151 of No. 65 of the Acts of 2007 is amended to read:

Sec. 151. Disabilities, aging and independent living - TBI home and community-based waiver

Grants	3,415,448	3,695,448
Source of funds		
Global Commitment fund	3,415,448	3,695,448

Sec. 54. Sec. 152 of No. 65 of the Acts of 2007 is amended to read:

Sec. 152. Disabilities, aging and independent living - developmental services

Grants	127,545,146	128,862,125
Source of funds		
General fund	162,964	181,619
Special funds	185,463	185,463
Global Commitment fund	126,872,324	128,124,303
Federal funds	<u>324,395</u>	<u>370,740</u>
Total	127,545,146	128,862,125

Sec. 55. Sec. 156 of No. 65 of the Acts of 2007 is amended to read:

Sec. 156. Corrections - correctional services

Personal services	69,445,693	69,576,739
Operating expenses	31,361,582	31,490,582
Grants	<u>1,660,500</u>	<u>1,765,630</u>
Total	102,467,775	102,832,951
Source of funds		
General fund	98,170,305	98,284,481
Special funds	547,919	547,919
Tobacco fund	87,500	87,500
Global Commitment fund	2,894,144	3,145,144
Federal funds	686,861	686,861

Interdepartmental transfer	<u>81,046</u>	<u>81,046</u>
Total	102,467,775	102,832,951

* * *

Sec. 56. Sec. 157 of No. 65 of the Acts of 2007 is amended to read:

Sec. 157. Corrections - correctional services - out-of-state beds

Operating expenses	<u>9,621,342</u>	11,857,868
Source of funds		
General fund	<u>9,621,342</u>	11,857,868

(a) In fiscal year 2008, upon approval of the commissioner of finance and management, the commissioner of corrections may transfer unexpended funds for out-of-state bed expenses to the appropriation for correctional services. Any transfer made under this authority shall be reported to the house and senate committees on appropriations.

Sec. 57. Sec. 163 of No. 65 of the Acts of 2007 is amended to read:

Sec. 163. Total human services 2,531,416,112 2,437,291,219

Source of funds		
General fund	<u>493,209,047</u>	498,726,479
Special funds	<u>76,187,668</u>	72,034,668
Tobacco fund	<u>35,546,820</u>	35,546,820
Global Commitment fund	<u>853,052,203</u>	812,482,244
State health care resources fund	<u>157,186,147</u>	148,325,411
Catamount fund	<u>13,015,143</u>	9,573,243
Federal funds	<u>883,671,653</u>	845,015,959
Permanent trust funds	<u>10,000</u>	10,000
Internal service funds	<u>3,322,612</u>	3,322,612
Interdepartmental transfer	<u>16,214,819</u>	<u>12,253,783</u>
Total	<u>2,531,416,112</u>	2,437,291,219

Sec. 58. Sec. 175 of No. 65 of the Acts of 2007 is amended to read:

Sec. 175. Education - adult education and literacy

Grants	<u>4,593,059</u>	5,343,059
Source of funds		
General fund	<u>2,717,398</u>	2,717,398
Education fund	<u>1,000,000</u>	1,750,000
Federal funds	<u>875,661</u>	<u>875,661</u>
Total	<u>4,593,059</u>	5,343,059

* * *

Sec. 59. Sec. 176 of No. 65 of the Acts of 2007 is amended to read:

Sec. 176. Education - adjusted education payment

Grants	1,063,700,000	1,058,295,808
Source of funds		
Education fund	1,063,700,000	1,058,295,808

* * *

Sec. 60. Sec. 180 of No. 65 of the Acts of 2007 is amended to read:

Sec. 180. Education - capital debt service aid

Grants	280,000	224,407
Source of funds		
Education fund	280,000	224,407

Sec. 61. Sec. 189 of No. 65 of the Acts of 2007 is amended to read:

Sec. 189. Total general education and property tax assistance

~~1,754,540,454~~ 1,749,830,669

Source of funds

General fund	335,912,914	335,912,914
Transportation fund	127,483	127,483
Education fund	1,259,249,933	1,254,540,148
Special funds	18,237,521	18,237,521
Tobacco fund	995,668	995,668
Global Commitment fund	1,052,999	1,052,999
Federal funds	116,935,063	116,935,063
Pension trust funds	21,772,624	21,772,624
Interdepartmental transfer	<u>256,249</u>	<u>256,249</u>
Total	1,754,540,454	1,749,830,669

Sec. 62. Sec. 196 of No. 65 of the Acts of 2007 is amended to read:

Sec. 196. Vermont student assistance corporation

Grants	19,153,758	19,128,758
Source of funds		
General fund	19,153,758	19,128,758

* * *

Sec. 63. Sec. 198 of No. 65 of the Acts of 2007 is amended to read:

Sec. 198. Total higher education
and other

88,195,184 88,170,184

Source of funds

General fund	83,783,621	83,758,621
Global Commitment fund	<u>4,411,563</u>	<u>4,411,563</u>

Total	88,195,184	88,170,184
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Sec. 64. Sec. 219 of No. 65 of the Acts of 2007 is amended to read:

Sec. 219. Housing and community affairs

Personal service	2,307,833	2,307,833
Operating expenses	361,339	361,339
Grants	<u>4,415,137</u>	<u>4,470,137</u>
Total	<u>7,084,309</u>	7,139,309
Source of funds		
General fund	<u>1,390,297</u>	1,445,297
Special funds	3,991,815	3,991,815
Federal funds	1,646,697	1,646,697
Interdepartmental transfer	<u>55,500</u>	<u>55,500</u>
Total	<u>7,084,309</u>	7,139,309

* * *

(c) Of the above general fund appropriation, \$55,000 shall be for grants, on a one-time basis, to communities related to ancient roads and unidentified corridors requirements.

Sec. 65. Sec. 234 of No. 65 of the Acts of 2007 is amended to read:

Sec. 234. Total commerce and community development

	59,113,306	59,168,306
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Source of funds		
General fund	<u>15,865,504</u>	15,920,504
Special funds	21,153,075	21,153,075
Federal funds	20,268,872	20,268,872
Enterprise funds	789,893	789,893
Interdepartmental transfer	<u>1,035,962</u>	<u>1,035,962</u>
Total	<u>59,113,306</u>	59,168,306

Sec. 66. Sec. 237 of No. 65 of the Acts of 2007 is amended to read:

Sec. 237. Transportation - aviation

Personal services	1,761,751	1,761,751
Operating expenses	<u>5,295,449</u>	5,095,449
Grants	<u>160,000</u>	<u>160,000</u>
Total	<u>7,217,200</u>	7,017,200
Source of funds		
Transportation fund	<u>2,123,200</u>	1,923,200
Federal funds	<u>5,094,000</u>	<u>5,094,000</u>
Total	<u>7,217,200</u>	7,017,200

Sec. 67. Sec. 239 of No. 65 of the Acts of 2007 is amended to read:

Sec. 239. Transportation - program development

Personal services	35,867,267	35,867,267
Operating expenses	112,896,085	106,396,085
Grants	<u>26,116,926</u>	<u>26,116,926</u>
Total	174,880,278	168,380,278
Source of funds		
Transportation fund	34,355,234	33,390,234
Local match	1,788,677	1,788,677
Federal funds	133,566,367	128,031,367
Interdepartmental transfer	<u>5,170,000</u>	<u>5,170,000</u>
Total	174,880,278	168,380,278

Sec. 68. Sec. 240 of No. 65 of the Acts of 2007 is amended to read:

Sec. 240. Transportation - rest areas

Personal services	100,000	100,000
Operating expenses	<u>3,550,000</u>	<u>550,000</u>
Total	<u>3,650,000</u>	650,000
Source of funds		
Transportation fund	391,760	91,760
Federal funds	<u>3,258,240</u>	<u>558,240</u>
Total	<u>3,650,000</u>	650,000

Sec. 69. Sec. 243 of No. 65 of the Acts of 2007 is amended to read:

Sec. 243. Transportation - rail

Personal services	5,102,227	5,102,227
Operating expenses	14,243,260	12,143,260
Grants	<u>3,320,000</u>	<u>3,320,000</u>
Total	22,665,487	20,565,487
Source of funds		
Transportation fund	10,053,487	9,553,487
Federal funds	<u>12,612,000</u>	<u>11,012,000</u>
Total	22,665,487	20,565,487

Sec. 70. Sec. 246 of No. 65 of the Acts of 2007 is amended to read:

Sec. 246. Transportation - central garage

* * *

(a) \$5,252,668 of the above appropriation is appropriated from the transportation equipment replacement account within the central garage fund for the purchase of equipment as authorized in 19 V.S.A. § 13(b).

(b) The agency of transportation, central garage, is authorized to initiate the solicitation of bids for an additional under-bridge inspection vehicle to support the agency's bridge inspection program. The vehicle will not be ordered or other obligation or commitment incurred with respect to the vehicle until specific authority is granted by the general assembly.

Sec. 71. Sec. 247 of No. 65 of the Acts of 2007 is amended to read:

Sec. 247. Department of motor vehicles

Personal services	17,147,046	18,647,046
Operating expenses	7,629,667	7,629,667
Grants	<u>339,000</u>	<u>339,000</u>
Total	<u>25,115,713</u>	26,615,713
Source of funds		
Transportation fund	23,341,574	24,841,574
Federal funds	<u>1,774,139</u>	<u>1,774,139</u>
Total	<u>25,115,713</u>	26,615,713

Sec. 72. Sec. 258 of No. 65 of the Acts of 2007 is amended to read:

Sec. 258. Total transportation 420,875,874 410,575,874

Source of funds

Transportation fund	192,667,968	192,202,968
Special funds	610,500	610,500
Local match	2,951,403	2,951,403
Federal funds	204,264,381	194,429,381
Internal service funds	14,611,622	14,611,622
Interdepartmental transfer	<u>5,770,000</u>	<u>5,770,000</u>
Total	<u>420,875,874</u>	410,575,874

Sec. 73. Sec. 259 of No. 65 of the Acts of 2007 is amended to read:

Sec. 259. Debt service

Debt service	69,420,026	68,698,029
Source of funds		
General fund	64,929,281	64,205,317
Transportation fund	1,994,895	1,996,862
Special funds	<u>2,495,850</u>	<u>2,495,850</u>
Total	<u>69,420,026</u>	68,698,029

Sec. 74. Sec. 260 of No. 65 of the Acts of 2007 is amended to read:

Sec. 260. Total debt service 69,420,026 68,698,029

Source of funds		
General fund	64,929,281	64,205,317

Transportation fund	1,994,895	1,996,862
Special funds	2,495,850	2,495,850
Total	69,420,026	68,698,029

Sec. 75. APPROPRIATION ADJUSTMENTS

(a) To reflect adjustments to budgets due to dental plan premium savings, personal services appropriations are reduced by \$396,430 general fund and \$97,181 transportation fund in accordance with the schedule, entitled "FY2008 Appropriation Reductions Due to Dental Plan Premium Savings" filed with the joint fiscal committee.

(b) To reflect adjustments to budgets due to general liability and auto liability insurance premium savings, operating expense appropriations are reduced by \$1,541,856 general fund and \$660,404 transportation fund in accordance with the schedule, entitled "FY2008 Appropriation Reductions Due to Liability Insurance Premium Savings" filed with the joint fiscal committee. The secretary of administration shall allocate these amounts to appropriations within departments. The secretary of administration may substitute appropriation reductions in other funds, and in fund transfers to the general fund of a like amount if the general fund appropriation reduction is not consistent with the liability premium savings.

(c) To reflect adjustments to budgets due to increases in Facilities Operations (Fee-For-Space) charges, operating expense appropriations are increased by \$1,718,787 general fund in accordance with the schedule entitled "FY2008 Appropriation Increases Due to Increased Facilities Operations(Fee-For-Space) Costs" filed with the joint fiscal committee. The secretary of administration shall allocate these amounts to appropriations within departments.

Sec. 76. REESTABLISH APPROPRIATION DUE TO AUGUST 23, 2007 EMERGENCY BOARD TRANSFER

(a) There is hereby appropriated \$6,477,655 general fund in fiscal year 2008 to corrections-correctional services, to reestablish spending authority transferred for home heating fuel assistance/LIHEAP-grants, authorized by the emergency board on August 23, 2007.

Sec. 77. Sec. 56(d) of No. 65 of the Acts of 2007 is amended to read:

(d) In fiscal year 2007, ~~\$1,000,000~~ \$900,000 in general funds shall be reserved and to the extent needed is hereby appropriated to the attorney general as necessary for payment of legal costs and charges arising from settlements of completed legal actions.

Sec. 78. Sec. 9(a)(3)(A) of No. 47 of the Acts of 2007 is amended to read:

(A) From the transportation fund for the fiscal year beginning July 1, 2007, ~~\$1,210,258.00~~ \$1,192,197.00;

Sec. 78a. Sec. 279(b) of No. 65 of the Acts of 2007 is amended to read:

(b) ~~In accordance with~~ Notwithstanding 19 V.S.A. § 13(c), the amount of \$900,000 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

Sec. 79. FUND TRANSFERS

(a) Notwithstanding any other provisions of law, in fiscal year 2008:

(1) The following amounts shall be transferred to the general fund from the funds indicated:

	<u>Fidelity/interest earnings</u>	<u>1,000,000</u>	<u>Approx.</u>
	<u>Bond premium</u>	<u>318,939</u>	
<u>62100</u>	<u>Abandoned property</u>	<u>2,479,018</u>	<u>Approx.</u>
	<u>Amortization of W.R. Grace</u>	<u>5,911</u>	
	<u>Caledonia Fair</u>	<u>5,000</u>	
	<u>North Country Hospital Loan</u>	<u>24,250</u>	
<u>50300</u>	<u>Liquor Control</u>	<u>836,519</u>	<u>Approx.</u>
<u>22005</u>	<u>Dept. Environmental Conservation Federal Indirect Cost Reimbursements</u>		
	<u>(Dept ID 6140040000)</u>	<u>1,234,385</u>	
<u>21110</u>	<u>Employee Leasing Companies</u>	<u>100,000</u>	
<u>21140</u>	<u>DUI Enforcement Special Fund (Corrections; Business Unit 03480)</u>	<u>5,722</u>	
<u>21340</u>	<u>Out-Of-State Power Sales Fund</u>	<u>108</u>	<u>Approx.</u>
<u>21380</u>	<u>Rockefeller State Zoning Fund</u>	<u>80,707</u>	<u>Approx.</u>
<u>21500</u>	<u>Inter-Unit Transfers Fund (Office of Vt Health Access; Business Unit 03410)</u>	<u>747,889</u>	
<u>21500</u>	<u>Inter-Unit Transfers Fund (Health Dept.; Business Unit 03420)</u>	<u>82,324</u>	
<u>21500</u>	<u>Inter-Unit Transfers Fund (Finance & Management; Business Unit 01110)</u>	<u>31,612</u>	
<u>21500</u>	<u>Inter-Unit Transfers Fund (Buildings & Gen. Services-Governmental; Business Unit 01150)</u>	<u>52,181</u>	

<u>21500</u>	<u>Inter-Unit Transfers Fund (Education Dept.; Business Unit 05100)</u>	<u>108,212</u>	
<u>21500</u>	<u>Inter-Unit Transfers Fund (Secretary of State; Business Unit 02230)</u>	<u>4,940</u>	
<u>21584</u>	<u>Surplus Property (Dept. Labor; Business Unit 04100)</u>	<u>900</u>	
<u>21594</u>	<u>Tax-PVR Use Value Admin.</u>	<u>8,799</u>	
<u>21595</u>	<u>BGS-Public Records</u>	<u>106,115</u>	
<u>21602</u>	<u>BGS-Vital Records</u>	<u>343,885</u>	
<u>21603</u>	<u>Motorist Aid Refreshment Prog.</u>	<u>150,000</u>	
<u>21636</u>	<u>AG-Auto Repair Investigative Fund</u>	<u>7,000</u>	
<u>21698</u>	<u>Public Service Dept. Regulation/Energy Effic</u>	<u>85,488</u>	
<u>21699</u>	<u>Public Service Dept. – Regulation - Admin-Rec (Business Unit 02240)</u>	<u>500</u>	
<u>21701</u>	<u>Public Service Dept. – Ed – Energy Education</u>	<u>975</u>	
<u>21709</u>	<u>Public Service Board Special Fund</u>	<u>73,183</u>	
<u>21860</u>	<u>PATH - Other Administration</u>	<u>22,687</u>	
<u>21884</u>	<u>Emergency Personnel Survivors' Benefit Fund</u>	<u>50,000</u>	
<u>21890</u>	<u>Homeland Security-CPC (Dept Agriculture)</u>	<u>30,000</u>	
<u>21975</u>	<u>Armed Services Scholarship Fund</u>	<u>20,000</u>	
<u>21993</u>	<u>VT Film Production Incentive</u>	<u>36,731</u>	<u>Approx</u>

(2) All or a portion of the unencumbered balances in the insurance regulatory and supervision fund (Fund Number 21075), the captive insurance regulatory and supervision fund (Fund Number 21085), and the securities regulatory and supervision fund (Fund Number 21080), expected to be approximately \$7,767,353, shall be transferred to the general fund, provided that on or before July 1, 2008, the commissioner of banking, insurance, securities, and health care administration certifies to the joint fiscal committee that the transfer of such balances or of any smaller portion deemed proper by the commissioner will not impair the ability of the department in fiscal year

2009 to provide thorough, competent, fair, and effective regulatory services or to maintain accreditation by the National Association of Insurance Commissioners; and that the joint fiscal committee does not reject such certification.

(3) The following amounts shall be transferred from the general fund to the funds indicated:

<u>21196</u>	<u>Catamount Fund</u>	<u>3,500,000</u>
<u>21555</u>	<u>Emergency Relief and Assistance Fund</u>	<u>562,409</u>

(4) Of the \$6,600,000 transferred from the general fund to the education fund in accordance with Section 277(b)(1) of No. 65 of the Acts of 2007, \$4,700,000 is hereby returned to the general fund for use by the homeowner rebate program.

Sec. 80. TRANSFER BETWEEN ACCOUNTS

(a) The sum of \$500,000 is transferred from the motor fuel account to the heating fuel account in the petroleum cleanup fund created in 10 V.S.A.

§ 1941.

Sec. 81. REVERSIONS

(a) Notwithstanding any other provisions of law, in fiscal year 2008 the following amounts shall revert to the general fund from the accounts indicated:

<u>1110003000</u>	<u>Budget & Management</u>	<u>25,275</u>
<u>1140890701</u>	<u>Act 185 Implementation</u>	<u>61,600</u>
<u>1220890601</u>	<u>Vt Tax Study</u>	<u>7,182</u>
<u>1260080000</u>	<u>Interest-Temp Borrowing</u>	<u>1,760</u>
<u>1260090000</u>	<u>Interest-Bonded Debt</u>	<u>4,389</u>
<u>1260980000</u>	<u>Debt Service</u>	<u>21,853</u>
<u>2130100000</u>	<u>State's Attorneys</u>	<u>528,986</u>
<u>2200040000</u>	<u>Plant Industry, Labs & CA Div</u>	<u>1,657</u>
<u>2200880207</u>	<u>Cattle Hlth & Qual Assur Prog</u>	<u>881</u>
<u>2230890501</u>	<u>Licensed Land Surveyors</u>	<u>5,735</u>
<u>2270001000</u>	<u>Vermont Racing Commission</u>	<u>375</u>
<u>3420890603</u>	<u>ADAP-Benn Mobile Meth</u>	

	<u>Clinic</u>	<u>55,000</u>
<u>4100500000</u>	<u>VDOL Program</u>	<u>100,000</u>
<u>6100010000</u>	<u>ANR Admin Management</u> <u>& Planning</u>	<u>14,010</u>

(b) Notwithstanding any other provisions of law, in fiscal year 2008 the following amounts shall revert to the transportation fund from the accounts indicated:

<u>1100010000</u>	<u>Secretary of Administration</u>	<u>197</u>
<u>2130100000</u>	<u>State's Attorneys</u>	<u>3,480</u>
<u>8100000100</u>	<u>Transportation - Finance and</u> <u>Administration</u>	<u>72,128</u>
<u>8100000200</u>	<u>Transportation - Aviation</u>	<u>200,000</u>
<u>8100001700</u>	<u>Transportation - Interstate Rest</u> <u>Areas</u>	<u>47,045</u>
<u>8100002000</u>	<u>Transportation - Maintenance</u>	<u>250,000</u>
<u>8100002200</u>	<u>Transportation - Policy and</u> <u>Planning</u>	<u>546,461</u>
<u>8100002300</u>	<u>Transportation - Rail</u>	<u>500,000</u>

(c) Notwithstanding any other provisions of law, in fiscal year 2008 the following amounts shall revert to the education fund from the accounts indicated:

<u>1140060000</u>	<u>Grand List Assistance</u>	<u>70,987</u>
<u>5100090000</u>	<u>Education Grant</u>	<u>1,781,009</u>
<u>5100100000</u>	<u>Transportation Aid</u>	<u>13,959</u>
<u>5100120000</u>	<u>Debt Service Aid</u>	<u>62,175</u>
<u>5100190000</u>	<u>Essential Early Education</u> <u>Grant</u>	<u>108,516</u>
<u>5100200000</u>	<u>Education - Technical</u> <u>Education</u>	<u>22,097</u>

Sec. 82. SECRETARY OF ADMINISTRATION; CARRY FORWARD AUTHORITY

(a) Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, general, transportation and education fund appropriations remaining unexpended on June 30, 2008 in the executive branch

of state government shall be carried forward and shall be designated for expenditure.

(b) Notwithstanding any other provisions of law, general and transportation fund appropriations remaining unexpended on June 30, 2008 in the legislative and judicial branch of state government shall be carried forward and shall be designated for expenditure.

Sec. 83. 4 V.S.A. § 28(c) is amended to read:

(c) The maximum loan balance at any time shall be \$100,000.00 \$250,000.00 for one municipality and \$400,000.00 for all municipalities. The court administrator shall administer the municipal ticket repayment revolving fund and shall establish procedures to allocate the available funds fairly and equitably. Upon the recommendation of the court administrator, the secretary of administration shall approve spending in anticipation of receipts from the fund up to a maximum of \$220,000.

Sec. 83a. MUNICIPAL TICKET REPAYMENT; NOTWITHSTANDING

(a) Notwithstanding the provisions of 4 V.S.A. § 28(a)(2), the town of Newport may receive such additional loans from the fund between June 30, 2001 and June 30, 2004 in an amount not to exceed \$55,000.

Sec. 84. SALARY ASSISTANCE; NOTWITHSTANDING

(a) Notwithstanding 16 V.S.A. § 1565(b)(1)(C), adult service coordinators' salary assistance shall not exceed 50 percent of actual salaries and benefits for fiscal year 2008.

Sec. 85. Sec. 6d(a)(5) and (b) of No. 46 of the Acts of 2007 are amended to read:

(5) In September 2006, the board approved Community Capital's proposal based on the merits of Community Capital's proposal for administering Job Start and the fact that Community Capital met the following six key qualifications:

(A) Registered as a nonprofit with the secretary of state.

(B) Certified by the secretary of state as being in good standing.

(C) Certified by the U.S. Department of the Treasury as a Community Development Financial Institution (CDFI).

(D) Experience managing municipal loan funds.

(E) Has both the resources and a business plan sufficient to implement the job start revolving loan fund program statewide.

(F) Has the support of the community action agency network as demonstrated by the Vermont community action directors' association.

(b) In response to the findings, the purpose of this section and sections 6e, section 6f, and 6g is to ratify the recommendations of the Job Start Board to restructure the Job Start Program by moving the program from VEDA to OEO. OEO shall contract with a nonprofit as the program administrator provided the nonprofit meets the criteria of 3 V.S.A. § 3721(b) and has the recommendation of the Job Start Advisory Board and VEDA granting the assets and liabilities of the program to Community Capital of Vermont after the payments of the obligation in Sec. 6g of No. 46 of the Acts of 2007, to remove all the vestiges of the program from VEDA, to place the responsibility for the grants for regional microbusiness development programs in OEO, and acknowledging that OEO, the regional microbusiness development programs, and Community Capital of Vermont have common goals and will collaborate in their efforts.

Sec. 86. GRANT AUTHORIZED

(a) The Vermont Economic Development Authority shall grant to Community Capital of Vermont all the rights, assets, and liabilities relating to the Job Start Program. The grant shall require:

(1) that the funds be used for the same purposes as the Job Start Program, which are to operate a revolving loan fund to serve low-income Vermonters who own their own businesses;

(2) that there be a loan maximum of \$25,000 to any applicant;

(3) that the Community Capital of Vermont board of directors shall include two members who are owners of microbusinesses;

(4) that a report be provided annually to the office of economic opportunity, the house committee on commerce, and the senate committee on economic development, housing, and general affairs on the status and use of the funds. This report shall include Community Capital of Vermont's audited financial statements to include a statement of activities and a statement of financial position. The report shall provide details on the Job Start loan portfolio including number and value of loans outstanding, number and value of loans defaulted and charged off, number and value of loans disbursed during the course of the year, number and value of loans fully paid, and remaining capital available to lend. The report shall also list the expected and actual number of jobs created or retained by recipient businesses as a result of accessing Job Start financing, the quality of the jobs created or retained as defined by salary and wage levels and benefits provided.

Sec. 87. ADMINISTRATIVE COSTS

(a) The \$57,000 originally appropriated to the agency of commerce and community development in fiscal year 2008 shall be granted to Community Capital of Vermont for administration of the Job Start Program.

(b) It is the intent of the legislature that, in fiscal years 2009 and 2010, a similar amount shall be granted from the department for children and families, office of economic opportunity to Community Capital of Vermont for administration of the Job Start Program.

Sec. 88. REPEALS

(a) The following are repealed:

(1) Sec. 6f of No. 46 of the Acts of 2007.

(2) 3 V.S.A. §§ 3721 and 3723.

Sec. 89. AUTHORIZATION FOR EXPENDITURES AT THE 9 DEPOT SQUARE SITE

(a) Pursuant to 10 V.S.A. § 1283(b), environmental contingency fund expenditures of \$30,000 in excess of \$100,000 under subdivision (b)(3) of that section are authorized for removal of contamination at the 9 Depot Square site in Barre, Vermont.

Sec. 90. Sec. 3(7) of No. 75 of the Acts of 2007 is amended to read:

(7) Authorized spending on statewide ledge/slope projects is amended to read:

PE	207,375	207,375
ROW	207,375	207,375
Construction	1,244,250	1,244,250
Other		
Total	1,659,000	1,659,000
<u>Sources of funds</u>		
State	313,551	310,200
Town fund		
Federal	1,345,449	1,348,800
Local		0
Total	1,659,000	1,659,000

Sec. 91. Sec. 6(1) of No. 75 of the Acts of 2007 is amended to read:

(1) Authorized spending for development and evaluation of candidates is amended to read:

PE	137,500	137,500
ROW	0	
Construction	0	

Other	9	
Total	137,500	137,500
<u>Sources of funds</u>		
State	3,750	13,750
Town Fund		
Federal	<u>133,750</u>	<u>123,750</u>
Local		
Total	137,500	137,500

Sec. 92. REPEAL

(a) Sec. 44 of No. 65 of the Acts of 2007 (fiscal year 2008 reversion - state treasurer) is repealed.

(b) Sec. 73(b) of No. 65 of the Acts of 2007 (limitation on disbursements by VSAC) is repealed.

Sec. 93 TOBACCO PROGRAMS; NOTWITHSTANDING

(a) Notwithstanding Sec. 120(i) of No. 65 of the Acts of 2007, no funding shall be distributed under this provision until fiscal year 2009.

Sec. 94. EFFECTIVE DATES

(a) This act shall take effect from passage.

(b) Secs. 85 through 88 shall take effect upon passage, except for Sec. 88(a)(1), which shall take effect June 29, 2007.

And by renumbering all of the sections of the bill to be numerically correct (including internal references) and adjusting all of the totals to be arithmetically correct.

Which was agreed to.

On motion of **Rep. Adams of Hartland**, the rules were suspended and action on the bill was ordered messaged to the Senate forthwith and the bill delivered to the Governor forthwith.

Bills and Resolution Messaged to Senate Forthwith

On motion of **Rep. Adams of Hartland**, the rules were suspended and the following bills and resolution were ordered messaged to the Senate forthwith:

H. 352

House bill, entitled

An act relating to reducing lead hazards in housing;

H. 867

House bill, entitled

An act relating to health insurance plan coverage for athletic trainer services;

J.R.H. 45

Joint resolution , entitled

Joint resolution urging Congress to repeal the planned Competitive Loan Auction Pilot program for the Federal Family Education Loan program's PLUS LOANS to parents;

Adjournment

At three o'clock and forty minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

FRIDAY, FEBRUARY 29, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by **Adam Courville and Debbie Lyons of Kids on the Block, Burlington, VT.**

Senate Bill Referred**S. 361**

Senate bill, entitled

An act relating to authority to lease the state lottery;

Was taken up, read the first time and referred to the committee on Ways and Means.

Bill Referred to Committee on Ways and Means**H. 863**

House bill, entitled

An act relating to creation and preservation of affordable housing and smart growth development;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 709

House bill, entitled

An act relating to campgrounds;

H. 806

House bill, entitled

An act relating to public water systems;

H. 864

House bill, entitled

An act relating to making miscellaneous amendments to education law;

Bill Amended, Read Third Time and Passed**H. 870**

House bill, entitled

An act relating to the regulations and professions and occupations;

Was taken up and pending third reading of the bill, **Rep. Evans of Essex** moved to amend the bill as follows:

In Sec. 3, 3 V.S.A. § 129, by striking subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) as follows:

(c) A board may assign one or more members of the board to investigate complaints and license applications. These members shall have the assistance of an investigator for the office and an attorney assigned by the office of professional regulation who shall be responsible for prosecuting disciplinary and licensing cases before the board. In the case of professions which have advisor appointees, the secretary may designate one or more of the advisor appointees or other licensed or certified members of the profession to assist in the investigation. While acting in this capacity, a board member or advisor appointee shall not sit in adjudication of the case and shall not participate in ex parte communications with other board members regarding the case. A board member whose term of office expires while an investigation is pending may continue through the completion of the case. When a board is unable to assign one or more members to investigate complaints or license applications by reason of disqualification, resignation, vacancy or necessary absence, the secretary of state may, at the request of the board, appoint ad hoc members to

serve on the board for investigation of that matter only. Ad hoc members shall have the same qualifications as required by law for the absent members.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Bill Amended, Read Third Time and Passed

H. 873

House bill, entitled

An act relating to the cleanup of Lake Champlain and other state waters;

Was taken up and pending third reading of the bill, Rep. Deen of Westminister moved to amend the bill as follows:

In Sec. 9, 10 V.S.A. § 6001(3)(D), in subdivision (vi), after "chapter 159 of this title" by inserting ", excluding regulation of wastewater sludge or septage,"

Which was agreed to.

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

Bill Amended; Third Reading Ordered

H. 859

Rep. Rodgers of Glover, for the committee on Institutions, to which had been referred House bill, entitled

An act relating to increasing substance abuse treatment, vocational training, and transitional housing for offenders in order to reduce recidivism, increase public safety and reduce corrections costs;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND INTENT

(a) The general assembly finds that:

(1) Vermont's incarcerated population is growing at an unsustainable rate.

(2) Property and drug offenders are the fastest growing segment of the prison population. Between 2000 and 2006, over half the increase in the felony prison population was due to property and substance abuse offenses.

(3) Seventy-seven percent of those sentenced for a property or drug felony have a substance abuse disorder. Two-thirds of them report having

received mental health treatment in the past. Fifty-five percent report being frequently unemployed prior to incarceration.

(4) Of those incarcerated for a property or drug felony, only 13 percent are receiving treatment.

(b) The general assembly further finds that:

(1) Each month approximately 70 inmates meet the criteria for reentering the community under the supervision of the commissioner of corrections on conditional reentry status. However, almost half are not released because of insufficient housing options.

(2) Studies show that the length of sentences served by offenders does not affect their recidivism rates. Therefore, current law authorizes the commissioner of corrections to release certain offenders on reintegration furlough 90 days prior to the minimum sentence date. However, on average, eligible inmates serve only 53 days in reintegration furlough status. If all those who are eligible serve the full 90 days of reintegration status, the result could be a savings of up to 90 corrections beds.

(c) Therefore, in order to reduce recidivism, increase public safety, and reduce the cost to the state of incarcerating offenders, it is the intent of the general assembly to increase substance abuse treatment services, vocational training, and transitional housing available to offenders; and establish processes for reducing incarceration time when appropriate.

(d) It is further the intent of the general assembly that the provisions of this act are a long range plan to guide expenditures from additional corrections savings in future years.

Sec. 2. Reserved

Sec. 3. 28 V.S.A. § 723(c) is added to read:

(c) Prior to release under this section, the department shall screen, and if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

Sec. 4. 28 V.S.A. § 808(a)(8) is amended to read:

(8) To prepare for reentry into the community.

(A) Any offender sentenced to incarceration ~~may~~ shall be furloughed to the community ~~up to~~ 90 days prior to completion of the minimum sentence, ~~at the commissioner's discretion and~~ in accordance with rules adopted pursuant to subdivision (C) of this subdivision (8), provided that an offender sentenced to a minimum term of fewer than 180 days shall not be eligible for furlough under this subdivision until the offender has served at least one-half of his or her minimum term of incarceration.

* * *

(C) The commissioner may authorize reintegration furlough under subdivisions (A) and (B) of this subdivision (8) only if ~~the days are awarded~~ the commissioner determines that public safety is not compromised and that the offender will receive community services necessary to reduce the chances of recidivism. The commissioner shall make the determination in accordance with rules adopted pursuant to chapter 25 of Title 3 designed to:

(i) Evaluate factors such as risk of reoffense, history of violent behavior, history of compliance with community supervision, compliance with the case plan, progress in treatment programs designed to reduce criminal risk, and obedience to rules and regulations of the facility.

(ii) Ensure adequate departmental supervision of the offender when furloughed into the community.

(iii) Ensure that each offender has a reentry plan which identifies services necessary to succeed upon reentry and that the necessary services are available to the offender.

* * *

(E) Prior to release under this subdivision (8), the department shall screen, and if appropriate, assess each felony drug and property offender for substance abuse treatment needs using an assessment tool designed to assess the suitability of a broad range of treatment services, and it shall use the results of this assessment in preparing a reentry plan. The department shall attempt to identify all necessary services in the reentry plan, and work with the offender to make connections to necessary services prior to release so that the offender can begin receiving services immediately upon release.

Sec. 5. STATEWIDE DRUG COURT STUDY

The court administrator, the deputy commissioner of the alcohol and drug abuse program in the department of health, and the commissioner of mental health shall report to the house and senate committees on judiciary by December 15, 2008 on the advisability and feasibility of expanding the drug court program to every county in the state. The report shall address:

(1) the financial costs of expanding the drug court program statewide;

(2) the workforce impact which a statewide expansion of the program would have, and whether new staff would be required;

(3) whether current state facilities have the capacity to support statewide expansion, and whether and where any new facilities would be required; and

(4) any other matter deemed relevant to the issue of statewide drug court expansion.

Sec. 6. FACILITIES REORGANIZATION AND RENOVATION;
BUDGETARY SAVINGS ALLOCATIONS IN FISCAL YEARS
2009 AND 2010

(a) Department of corrections expenditures on correctional services including out-of-state beds grew from \$93,255,650.00 in fiscal year 2004 to \$120,533,309.00 in fiscal year 2008. The amount of funding proposed for fiscal year 2009 is \$123,589,833.00.

(b) It is the intent of the general assembly to achieve savings in the department of corrections that will be reinvested in substance abuse screening and treatment and reentry support which results in reduced recidivism by the proposed reorganization of three correctional facilities as follows:

(1) Northwest Regional Correctional Facility. Transfer men to other facilities, renovate the space, and transfer women from the Dale Correctional Facility and Southeast Correctional Facility to the Northwest Regional Correctional Facility.

(2) Dale State Correctional Facility. Close the building as a correctional facility.

(3) Southeast Correctional Facility. Renovate space to become a 100-bed work camp for felony drug and property offenders.

© In fiscal year 2009, a savings of \$600,000.00 is anticipated as a result of this reorganization. The department of corrections shall reinvest these funds in fiscal year 2009 as follows:

(1) The amount of \$100,000.00 shall be to increase the capacity of the department of corrections' intensive substance abuse program (ISAP) to provide services to those offenders with drug abuse disorders who are on preapproved furlough status under 28 V.S.A. § 808(a)(7).

(2) The amount of \$208,000.00 shall be for entering into contracts with several community-based substance abuse treatment providers in different geographic regions of the state to provide the substance abuse treatment services to persons on conditional reentry status pursuant to subchapter 1A of chapter 11 of 28 V.S.A. or furlough pursuant to 28 V.S.A. § 808.

(3) The amount of \$200,000.00 shall be to fund the establishment of a pilot program to:

(A) conduct a voluntary and confidential screening and assessment, when screening indicates that an assessment is appropriate, for substance abuse and mental health treatment needs at the time of arraignment of individuals charged with felony property, drug, or fraud offenses;

(B) conduct a mandatory screening and assessment, when screening indicates that an assessment is appropriate, for substance abuse and mental health treatment needs following adjudication and prior to sentencing of individuals found guilty of felony property, drug, or fraud offenses;

© provide the results of any screening and assessment conducted under this section to the judge following adjudication and prior to sentencing so that the judge can use the information to determine the level of treatment to be provided while the individual is in the custody of the commissioner of corrections; and

(D) enable the commissioner to gather data regarding the prevalence of co-occurring substance abuse and mental health disorders.

(4) The amount of \$88,000.00 shall be to assess offenders for substance abuse treatment needs prior to release.

(d) Additional savings in fiscal 2009 from reorganization of correctional facilities may be available depending on the timing of the reorganization. Any additional fiscal year 2009 savings shall be reinvested as follows and in the following order:

(1) The amount of \$150,000.00 to provide grants to community providers of transitional housing to increase the number of beds available by 10 beds for three to six months of housing for at least 20 offenders reentering the community on furlough pursuant to 28 V.S.A. § 808 or conditional reentry pursuant to subchapter 1A of chapter 11 of Title 28;

(2) The amount of \$650,000.00 shall be to provide vocational training and residential substance abuse programs in a work camp for felony drug and property offenders;

(3) The amount of \$1,000,000.00 shall be for the purpose of expanding the corrections reentry housing program to include the addition of 60 new transitional housing beds as well as expanding housing search and retention resources to include funding for housing assistance granted to housing authorities to be used in accordance with DOC directives;

(4) The amount of \$365,000.00 shall be to expand the ISAP program to include a residential component for those who have been furloughed to the community pursuant to 28 V.S.A. § 808(a)(7); and

(5) The amount of \$200,000.00 shall be to develop the capacities of the substance abuse treatment system to work effectively with offenders, and function efficiently as a collaborative system.

(e) In fiscal year 2010, a savings of \$3 million is anticipated from reorganization of correctional facilities and other provisions of this act, assuming all inflationary needs of the department are funded. Therefore, the commissioner of corrections shall develop a budget for fiscal year 2010 which reinvests the savings so that all the programs begun under subsection © of this section are funded again, and all the programs described in subsection (d) of this section are funded.

(f) The joint fiscal office shall track and report to the joint fiscal committee in January and July of 2009, savings in the corrections budget resulting from the proposed closing of the Dale State Correctional Facility, transfer of men from the Northwest Correctional Facility to other facilities, transfer of women from the Dale Correctional Facility and Southeast Correctional Facility to the Northwest Correctional Facility, renovation of the Southeast Correctional Facility to be a work camp, and savings resulting from the provisions of this act.

Sec. 7. ACCOUNTABILITY; REPORTS

(a) On or before January 15, 2010, the commissioner of corrections shall report to the senate committee on judiciary, the house committee on institutions and corrections, and the house committee on judiciary on:

(1) the prevalence of co-occurring mental health and substance abuse disorders among those committed to the custody of the commissioner of corrections;

(2) the success of and problems encountered in:

(A) expanding the ISAP program pursuant to Sec.6(c)(1) of this act:

(B) implementing the pilot program authorized and funded in Sec. 6(c)(3) of this act, as well as, recommendations for continuing the program, or expanding the program, or both; and

© developing reentry plans which identify necessary services needed upon release, and in working with community providers to ensure that each offender receives those services immediately upon release; and

(3) the progress made since passage of this act in establishing a comprehensive system of community substance abuse treatment services which is coordinated with corrections services.

(b) On or before January 15, 2011, the commissioner of corrections shall report to the senate committee on judiciary, the house committee on institutions and corrections, and the house committee on judiciary on the successes of and problems encountered in working to meet the following goals with the funds provided and through the programs established in this act:

(1) increase by at least 30 the number of offenders with sentences of one or more years placed in the department of corrections' intensive substance abuse program (ISAP) pursuant to 28 V.S.A. § 808(a)(7);

(2) move at least 10 offenders who are in the intensive phase of receiving ISAP services under 28 V.S.A. § 808(a)(7), and who are unsuccessful and would otherwise be reincarcerated to a community-based residential substance abuse treatment program which may be a component of ISAP;

(3) incarcerate no more than 20 percent of offenders who are receiving substance abuse treatment services under 28 V.S.A. § 808(a)(7);

(4) reduce by 10 percent the number of reincarcerations of those on conditional reentry with a high need for substance abuse treatment;

(5) increase the number of inmates released on furlough, pursuant to 28 V.S.A. § 808, by 25 individuals per month; and

(6) increase the average number of days released on reintegration furlough pursuant to 28 V.S.A. § 808(a)(8) prior to the minimum sentence to as close to 90 days as possible.

© Until the corrections oversight committee informs the commissioner that it no longer requires the information, the commissioner of corrections shall include in monthly reports to the committee:

(1) the number of inmates eligible for furlough under 28 V.S.A. § 808 and considered appropriate for release by the commissioner but who have not been released because the commissioner is unable to find appropriate housing, employment, treatment, or other services;

(2) which treatment or other services would have been necessary and in which geographic region the services would have been needed, to enable release; and

(3) the number of days of incarceration that could have been avoided if the community resources had been available and these offenders had been released.

(d) The joint fiscal office and office of finance and management shall jointly document the impact of the policies and provisions of this act on corrections costs and shall report their findings to the general assembly on or before January 15, 2010 and in January of each year for five years thereafter.

Rep. Acinapura of Brandon, for the committee on Appropriations, reported that they have met and considered the report of the committee on Institutions and Corrections and recommended that the report be amended by striking Sec. 6 in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. BUDGETARY SAVINGS ALLOCATIONS IN FISCAL YEAR 2009

(a) Department of corrections expenditures on correctional services including out-of-state beds grew from \$93,255,650.00 in fiscal year 2004 to \$120,533,309.00 in fiscal year 2008. The amount of funding proposed for fiscal year 2009 is \$123,589,833.00.

(b) It is the intent of the general assembly to achieve savings in the department of corrections budget which will be reinvested in substance abuse screening, assessment, treatment, and reentry support to result in reduced recidivism.

© In fiscal year 2009, from within the amounts appropriated to the department of corrections from the general fund, the department shall spend \$600,000 as follows:

(1) The amount of \$100,000.00 shall be to increase the capacity of the department of corrections' intensive substance abuse program (ISAP) to provide services to those offenders with drug abuse disorders who are on preapproved furlough status under 28 V.S.A. § 808(a)(7).

(2) The amount of \$212,000.00 shall be for entering into contracts with several community-based substance abuse treatment providers in different geographic regions of the state to provide the substance abuse treatment services to persons on conditional reentry status pursuant to subchapter 1A of chapter 11 of 28 V.S.A. or furlough pursuant to 28 V.S.A. § 808.

(3) The amount of \$200,000.00 shall be to fund the establishment of a pilot program at a location approved by the court administrator to:

(A) conduct a voluntary and confidential screening and assessment, when screening indicates that an assessment is appropriate, for substance abuse

and mental health treatment needs at the time of arraignment of individuals charged with felony property, drug, or fraud offenses;

(B) conduct a mandatory screening and assessment, when screening indicates that an assessment is appropriate, for substance abuse and mental health treatment needs following adjudication and prior to sentencing of individuals found guilty of felony property, drug, or fraud offenses;

© provide the results of any screening and assessment conducted under this section to the judge following adjudication and prior to sentencing so that the judge can use the information to determine the level of treatment to be provided while the individual is in the custody of the commissioner of corrections; and

(D) enable the commissioner to gather data regarding the prevalence of co-occurring substance abuse and mental health disorders.

(4) The amount of \$88,000.00 shall be to assess offenders for substance abuse treatment needs prior to release.

(d) Based on a recommendation from either the commissioner of corrections or the corrections oversight committee, the joint fiscal committee may authorize further spending of funds from the fiscal year 2009 corrections appropriation for all or part of the following, in the following order:

(1) The amount of \$150,000.00 to provide grants to community providers of transitional housing to increase the number of beds available by 10 beds for three to six months of housing for at least 20 offenders reentering the community on furlough pursuant to 28 V.S.A. § 808 or conditional reentry pursuant to subchapter 1A of chapter 11 of Title 28;

(2) The amount of \$200,000.00 shall be to develop the capacities of the substance abuse treatment system to work effectively with offenders, and function efficiently as a collaborative system;

(3) The amount of \$1,000,000.00 shall be for the purpose of expanding the corrections reentry housing program to include the addition of 60 new transitional housing beds as well as expanding housing search and retention resources to include funding for housing assistance granted to housing authorities to be used in accordance with DOC directives; and

(4) The amount of \$365,000.00 shall be to expand the ISAP program to include a residential component for those who have been furloughed to the community pursuant to 28 V.S.A. § 808(a)(7).

(e) The joint fiscal office shall track and report to the joint fiscal committee in January and July of 2009 savings in the corrections budget resulting from the provisions of this act.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the recommendation of amendment offered by the committee on Institutions as recommended by the committee on Appropriations? **Rep. Branagan of Georgia** moved to recommit the bill to the committee on Institutions, which was disagreed to.

Thereupon, **Rep. O'Donnell of Vernon** moved to commit the bill to the committee on Judiciary.

Pending the question, Shall the House commit the bill to the committee on Judiciary? **Rep. O'Donnell of Vernon** asked and was granted leave of the House to withdraw her motion to commit.

Thereupon, the report of the committee on Appropriations was agreed to.

Pending the question, Shall the House amend the bill as recommended by the committee on Institutions, as amended? **Rep. Lippert of Hinesburg** moved to strike Sec. 5 of the report of the committee on Institutions, which was agreed to and the report of the committee on Institutions, as amended, was agreed to and third reading was ordered.

Action on Bill Postponed

H. 112

House bill, entitled

An act relating to protection of health care and public safety personnel from communicable disease;

Was taken up and pending third reading, on motion of **Rep. Fisher of Lincoln**, action on the bill was postponed until Wednesday, March 12, 2008.

Recess

At eleven o'clock and thirty minutes in the forenoon, the Speaker declared a recess until the fall of the gavel.

At one o'clock and twenty-five minutes in the afternoon, the Speaker called the House to order.

Rules Suspended; Bill Amended; Read the Third Time and Passed;

H. 859

House bill, entitled

An act relating to increasing substance abuse treatment, vocational training, and transitional housing for offenders in order to reduce recidivism, increase public safety and reduce corrections costs;

On motion of **Rep. Adams of Hartland**, the rules were suspended and the bill placed on all remaining stages of passage.

Pending the question, shall the bill be read the third time? **Reps. Lippert of Hinesburg, Allard of St. Albans Town, Clarkson of Woodstock, Donaghy of Poultney, Flory of Pittsford, Gervais of Enosburg, Grad of Moretown, Jewett of Ripton, Marek of Newfane, Pellett of Chester** moved to amend the bill as follows:

Following Sec. 4, by inserting a new Sec. 5 to read:

Sec. 5. STATEWIDE DRUG COURT STUDY

The court administrator, the deputy commissioner of the alcohol and drug abuse program in the department of health, and the commissioner of mental health shall report to the house and senate committees on judiciary by December 15, 2008 on the advisability and feasibility of expanding the drug court program to every county in the state. The report shall address:

- (1) the financial costs of expanding the drug court program statewide;
- (2) the workforce impact which a statewide expansion of the program would have, and whether new staff would be required;
- (3) whether current state facilities have the capacity to support statewide expansion, and whether and where any new facilities would be required; and
- (4) any other matter deemed relevant to the issue of statewide drug court expansion.

Which was agreed to.

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

Bills Messaged to Senate Forthwith

On motion of **Rep. Adams of Hartland**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

H. 709

House bill, entitled

An act relating to campgrounds;

H. 806

House bill, entitled

An act relating to public water systems;

H. 864

House bill, entitled

An act relating to making miscellaneous amendments to education law;

H. 870

House bill, entitled

An act relating to the regulations and professions and occupations;

H. 873

House bill, entitled

An act relating to the cleanup of Lake Champlain and other state waters;

H. 859

House bill, entitled

An act relating to increasing substance abuse treatment, vocational training, and transitional housing for offenders in order to reduce recidivism, increase public safety and reduce corrections costs;

Remarks Journalized

On motion of **Rep. Myers of Essex**, the following remarks by **Rep. Wheeler of Derby** were ordered printed in the Journal:

“Madam Speaker:

In 1979 when I was in junior high in Derby a family traveling in a converted bus rolled into Charleston from New Hampshire. The couple and their children were looking for a quiet life in rural Vermont to begin a new chapter of their lives.

The husband, who was a mechanic, carpenter, jack-of-all-trades, also played in a rock band all around New Hampshire. In his spare time he raced race cars. Having lived the wild side of life he was ready to settle down and turn to a new chapter of life, a quieter one. He knew he had to settle down and plant his roots once and for all and give his wife and children the lives they deserved.

He was no stranger to hard times, neither was he a stranger to pulling himself up when he fell down. The family bought a general store in West Charleston, a community that they embraced, and the community embraced them. In time they became some of the area's most respected business people. They bought a restaurant, not just any restaurant, but a family restaurant, one in which everybody was invited to eat - sometimes even if they didn't have money to pay.

This man, along with his wife, were known for their hard work and dedication to their community. They dedicated many hours and thousands of

dollars giving back to a region that had embraced them when they arrived in the area. When they bought an airplane the couple didn't buy it just for leisure, the husband used it to fly mercy missions for people in need. He expected nothing in return.

I have known of this couple and their family for many years but it wasn't until recent years that I really came to know the husband - through civic activities, politics, his restaurant, and through family connections. We haven't always agreed on everything, and we still don't, but in those years, including some terrible days, we have gained tremendous respect for one another. When I decided to run for the Vermont House he supported me every step of the way even when others refuted that I, a child of skunk hollow, could win a seat in this honorable body.

Little did I know that so soon after I arrived here I'd be saying good bye to him. Yesterday I had to say goodbye to that friend - that rock and rolling race car driving mechanic, carpenter, restaurateur, jack-of-all-trades and man of mercy. That friend also was district mate, Representative Loren Shaw, a man who has served in the House for almost eight years, a man who has served his district, and state without abandoning his convictions and his faith.

Since it became public that Loren planned to step down from his seat, a role that he loved so much, many people asked me if I was surprised about his decision. I always said - no. It didn't surprise me because although I knew he loved serving as a legislator I knew he loves his family more. His life's journey has taken him to a new chapter in his life, a chapter with challenges that Loren has, and is, navigating with class and dignity. It is through his challenges that I earned an even greater respect for Loren. The decision for him to leave us wasn't an easy decision - but he knew it was the right one. However, I have little doubt that we won't be far out of Loren's heart and mind.

If Loren were here today I'd thank him for his years of dedication, dedication to his district, his state, and his nation. I'd also thank him for almost eight years under the Gold Dome. But as important I'd thank Loren for believing in me and my ability to represent our district and our state.

Today Loren has begun his new chapter, and I have begun mine - as the senior member from my district. Those are some big shoes for me to fill."

Adjournment

At one o'clock and thirty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until Tuesday, March 11, 2008, at ten o'clock in the forenoon, pursuant to the provisions of J.R.S. 43.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 217

House concurrent resolution congratulating the Vermont Girl Scouts selected to attend the 52nd United Nations Commission on the Status of Women

H.C.R. 218

House concurrent resolution honoring Barbara Oles for her public service as Guilford town clerk and treasurer and as a leader among her colleagues

H.C.R. 219

House concurrent resolution honoring Laurence Rossi for his civic service in the town of Woodbury

H.C.R. 220

House concurrent resolution congratulating Arthur Briggs for a half-century of civic service as a member of the Cavendish volunteer fire department

H.C.R. 221

House concurrent resolution congratulating Sarah Hurlbut on being named the recipient of the Franklin County Person of the Year Award

H.C.R. 222

House concurrent resolution congratulating the Frederic Duclos Barstow Memorial School on its 75th anniversary

H.C.R. 223

House concurrent resolution congratulating Frank Pecora on being named a St. Michael's College unsung hero.

H.C.R. 224

House concurrent resolution congratulating Colchester town clerk and treasurer Karen Richard on being named the 2007 Vermont Town Clerk of the Year

H.C.R. 225

House concurrent resolution honoring Carolyn Wells for her outstanding public service in the town of Worcester

H.C.R. 226

House concurrent resolution honoring Henry Andrew Raymond for his tireless community service in the town of Fairfax

S.C.R. 34.

Senate concurrent resolution in memory of Dr. Lawrence Myers of Waitsfield.

S.C.R. 35.

Senate concurrent resolution honoring Barre City Clerk-Treasurer Eugene Stratton on his service to the community.

S.C.R. 36.

Senate concurrent resolution honoring Moretown Town Clerk-Treasurer and Trustee of Public Money Susan Goodyear for her public service.

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the volume of the Public Acts and Resolves of the 2008, sixty-ninth Adjourned session]

TUESDAY, MARCH 11, 2008

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Mr. Regis Cummings, Deacon of St. Augustine Church, Montpelier, VT.

Pledge of Allegiance

Page Nickolas Johnson of Middlesex led the House in the Pledge of Allegiance.

Communication from Governor

"February 29, 2008

The Honorable Gaye R. Symington
115 State Street Drawer 33
Montpelier, VT 05633

Dear Speaker Symington,

I have the honor to inform you that I have appointed **Robert W. Lewis, Jr.** to fill the seat left vacant by the resignation of Loran Shaw in the district of Orleans-1. This appointment is effective as of March 1, 2008.

Sincerely,
/s/James H. Douglas
Governor

JHD/ms

cc: Deborah Markowitz, Secretary of State of Vermont
Donald G. Milne, Clerk of the House"

Communication from Governor

"March 10, 2008

The Honorable Gaye R. Symington
115 State Street Drawer 33
Montpelier, VT 05633

Dear Speaker Symington,

I have the honor to inform you that I have appointed **Sandra P. Grenier** to fill the seat left vacant by the passing of Representative David Clark in the district of Caledonia-3. This appointment is effective as of March 10, 2008.

Sincerely,
/s/James H. Douglas
Governor

JHD/ms

cc: Deborah Markowitz, Secretary of State of Vermont
Donald G. Milne, Clerk of the House"

Oath Administered to Robert W. Lewis, Jr.

The Speaker directed the Doorkeeper to conduct **Robert W. Lewis, Jr.**, the appointed member from Orleans-1, to the bar of the House where he took the subscribed oath, administered by the Clerk, as required by the Constitution and laws of the State.

New Member Seated

Rep. Robert W. Lewis, Jr., the newly appointed member, having taken and subscribed the oath administered by the Clerk, as required by the Constitution and laws of the State, was conducted to his seat by the Doorkeeper.

Oath Administered to Sandra P. Grenier

The Speaker directed the Doorkeeper to conduct **Sandra P. Grenier**, the appointed member from Caledona-3, to the bar of the House where she took the subscribed oath, administered by the Clerk, as required by the Constitution and laws of the State.

New Member Seated

Rep. Sandra P. Grenier, the newly appointed member, having taken and subscribed the oath administered by the Clerk, as required by the Constitution and laws of the State, was conducted to her seat by the Doorkeeper.

Committee Appointments Announced

The Speaker appointed new members to the following committees:

Rep. Grenier of St. Johnsbury to the committee on Government Operations, **Rep. Lewis of Derby** to the committee on Fish, Wildlife and Water Resources and **Rep. McCullough of Williston** was appointed vice-chair of Fish, Wildlife and Water Resources.

Message from the Senate No. 33

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 226. An act relating to requiring the installation of photoelectric only smoke detectors.

S. 250. An act relating to decreasing the amounts of cocaine and heroin required to be possessed to trigger drug trafficking penalties.

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

The Senate has considered House proposal of amendment to Senate proposal of amendment to House bill of the following title:

H. 580. An act relating to terms of members of the Vermont Tobacco Evaluation and Review Board.

And has concurred therein.

The Senate has on its part adopted Senate concurrent resolutions of the following titles:

S.C.R. 34. Senate concurrent resolution in memory of Dr. Lawrence Myers of Waitsfield.

S.C.R. 35. Senate concurrent resolution honoring Barre City Clerk-Treasurer Eugene Stratton on his service to the community.

S.C.R. 36. Senate concurrent resolution honoring Moretown Town Clerk-Treasurer and Trustee of Public Money Susan Goodyear for her public service.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 217. House concurrent resolution congratulating the Vermont Girl Scouts selected to attend the 52nd United Nations Commission on the Status of Women.

H.C.R. 218. House concurrent resolution honoring Barbara Oles for her public service as Guilford town clerk and treasurer and as a leader among her colleagues.

H.C.R. 219. House concurrent resolution honoring Laurence Rossi for his civic service in the town of Woodbury.

H.C.R. 220. House concurrent resolution congratulating Arthur Briggs for a half-century of civic service as member of the Cavendish volunteer fire department.

H.C.R. 221. House concurrent resolution congratulating Sarah Hurlbut on being named the recipient of the Franklin County Person of the Year Award.

H.C.R. 222. House concurrent resolution congratulating the Frederic Duclos Barstow Memorial School on its 75th anniversary.

H.C.R. 223. House concurrent resolution congratulating Frank Pecora on being named a St. Michael's College unsung hero.

H.C.R. 224. House concurrent resolution congratulating Colchester town clerk and treasurer Karen Richard on being named the 2007 Vermont Town Clerk of the Year.

H.C.R. 225. House concurrent resolution honoring Carolyn Wells for her outstanding public service in the town of Worcester.

H.C.R. 226. House concurrent resolution honoring Henry Andrew Raymond for his tireless community service in the town of Fairfax.

Committee Bill Introduced

H. 875

Rep. Dostis of Waterbury, for the committee on Natural Resources and Energy, introduced a bill, entitled

An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

House Bill Introduced

H. 876

Reps. Nuovo of Middlebury and Maier of Middlebury introduced a bill, entitled

An act relating to approval of amendment to the charter of the town of Middlebury;

Which was read the first time and referred to the committee on Government Operations.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 226

Senate bill, entitled

An act relating to requiring the installation of photoelectric only smoke detectors;

To the committee on General, Housing and Military Affairs.

S. 250

Senate bill, entitled

An act relating to decreasing the amounts of cocaine and heroin required to be possessed to trigger drug trafficking penalties;

To the committee on Judiciary.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the third day of March, 2008, he approved and signed a bill originating in the House of the following title:

H. 874 An act relating to decomposed municipal budgets.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the fifth day of March, 2008, he approved and signed a bill originating in the House of the following title:

H. 750 An act relating to prescription drug pricing and information.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the sixth day of March, 2008, he approved and signed a bill originating in the House of the following title:

H. 737 An act relating to fiscal year 2008 budget adjustment.

Message from the Senate No. 34

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 245. An act relating to crime victims.

S. 280. An act relating to prosthetic parity.

S. 281. An act relating to end-of-life care and pain management.

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

The Governor has informed the Senate that on the third day of March, 2008, he approved and signed a bill originating in the Senate of the following title:

S. 355. An act relating to debt financing for the Vermont housing finance agency.

The Governor has informed the Senate that on the sixth day of March, 2008, he approved and signed a bill originating in the Senate of the following title:

S. 257. An act relating to Medicaid coverage of naturopathic physicians.

Adjournment

At ten o'clock and forty-five minutes in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

WEDNESDAY, MARCH 12, 2008

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Susan Cooke-Kittredge of the Old Meeting House in East Montpelier, VT.

Colors Presented

The following Girl Scout Color Guard presented colors:

Bridget Iverson, Underhill
Shannon McCullen, Essex, Junction
Jennifer Cunningham, Ferrisburgh
Stephanie Garland, Barre Town
Announcer: Brittney Wieland, Georgia

House Bill Introduced

H. 877

Rep. Obuchowski of Rockingham introduced a bill, entitled

An act relating to presumption of parentage;

Which was read the first time and referred to the committee on Judiciary.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 245

Senate bill, entitled

An act relating to crime victims;

To the committee on Judiciary.

S. 280

Senate bill, entitled

An act relating to prosthetic parity;

To the committee on Human Services.

S. 281

Senate bill, entitled

An act relating to end-of-life care and pain management;

To the committee on Human Services.

Bill Committed

H. 615

House bill, entitled

An act relating to juvenile judicial proceedings;

Appearing on the Calendar for action, was taken up and pending the reading of the report of the committee on Judiciary, on motion of **Rep. Flory of Pittsford**, the bill was committed to the committee on Human Services

Bill Amended, Read Third Time and Passed

H. 112

House bill, entitled

An act relating to protection of health care and public safety personnel from communicable disease;

Was taken up and pending third reading of the bill, **Rep. Fisher of Lincoln** moved to amend the bill as follows:

In Sec. 1, 18 V.S.A. § 1141,

First: By striking subsection (l) in its entirety and by inserting in lieu thereof the following:

(l) Notwithstanding any other law to the contrary, a health care provider who orders a test in accordance with this section shall not be subject to civil or criminal liability for ordering the test. Nothing in this subsection shall be construed to establish immunity for the failure to exercise due care in the performance or analysis of the test.

Second: By adding a new subsection (m) to read as follows:

(m) A health care provider's duties under this section are not continuing but limited to testing and services performed under this section.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Bill Amended; Third Reading Ordered

H. 617

Rep. Jewett of Ripton, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to guardianships;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 14 V.S.A. chapter 111 is amended to read:

CHAPTER 111. ~~GUARDIANS AND WARD~~ GUARDIANSHIP

* * *

Subchapter 12. ~~Total and Limited Guardianship for Mentally Disabled Adults~~ Persons in Need of Guardianship

§ 3060. POLICY

Guardianship ~~for mentally disabled persons~~ shall be utilized only as necessary to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights. It shall be designed to encourage the development and maintenance of maximum self-reliance and independence in the individual and only the least restrictive form of guardianship shall be ordered ~~only~~ to the extent required by the individual's actual mental and adaptive limitations.

§ 3061. DEFINITIONS

The words and phrases used in this subchapter shall be defined as follows:

(1) ~~"Mentally disabled person"~~ "Person in need of guardianship" means a person who ~~has been found to be:~~

(A) is at least 18 years of age; and

(B) ~~mentally ill or developmentally disabled; and~~

~~(C) is unable to manage, without the supervision of a guardian, some or all aspects of his or her personal care or financial affairs~~ as a result of:

(i) significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior; or

(ii) a physical or mental condition that results in significantly impaired cognitive functioning which grossly impairs judgment, behavior, or the capacity to recognize reality.

(2) "Unable to manage his or her personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene, or safety so that physical injury, illness, or disease has occurred or is likely to occur in the near future.

(3) "Unable to manage his or her financial affairs" means gross mismanagement, as evidenced by recent behavior, of one's income and resources which has led or is likely in the near future to lead to financial vulnerability.

~~(4) "Developmentally disabled" means significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior.~~

~~(5) "Mentally ill" means a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include mental retardation.~~

~~(6)(4)~~ "Near relative" means a parent, stepparent, brother, sister, grandparent, spouse, domestic partner, or adult child.

~~(7)(5)~~ "Person interested in the welfare of the ward" "Interested person" means a responsible adult who has a direct interest in a mentally disabled person in need of guardianship and includes but is not limited to, the proposed mentally disabled person in need of guardianship, a near relative, a close friend, a guardian, public official, social worker, physician, agent named in an advance directive or in a power of attorney, person nominated as guardian in an advance directive, or clergyman member of the clergy.

~~(8) "Total guardianship" means the legal status of a mentally disabled person who is subject to a guardian's exercise of all the powers listed in section 3069 of this title.~~

~~(9) "Limited guardianship" means the legal status of a mentally disabled person who is subject to a guardian's exercise of some, but not all of the powers listed in section 3069 of this title.~~

~~(10) "Qualified mental health professional" means:~~

~~(A) for the evaluation of an allegedly developmentally disabled person, a licensed psychologist, physician, certified special educator, or~~

~~certified clinical social worker, or certified clinical mental health counselor, any of whom must also have specialized training and demonstrated competence in the assessment of developmentally disabled persons;~~

~~(B) for the evaluation of an allegedly mentally ill person, a person with professional training and demonstrated competence in the treatment of mental illness, who shall be a physician, licensed psychologist, certified clinical social worker or certified clinical mental health counselor.~~

(11)(6) "Respondent" means a person who is the subject of a petition filed pursuant to section 3063 of this title or a ward person under guardianship who is the subject of any subsequent petition, motion, or action filed pursuant to this subchapter.

(12)(7) "Party" shall have the same meaning as defined by Rule 17(a)(3) and (b) of the Vermont Rules of Probate Procedure.

(13)(8) "~~Ward~~" "Person under guardianship" means a person under in need of guardianship for whom a guardianship order has been issued.

(9) "Do not resuscitate order" shall have the same meaning as in subdivision 9701(7) of Title 18.

§ 3062. JURISDICTION; REVIEW OF GUARDIAN'S ACTIONS

(a) The probate court shall have exclusive original jurisdiction over all proceedings brought under the authority of this chapter or pursuant to section 9718 of Title 18.

(b) The probate court shall have supervisory authority over guardians. Any interested person may seek review of a guardian's proposed or past actions by filing a motion with the court.

§ 3063. PETITION FOR TOTAL OR LIMITED GUARDIANSHIP

~~Any person interested in the welfare of the ward~~ An interested person may file a petition with the probate court for the appointment of a ~~total or a limited~~ guardian. The petition shall state:

(1) ~~the names and addresses of the petitioner and the respondent, and, if known, the name and address of a near relative of the respondent; the name and address of the person nominated as guardian in an advance directive; and the name and address of the current guardian, and agent named in an advance directive or in a power of attorney;~~

(2) the interest of the petitioner in the respondent;

(3) ~~whether that~~ the respondent is alleged to be ~~mentally ill or developmentally disabled~~ a person in need of guardianship, and ~~whether that~~

the respondent is at least 18 years of age or will become 18 years of age within four months of the filing of a petition;

(4) specific reasons with supporting facts why guardianship is sought;

(5) the specific areas where supervision and protection is requested and the powers of the guardian requested for inclusion in the court's order;

(6) the nature, description and approximate value of the respondent's income and resources, including public benefits and pension;

(7) if a specific individual is proposed as guardian, the name and address of the proposed guardian and the relationship of the proposed guardian to the respondent; and

(8) alternatives to guardianship that have been considered and an explanation as to why each alternative is unavailable or unsuitable.

§ 3064. NOTICE OF PETITION AND HEARING

(a) Upon the filing of the petition, the probate court shall schedule a hearing and notice shall be given as provided by the rules of probate procedure.

(b) The hearing shall be held not less than 15 nor more than 30 days after the filing with the court of the evaluation required by section 3067 of this title. The hearing may be continued for good cause shown for not more than 15 additional days.

§ 3065. COUNSEL

(a)(1) The respondent shall have the right to be represented by counsel of his or her own choosing at any stage of a guardianship proceeding. Unless a respondent is already represented, the court:

(A) shall appoint counsel for the respondent when an initial petition for guardianship is filed;

(B) shall appoint counsel for the respondent in any subsequent proceeding if the respondent or a party requests appointment in writing; and

(C) may appoint counsel for the respondent on the court's initiative in any subsequent proceeding.

(2) Appointed counsel shall have the right to withdraw upon conclusion of the proceeding for which he or she has been appointed.

(b) Counsel shall receive a copy of the petition upon appointment and copies of all other documents upon filing with the court. Counsel shall consult with the respondent prior to any hearing and, to the maximum extent possible, explain to the respondent the meaning of the proceedings and of all relevant

documents. Counsel for the respondent shall act as an advocate for the respondent and shall not substitute counsel's own judgment for that of the respondent on the subject of what may be in the best interest of the respondent. Counsel's role shall be distinct from that of a guardian ad litem if one is appointed. At a minimum, counsel shall endeavor to ensure that:

(1) the wishes of the respondent, including those contained in an advance directive, as to the matter before the court are presented to the court;

(2) there is no less restrictive alternative to guardianship or to the matter before the court;

(3) proper due process procedure is followed;

(4) no substantial rights of the respondent are waived, except with the respondent's consent and the court's approval, provided that the evaluation and report required under section 3067 of this title and the hearing required under section 3068 of this title may not be waived;

(5) the petitioner proves allegations in the petition by clear and convincing evidence in an initial proceeding, and applicable legal standards are met in subsequent proceedings;

(6) the proposed guardian is a qualified person to serve or to continue to serve, consistent with section 3072 of this title; and

(7) if a guardian is appointed, the initial order or any subsequent order is least restrictive of the ~~ward's~~ person under guardianship of the person under guardianship consistent with the need for supervision.

(c) Respondent's counsel shall be compensated from the respondent's estate unless the respondent is found indigent in accordance with Rule 3.1 of the Rules of Civil Procedure. For indigent respondents, the court shall maintain a list of pro bono counsel from the private bar to be used before appointing nonprofit legal services organizations to serve as counsel.

§ 3066. GUARDIAN AD LITEM

On motion of the respondent's or ~~ward's~~ person under guardianship's counsel or on the court's own motion the court may appoint a guardian ad litem if it finds the respondent or ~~ward~~ person under guardianship is unable to communicate with or advise counsel.

§ 3067. EVALUATION AND REPORT; BACKGROUND CHECK; RELEASE OF EVALUATION

(a) When a petition is filed pursuant to section 3063 of this title, or when a motion for modification or termination is filed pursuant to subdivision

3077(a)(4) of this title, the court shall order an evaluation of the respondent. Except as otherwise provided in this subsection, the cost of the evaluation shall be paid for out of the respondent's estate or as ordered by the court. If the respondent is unable to afford some or all of the cost of the evaluation without expending income or liquid resources necessary for living expenses, the court shall order that the department of mental health or the department of disabilities, aging, and independent living provide the evaluation through ~~community mental health agencies affiliated with the departments~~ qualified evaluators.

(b) The evaluation shall be performed by ~~a qualified mental health professional~~ someone who has specific training and demonstrated competence to evaluate a person in need of guardianship. The evaluation shall be completed within 30 days of the filing of the petition with the court unless the time period is extended by the court for cause.

(c) The evaluation shall:

(1) describe the nature and degree of the respondent's disability, if any, and the level of the respondent's intellectual, developmental, and social functioning;

(2) contain recommendations, with supporting data, regarding:

(A) those aspects of his or her personal care and financial affairs which the respondent can manage without supervision or assistance;

(B) those aspects of his or her personal care and financial affairs which the respondent could manage with the supervision or assistance of support services and benefits;

(C) those aspects of his or her personal care and financial affairs which the respondent is unable to manage without the supervision of a guardian;

(D) those powers and duties as set forth in sections 3069 and 3071 of this title which should be given to the guardian, including the specific support services and benefits which should be obtained by the guardian for the respondent.

(d) The proposed guardian shall provide the court with the information and consents necessary for a complete background check. Not more than 10 days after receipt of an evaluation supporting guardianship of the respondent, the court shall order from the respective registries background checks of the proposed guardian from any available state registries, including but not limited to the adult abuse registry, child abuse registry, Vermont crime information center, and the Vermont state sex offender registry, and the court shall consider

information received from the registries in determining whether the proposed guardian is suitable. However, if appropriate under the circumstances, the court may waive the background reports or may proceed with appointment of a guardian prior to receiving the background reports, provided that the court may remove a guardian if warranted by background reports which the court receives after the guardian's appointment. If the proposed guardian has lived in Vermont for fewer than five years or is a resident of another state, the court may order background checks from the respective state registries of the states in which the proposed guardian lives or has lived in the past five years or from any other source. The court shall provide copies of background check reports to the petitioner, the respondent, and the respondent's attorney.

(e) Regardless of whether the report of the evaluator supports or does not support guardianship, the court shall provide a copy of the evaluation to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the court to have a strong interest in the welfare of the respondent. The evaluation shall remain confidential, and recipients of the evaluation are prohibited from sharing the evaluation. Notwithstanding the foregoing, the court may restrict access to the evaluation or portions of the evaluation upon objection by one of the parties or on the court's own motion.

§ 3068. HEARING

(a) The respondent, the petitioner and all other persons to whom notice has been given pursuant to section 3064 of this title may attend the hearing and testify. The respondent and the petitioner may subpoena, present and cross-examine witnesses, including those who prepared the evaluation. The court may exclude any person not necessary for the conduct of the hearing on motion of the respondent.

(b) The hearing shall be conducted in a manner consistent with orderly procedure and in a setting not likely to have a harmful effect on the mental or physical health of the respondent.

(c) The evaluation shall be received into evidence, if the persons who prepared the evaluation are available for the hearing or subject to service of subpoena. However, the court shall not be bound by the evidence contained in the evaluation, but shall make its determination upon the entire record. In all cases, the court shall make specific findings of fact, state separately its conclusions of law and direct the entry of an appropriate judgment.

(d) The petitioner may be represented by counsel in any proceedings brought under this chapter.

(e) If upon completion of the hearing and consideration of the record the court finds that the respondent is not ~~mentally disabled~~ a person in need of guardianship, it shall dismiss the petition and seal the records of the proceeding.

(f) If upon completion of the hearing and consideration of the record the court finds that the petitioner has proved by clear and convincing evidence that the respondent is ~~mentally disabled~~ a person in need of guardianship or will be ~~mentally disabled~~ a person in need of guardianship on attaining ~~eighteen~~ 18 years of age, it shall enter judgment specifying the powers of the guardian pursuant to sections 3069 and 3070 of this title and the duties of the guardian pursuant to section 3071 of this title.

(g) Any party to the proceeding before the court may appeal the court's decision in the manner provided in section 3080 of this title.

§ 3068a. RIGHTS OF A ~~WARD~~ PERSON UNDER GUARDIANSHIP

A ~~ward~~ person under guardianship retains the same legal and civil rights guaranteed to all Vermont residents under the Vermont and United States constitutions and all the laws and regulations of Vermont and the United States. These rights include:

(1) The right to participate in decisions made by the guardian and to have personal preferences followed unless:

(A) the preference is unreasonable and would result in actual harm;
or

(B) the ~~ward~~ person under guardianship does not have a basic understanding of the benefits and consequences of his or her chosen preference.

(2) The right, without interference from anyone, to retain an attorney and to communicate freely with counsel, the court, ombudsmen, advocates of his or her choosing, and other persons authorized by law to act as an advocate for the ~~ward~~ person under guardianship.

(3) The right to retain an attorney and seek legal advice independently without consent of the guardian, provided that any legal fees not authorized by the guardian are subject to review and approval by the court.

§ 3069. POWERS OF A ~~TOTAL~~ GUARDIAN

(a) If the court enters judgment pursuant to subsection 3068(f) of this title, it may appoint a ~~total~~ guardian if it determines that the respondent is unable to manage, without the supervision of a guardian, any or all aspects of his or her personal care and financial affairs.

(b) When the person under guardianship has an advance directive, the authority of the agent and the instructions contained therein shall remain in effect unless the probate court expressly orders otherwise in a petition for review of the advance directive under 18 V.S.A. § 9718.

(c) ~~A total guardian shall supervise the ward through the exercise of the following powers~~ The court shall grant powers to the guardian in the least restrictive manner appropriate to the circumstances of the respondent and consistent with any advance directive. Guardianship powers shall be ordered only to the extent required by the respondent's actual mental and adaptive limitations. The court shall specify which of the following powers the guardian shall have and may further restrict each power so as to preserve the respondent's authority to make decisions commensurate with respondent's ability to do so:

(1) the power to exercise general supervision over the ward person under guardianship. This includes care, habilitation, education, and employment of the person under guardianship and choosing or changing the residence, subject to the requirements of sections 2691, 3073, and 3074 of this title, ~~care, habilitation, education, and employment of the ward;~~

(2) ~~to approve or withhold approval of any contract, except for necessities, which the ward wishes to make~~ the power to seek, obtain, and give or withhold consent to the initiation or continuation of medical or dental treatment, subject to the provisions of section 3075 of this title and any constitutional right of the person under guardianship to refuse treatment, provided that the court in its discretion may place limitations on the guardian's powers under this subdivision if appropriate under the circumstances, including requiring prior court approval for specific surgeries, procedures, or treatments;

(3) ~~to approve or withhold approval of the ward's request to sell or in any way encumber his or her personal or real property~~ the power to exercise general financial supervision over the income and resources of the person under guardianship. This includes the power to seek or apply for, receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the person under guardianship, to liquidate personal property for the benefit of the person under guardianship, to settle accounts, demands, claims, and actions by or against the person under guardianship, and to take any other action reasonably necessary to secure, preserve, protect, and defend the financial interests of the person under guardianship;

~~(4) to exercise general supervision over the income and resources of the ward. This includes the power to receive, invest, and expend all wages, compensation, insurance benefits, public benefits, and pensions for the benefit of the ward and to liquidate resources for the benefit of the ward~~ the power to approve or withhold approval of any contract, except for necessities, which the person under guardianship wishes to make;

~~(5) to consent to surgery or other medical procedures, subject to the provisions of section 3075 of this title, subsection 9711(g) of Title 18, and any constitutional right of the ward to refuse treatment~~ the power to approve or withhold approval of the sale or encumbrance of real property of the person under guardianship subject to subchapter 6 of this chapter;

~~(6) to receive, sue for, and recover debts and demands due to the ward, to maintain and defend actions or suits for the recovery or protection of the property or person of the ward, settle accounts, demands, claims, and actions by or against the ward, including actions for injuries to the property or person of the ward, and to compromise, release, and discharge the same on such terms as he or she deems just and beneficial to the ward~~ the power to obtain legal advice and to commence or defend against court actions in the name of the person under guardianship.

~~(e)(d) The total guardian shall exercise his or her supervisory powers over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the need for supervision.~~

(1) When a guardian has been granted some but not all guardianship powers, the guardianship shall be identified as a "limited guardianship" and the guardian identified as a "limited guardian."

(2) A person for whom limited guardianship has been granted retains all the powers identified in subsection (c) of this section except those which have been specifically granted to the limited guardian.

(e) The guardian shall exercise supervisory powers in a manner which is least restrictive of the personal freedom of the person under guardianship consistent with the need for supervision.

(f) The guardian shall encourage the person under guardianship to participate in decisions, to act on his or her own behalf when practicable, and to develop or regain the capacity to manage his or her own personal affairs to the maximum extent possible. The wishes, values, beliefs, and preferences of the person under guardianship shall be respected to the greatest possible extent in the exercise of all guardianship powers.

§ 3070. POWERS OF A LIMITED GUARDIAN

~~(a) If the court enters judgment pursuant to section 3068(f) of this title, it may appoint a limited guardian if it determines that the respondent is unable to manage some, but not all, aspects of his personal care and financial affairs. The court shall specify those powers enumerated in section 3069 of this title which the limited guardian shall have and may further restrict each power so as to permit the ward to care for himself and his property commensurate with his ability to do so.~~

~~(b) A person for whom a limited guardian has been appointed retains all legal and civil rights except those which have been specifically granted to the limited guardian by the court.~~

~~(c) The limited guardian shall exercise his supervisory powers over the ward in a manner which is least restrictive of the ward's personal freedom consistent with the order of the court.~~

§ 3071. DUTIES OF GUARDIAN

(a) The guardian shall maintain close contact with the ward person under guardianship and encourage maximum self-reliance on the part of the ward under his protection person under guardianship.

(b) In addition to the powers vested in the guardian by the court pursuant to sections 3069 and 3070 of this title, the court may order the guardian to assure that the ward person under guardianship receives those benefits and services to which he or she is lawfully entitled and which he needs to maximize his or her opportunity for social and financial independence. Those benefits and services include, but are not limited to:

(1) education services for a ward person under guardianship who is of school age;

(2) residential services for a ward person under guardianship who lacks adequate housing;

(3) nutrition services;

(4) medical and dental services, including home health care;

(5) therapeutic and habilitative services, adult education, vocational rehabilitation or other appropriate services.

(c) The guardian shall always serve the interests of the person under guardianship and shall bring any potential conflicts of interest to the attention of the court.

§ 3072. GUARDIANS; INDIVIDUALS WHO MAY SERVE

(a)(1) Competent individuals of at least ~~eighteen~~ 18 years of age may serve as guardians. ~~No individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the ward resides may serve as guardian.~~

(2) No individual may be appointed or serve as guardian for a person under or in need of guardianship if the individual:

(A) operates or is an employee of a boarding home, residential care home, assisted living residence, nursing home, group home, developmental home, correctional facility, psychiatric unit at a designated hospital, or other similar facility in which the person under or in need of guardianship resides or is receiving care; and

(B) provides direct care to or exercises authority over the person under or in need of guardianship.

(3) No person may serve as guardian for the respondent who has served as guardian ad litem in the same proceeding.

(4) Notwithstanding the provisions of section 2603 of this title, the court shall have the discretion to appoint a guardian who is not a resident of this state, provided that the individual appointed is otherwise qualified to serve.

(b) In appointing an individual to serve as guardian, the court shall take into consideration:

(1) the nomination of a guardian in an advance directive or in a will;

(2) ~~the preference~~ any current or past expressed preferences of the ward respondent;

(2)(3) the geographic location of the proposed guardian;

(3)(4) the relationship of the proposed guardian to and the ward respondent;

(4)(5) the ability of the proposed guardian to carry out the powers and duties of the guardianship; and

(5)(6) the willingness and ability of the proposed guardian to communicate with the respondent and to respect the respondent's choices and preferences;

(7) potential financial conflicts of interest between the ward respondent and the proposed guardian; and

(8) results of any background checks.

§ 3073. CHANGE OF RESIDENTIAL PLACEMENT

(a)(1) When a guardian who has been granted the power to choose or change the residence of the ward person under guardianship pursuant to subdivision 3069(b)(1) of this title wishes to admit the ward person under guardianship to a nursing home or change the residential placement of the ward person under guardianship from a private home to a boarding home, residential care home, assisted living residence, group home, or other similar facility, the guardian must first file a motion for permission to do so.

(2) For any other change of residence sought by a guardian who has been granted the power to choose or change the residence of the ward person under guardianship pursuant to subdivision 3069(b)(1) of this title, the guardian shall give notice to all parties and to such other persons as the court directs as soon as practicable prior to the change of placement.

(b)(1) In an emergency, a guardian who has been granted the power to choose or change the residence of the ward person under guardianship pursuant to subdivision 3069(b)(1) of this title may change the residential placement of the ward person under guardianship without petitioning the court for prior permission or without giving prior notice to parties. Immediately after any emergency change in residential placement for which prior permission under subsection (a) of this section would be required in the absence of an emergency, the guardian shall file a motion for permission to continue the placement.

(2) Immediately after any emergency change of placement for which prior permission under subsection (a) of this section is not required, the guardian shall give notice of the change of placement to all parties and to such other persons as the court directs.

(3) Any party may request a hearing on a change in residential placement. The hearing shall be set for the earliest possible date and shall be given precedence over other probate matters.

(c) In a hearing on a change of placement, the court shall consider:

- (1) the need for the change of placement;
- (2) the appropriateness of the new placement;
- (3) the wishes of the ward person under guardianship, if known; and
- (4) whether the guardian has considered alternatives.

§ 3074. INSTITUTIONALIZATION OF MENTALLY DISABLED PERSONS COMMITMENT, STERILIZATION, INVOLUNTARY TREATMENT, AND INVOLUNTARY MEDICATION

Nothing in this chapter shall give the guardian of a ward person authority to:

(1) place that person in a state school or hospital except pursuant to section 7601 et seq. of Title 18 or section 8801 et seq. of Title 18 in the Vermont state hospital or any psychiatric unit of a designated hospital as defined under 18 V.S.A. § 7101(4), unless:

(A) the person consents in writing on a form adopted by the department that includes a representation that the person understands that his or her treatment will involve inpatient status, that the person desires to be admitted to the hospital, and that the person consents to admission voluntarily, without any coercion or duress; and

(B) the guardian consents in writing to the admission.

(2) consent to an involuntary treatment or medication petition pursuant to chapter 181 of Title 18.

(3) consent to sterilization or to a petition for involuntary sterilization pursuant to chapter 204 of Title 18.

(4) consent to a petition for custody, care, or habilitation filed pursuant to chapter 206 of Title 18.

§ 3075. CONSENT FOR MEDICAL OR DENTAL TREATMENT

(a) When a ward whose right to consent to surgery or other medical procedure has not been restricted pursuant to section 3069(b)(5) of this title is admitted to a hospital for nonemergency surgery or other nonemergency medical procedures requiring consent, the treating physician shall determine if the person's physical condition is such that the person has sufficient capacity to make a responsible decision. If the person has such capacity, his informed consent shall be obtained before such surgery or medical procedure is performed. In such cases, the ward's consent shall be determinative and no other consent is necessary. A person under guardianship retains the right to make medical and dental decisions unless that right has been restricted pursuant to subdivision 3069(c)(2) of this title.

(b) When a ward whose right to consent to surgery or other medical procedures has been restricted pursuant to section 3069(b)(5) of this title is admitted to a hospital for nonemergency surgery or other nonemergency medical procedures requiring consent, the guardian may give such consent upon the advice of the treating physician and after obtaining permission of the probate court, after hearing, upon such notice as the court may direct. Unless an advance directive or the authority of an agent is expressly revoked or modified by the court pursuant to section 9718 of Title 18, the advance

directive of a person under guardianship shall remain in effect, and the agent shall have sole authority to make health care decisions for the person under guardianship pursuant to chapter 231 of Title 18.

(c) If there is no agent named in the advance directive, or if the office of agent is vacant, the guardian shall follow the instructions contained in the advance directive.

(d) For a person whose right to consent to medical or dental procedures has been restricted pursuant to subdivision 3069(b)(2) of this title, the guardian may give or withhold consent pursuant to this section and subject to any constitutional right of the person under guardianship to refuse treatment.

(e) Consent to the procedure shall be given or withheld consistent with the manner in which the person under guardianship would have given or withheld consent, provided there is sufficient information concerning the person's wishes. In making this determination, the guardian and the court in reviewing a guardian's decision under this section shall:

(1) rely on written and oral expressions of the person under guardianship;

(2) rely on available information concerning the wishes, values, beliefs, and preferences of the person under guardianship if the person's written and oral expressions do not provide sufficient information; and

(3) follow the best interests of the person under guardianship if subdivisions (1) and (2) of this subsection are inapplicable. No decision to withhold or abate medical treatment will be based solely on the age, economic level, or level of disability of the person under guardianship.

(f)(1) The guardian shall obtain prior written approval by the probate court following notice and hearing:

(A) if the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise;

(B) if the court orders prior approval for a specific surgery, procedure, or treatment, either in its initial order pursuant to subdivision 3069(c)(2) of this title or anytime after appointment of a guardian;

(C) except as provided in subdivision (2) of this subsection, and unless the guardian is acting pursuant to an advance directive, before withholding or withdrawing life-sustaining treatment other than antibiotics; or

(D) unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order unless a clinician as defined in subdivision 9701(5) of Title 18 certifies that an attempt to resuscitate would

not prevent death and that the person under guardianship is likely to experience cardiopulmonary arrest before court approval can be obtained. The guardian shall obtain the clinician's certification prior to consenting to the

do-not-resuscitate order and shall file the clinician's certification with the court after consent has been given.

(2) The requirements of subdivision (1)(C) of this subsection shall not apply if obtaining a court order would be impracticable due to the imminent death of the person under guardianship.

(g) The procedures in chapter 181 of Title 18 shall be the exclusive mechanism to obtain approval for administration of nonemergency involuntary psychiatric medication to a person under guardianship.

§ 3076. ANNUAL REPORTS; FINAL ACCOUNTING; FEES

(a) The guardian ~~of a ward~~ shall file an annual report with the appointing court ~~on~~ within 30 days of the anniversary date of his the appointment.

(b) The annual report shall contain:

(1) a financial accounting as required by section 2921 of this title if the guardian has been granted power over ~~the ward's~~ income and resources pursuant to ~~section~~ subdivision 3069(b)(4) of this title;

(2) a report on the progress and condition of the ~~ward~~ person under guardianship, including ~~but not limited to,~~ his or her health, medical and dental care, residence, education, employment, and habilitation;

(3) a report on the manner in which the guardian carried out his or her powers and fulfilled his or her duties; and

(4) the guardian's opinion regarding the continued need for guardianship.

(c) If the guardian has been granted power over ~~the ward's~~ income and resources pursuant to ~~section~~ subdivision 3069(b)(4) of this title, at the termination of the guardianship, the guardian shall render a final accounting as required by section 2921 of this title.

(d)(1) Except as provided in subdivision (2) of this subsection, the guardian shall not be paid any fees to which he or she may be entitled, or reimbursed for any of his or her expenses from the estate of the ward person under guardianship until the annual reports or final accounting required by this section have been filed with the court.

(2) The guardian may at any time apply by motion to the probate court for payment of fees or reimbursement of expenses incurred as a result of the

guardianship. The court may grant the motion and approve payment if it finds the expenses were reasonable and supported by documentary evidence.

§ 3077. TERMINATION AND MODIFICATION OF GUARDIANSHIP

(a) Any person under guardianship or any person interested in the welfare of the ward person under guardianship may file a motion for termination or modification of the guardianship. Grounds for the termination or modification of the guardianship shall include:

(1) the death of the guardian;

(2) the failure of the guardian to file an annual report, or the failure to file such report in a timely manner;

(3) the failure of the guardian to act in accord with an order of the court;

(4) a change in the ability of the ward person under guardianship to manage his or her personal care or financial affairs;

(5) a change in the capacity or suitability of the guardian for carrying out his or her powers and duties, including but not limited to any current or past expressed preferences of the person under guardianship to have an alternative person appointed as guardian.

(b) ~~When the grounds for termination or modification are those listed in subsections (a)(1), (2), (3), or (5) of this section, the court may appoint a successor guardian~~ After notice and hearing, the court may terminate or modify the guardianship, appoint a successor guardian, or restrict the powers of a guardian, consistent with the court's findings and conclusions of law.

(c) Notice and hearing on the motion shall proceed in the manner set forth in sections 3064 and 3068 of this title.

(d) Marriage of the person under guardianship shall not extinguish a guardian's authority.

(e) The following guardianship powers shall remain for up to two years after the death of a person under guardianship or until the appointment of an executor or administrator of the person's estate:

(1) the power to arrange and pay for a funeral;

(2) the power to request medical, financial or other records of the person in guardianship;

(3) the power to request an autopsy and to obtain the results thereof;

(4) the power to make and file a financial accounting; and

(5) any other powers which are incidental to the closing of and accounting for the guardianship and which are fully reported to the probate court.

§ 3078. ANNUAL NOTICE TO WARD PERSON IN NEED OF GUARDIANSHIP

The appointing court shall send an annual notice to each ward person under guardianship and the ward's counsel of record of each person under guardianship, advising the ward person under guardianship of his or her right to file a motion for termination or modification of the guardianship pursuant to section 3077 of this title. The notice shall include a copy of any accountings, reports or other information filed by the guardian during the year, except when there is counsel of record and the court deems it is in the best interest of the ward person under guardianship to send the accountings, reports and other information to counsel only.

§ 3079. VALIDITY OF PRIOR GUARDIANSHIP

All guardianships approved pursuant to section 2671 et seq. and section 2683 et seq. of this title prior to July 1, 1979 remain valid. On the first anniversary date of such guardianship after July 1, 1979, the court which approved such guardianship shall send notice to each ward person under guardianship, his or her counsel of record, and a near relative of the ward person under guardianship, if known, advising them of the ward's right of the person under guardianship's to petition for termination or modification of the guardianship pursuant to section 3077 of this title. Upon the filing of such a petition, the court shall promptly arrange for a comprehensive evaluation of the ward person under guardianship pursuant to section 3067 of this title.

§ 3080. APPEALS

Orders of the court issued pursuant to the provisions of this subchapter may be appealed in such manner as provided in sections 2551 et seq. of Title 12 and Rule 72, Vermont Rules of Civil Procedure, provided, however, that any order issued pursuant to this subchapter shall not be stayed during the pendency of an appeal except by order of a court of competent jurisdiction.

§ 3081. EMERGENCY TEMPORARY GUARDIAN PENDING FINAL HEARING ON PETITION

(a) When a petition for guardianship has been filed, but adherence to the procedures set out in this subchapter would cause serious and irreparable harm to the respondent's physical health or financial interests, the probate court may appoint a an emergency temporary guardian prior to the final hearing and decision on the petition, subject to the requirements of this section.

(b) ~~Upon motion of the petitioner, the court shall schedule a hearing on the appointment of a temporary guardian for the earliest possible date, appoint a guardian ad litem for the respondent, and notice shall be given as provided by the rules of probate procedure. Upon a finding that serious and irreparable harm to the respondent's physical health or financial interests would result during the pendency of petition, the court shall appoint a temporary guardian and shall specify those powers which the temporary guardian shall have in order to prevent serious and irreparable harm to the respondent. The duration of the temporary guardianship shall not extend beyond the time the court renders a decision on the petition for guardianship. If a guardianship petition is accompanied by a motion for emergency temporary guardianship, the court shall schedule a hearing on the appointment of an emergency temporary guardian for the earliest possible date. The court shall appoint counsel for the respondent and cause notice to be given as provided by the Vermont Rules of Probate Procedure (VRPP). Upon a showing by sworn affidavit that notice cannot be given within the time periods, in the manner, or to the persons required by the VRPP, the court may allow a hearing to go forward upon such notice as the court may direct. The court may appoint an emergency temporary guardian if it finds that serious and irreparable harm to the respondent's physical health or financial interests will likely result during the pendency of the petition.~~

(c) ~~A temporary guardian may be appointed without notice to the respondent and guardian ad litem only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate, serious and irreparable harm will result to the respondent before a hearing on the appointment of a temporary guardian can be held. On two days' notice to the party who obtained the appointment of a temporary guardian without notice, or on such shorter notice to that party as the court may prescribe, the respondent or the guardian ad litem may appear and move dissolution or modification of the court's order, and, in that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. An emergency temporary guardian may be appointed without notice to the respondent or respondent's counsel only if it clearly appears from specific facts shown by affidavit or sworn testimony that immediate, serious, and irreparable harm will result to the respondent before the hearing on the appointment of an emergency temporary guardian can be held. A request for ex parte emergency temporary guardianship under this section shall be made by written motion, accompanied by a petition for guardianship, unless waived by the court for good cause shown. If the court appoints an ex parte emergency temporary guardian, the court shall immediately schedule a temporary hearing in accordance with subsection (b) of this section. The ex parte order shall state why the order was~~

granted without notice and include findings on the immediate, serious, and irreparable harm. The ex parte order shall be for a fixed period of time, not to exceed 10 days, and shall expire on its terms unless extended after the temporary hearing. If the temporary hearing cannot be held before the ex parte order expires, the ex parte order can be extended for good cause shown for an additional 10 days until the temporary hearing is held.

(d) A temporary guardianship order expires when the court renders a final decision on the guardianship petition. If the final decision is not rendered within 90 days of the filing of the petition, the court shall schedule a hearing to review the need for continuation of the temporary guardianship order.

Sec. 2. PROPOSAL OF RULES

Within six months after the effective date of this act, the advisory committee on the Vermont Rules of Probate shall report to the legislative committee on judicial rules any changes to rules or forms that the committee determines are necessary or advisable as a result of this act.

Sec. 3. GUARDIANSHIP TASK FORCE

(a) The general assembly finds that:

(1) Individuals under guardianship are among the state's most vulnerable citizens.

(2) Guardianship provides legal and human rights protections but may also be used to deprive vulnerable people of resources and fundamental rights.

(3) Guardianship is increasing in Vermont.

(4) Private guardians usually have no training or support in carrying out their guardianship responsibilities.

(5) Probate judges and court registers who once were able to provide a measure of support for and monitoring of guardians are less able to do so as the volume of new guardianships and other court work increases their workload.

(6) A comprehensive guardianship monitoring program would likely require significant additional staffing and resources and, as such, is not currently a cost effective or viable approach.

(b) The guardianship education, improvement, and accountability task force is established. Consistent with the findings in subsection (a) of this section and in recognition of the vulnerability of individuals under guardianship, the task force shall study ways, other than a staff-intensive monitoring model, for improving guardian accountability, assuring the protection of the rights and well-being of individuals under guardianship, and training and supporting guardians in the execution of their guardianship duties.

(c) The task force shall consist of the following members:

(1) Two sitting probate judges appointed by the Vermont association of probate judges.

(2) Two members appointed by Vermont Legal Aid.

(3) One member appointed by Vermont protection and advocacy.

(4) Two members appointed by the secretary of human services, one of whom shall be a representative from the office of the public guardian.

(5) One member appointed by the community of Vermont elders.

(6) A member appointed by green mountain self-advocates.

(7) Two members, appointed by the Vermont coalition for disability rights, who shall be family members of adults under guardianship.

(8) One member appointed by Vermont psychiatric survivors.

(9) One member appointed by the Vermont traumatic brain injury association.

(d) The committee shall report its findings and recommendations to the house and senate committees on judiciary and the office of the court administrator on or before December 15, 2008.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Action on Bill Postponed

H. 641

House bill, entitled

An act relating to nursing mothers in the workplace;

Was taken up and pending the reading of the report of the committee on General, Housing and Military Affairs, on motion of **Rep. Head of South Burlington**, action on the bill was postponed until the next legislative day.

Favorable Report; Third Reading Ordered

J.R.H. 54

Rep. Krawczyk of Bennington, for the committee on Natural Resources and Energy, to which had been referred Joint resolution, entitled

Joint resolution urging Congress to eliminate the Enron Loophole regulatory exemption for energy and metal commodities traded on electronic commodities markets;

Reported in favor of its passage. The resolution, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Senate Proposal of Amendment Concurred in

J.R.H. 51

The Senate proposed to the House to amend Joint resolution, entitled Joint resolution supporting the Hanover High School kids for a cooler planet reusable shopping bag campaign;

First: In the *fourth* whereas clause, after the number "12" by inserting the word million

Second: In the *seventh* whereas clause, by striking out the word "nondisposable" and inserting in lieu thereof the word disposable

Which proposal of amendment was considered and concurred in.

Message from the Senate No. 35

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has considered House proposal of amendment to Senate bill of the following title:

S. 351. An act relating to consolidating management of public records.

And has concurred therein.

The Senate has on its part adopted a joint resolution of the following title:

J.R.S. 55. Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges, one Environmental Judge and three District Judges.

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

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

J.R.H. 27. Joint resolution requesting Congress to maximize to the greatest extent possible the federal funding for state transportation construction projects and grant the states the maximum degree of flexibility in prioritization of projects to be financed.

J.R.H. 39. Joint resolution requesting Congress to reduce greenhouse gas emissions through the authorization of a 90,000-pound weight limitation for all

vehicles with a minimum of five axles traveling on interstate highways in Vermont.

And has adopted the same in concurrence.

Adjournment

At two o'clock and five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

THURSDAY, MARCH 13, 2008

Rep. Partridge of Windham in Chair.

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Speaker Carolyn Partridge of Windham.

Committee Bill Introduced

H. 878

Rep. Sweaney of Windsor, for the committee on Government Operations, introduced a bill, entitled

An act relating to elevator safety;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Bill Referred to Committee on Appropriations

H. 629

House bill, entitled

An act relating to an evaluation of Vermont's system of caring for mentally ill offenders;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Rules Suspended; Bill Committed

H. 635

On motion of **Rep. Pugh of South Burlington**, the rules were suspended and House bill, entitled

An act relating to reports of child abuse or neglect;

Appearing on the Calendar for notice, was taken up for immediate consideration.

Pending the reading of the report of the committee on Human Services, on motion of **Rep. Pugh of South Burlington**, the bill was committed to the committee on Judiciary.

Joint Resolution Adopted in Concurrence

J.R.S. 55

Joint resolution, entitled

Joint resolution providing for a Joint Assembly to vote on the retention of two Superior Judges, one Environmental Judge and three District Judges;

By Senator Campbell

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 20, 2008, at ten o'clock and thirty minutes in the forenoon to vote on the retention of two Superior Judges, one Environmental Judge and three District Judges. In case the vote to retain said Judges shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Was taken up read and adopted in concurrence.

Bill Amended; Third Reading Ordered

H. 338

Rep. Manwaring of Wilmington, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to a state purchasing code of conduct;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND INTENT

(a) The general assembly finds that:

(1) Vermont citizens believe employers should fairly compensate hard work, that the health and safety of working people should be protected, and

that no form of unlawful discrimination or abuse should be tolerated.

(2) Vermont citizens are aware that laws and regulations designed to safeguard basic tenets of ethical business practice are disregarded in many workplaces, commonly referred to as "sweatshops."

(3) State government purchase of goods made under abusive conditions on behalf of the state's citizens offends Vermont citizens' sense of justice and decency.

(4) When the state of Vermont contracts with vendors whose suppliers profit by providing substandard wages and working conditions, Vermont's businesses are put at a competitive disadvantage.

(5) The state of Vermont believes in doing business with vendors who make a good-faith effort to ensure that their suppliers and those at the point of assembly adhere to the principles set forth in this act.

(b) By this act, the general assembly intends that:

(1) In its role as a market participant that procures apparel, footwear, and textiles, the state of Vermont seeks to protect the interests of Vermont citizens and businesses by exercising its state sovereignty to spend Vermont citizens' tax dollars in a manner consistent with their express wishes that the state deal with responsible bidders who seek contracts to supply goods to the state of Vermont, and protect legally compliant Vermont businesses and workers from unfair competition created by downward pressure on prices and conditions attributable to businesses that violate applicable workplace laws.

(2) Seeking to protect these local interests through the least discriminatory means available, the state of Vermont requires that all bidders seeking contracts to supply the state of Vermont with apparel, footwear, and textiles certify that they and, to the best of their knowledge, their suppliers at the point of assembly comply with workplace laws of the vendor's or supplier's site of assembly and with treaty obligations that are shared by the United States and the country in which the goods are assembled.

Sec. 2. 29 V.S.A. §§ 901–920 are designated as subchapter 1 which is added to read:

Subchapter 1. General Provisions

Sec. 3. 29 V.S.A. chapter 49, subchapter 2 is added to read:

Subchapter 2. State Purchasing of Apparel, Footwear, or Textiles

§ 921. APPLICATION OF SUBCHAPTER; DEFINITIONS

(a) This subchapter applies to competitive bids for sale of apparel,

footwear, or textiles pursuant to subchapter 1 of this chapter.

(b) As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings:

(1) "Commissioner" means the commissioner of buildings and general services.

(2) "Independent monitor" means a nonprofit organization that is neither funded nor controlled, in whole or in part, by businesses that sell or manufacture apparel, footwear, or textiles.

§ 922. BIDS FOR THE SALE OF APPAREL, FOOTWEAR, OR TEXTILES

(a) The commissioner shall require that a bidder for the sale of apparel, footwear, or textiles certify that, to the best of the bidder's knowledge, each supplier at the point of assembly of the goods:

(1) complies with all applicable wage, health, labor, environmental, and safety laws, legal guarantees of freedom of association, building and fire codes, and laws relating to discrimination in hiring, promotion, and compensation on the basis of race, disability, national origin, gender, sexual orientation, and affiliation with any political, nongovernmental, and civic group except when federal law precludes the state from attaching the procurement conditions provided in this subchapter; and

(2) complies with all human and labor rights treaty obligations that are shared by the United States and the country in which the goods are assembled, including obligations with regard to forced labor, indentured labor, slave labor, child labor, involuntary prison labor, physical and sexual abuse, and freedom of association.

(b) Prior to the awarding of a contract, a bidder for the sale of apparel, footwear, or textiles shall submit a list of the names and addresses of suppliers at the point of assembly of goods subject to the bid process.

(c) If, after complying with the filing requirements of this section, a bidder is awarded a contract, that contractor shall, during the term of the contract, promptly inform the commissioner of any change in the information furnished to the commissioner pursuant to this section.

§ 923. EXCEPTION

The commissioner may accept a bid from and award a contract to a supplier who has not met the requirements provided in section 922 of this title if, after reasonable investigation by the commissioner, it appears that the required unit or item of supply or brand of that unit or item is procurable by the state from only that supplier or under other extraordinary circumstances. The approval of

an exception pursuant to this section shall be documented in writing, signed by the commissioner, and retained as part of the contract file.

§ 924. REPORT

By January 15 of each year, the commissioner shall submit a report to the house and senate committees on government operations concerning the degree of voluntary compliance with this subchapter; the number of vendors who agreed to and the number that declined to comply with the provisions of this subchapter; the status of the commissioner's efforts to coordinate with other states with those jurisdictions' efforts to develop an effective strategy to monitor vendor compliance with the requirements of this subchapter or with similar requirements of those jurisdictions; a description of any exceptions approved pursuant to section 923 of this title; and any other information relevant to this subchapter.

§ 925. COMPLAINTS OF NONCOMPLIANCE WITH SUBCHAPTER; INVESTIGATIONS OF COMPLAINTS

(a) The commissioner shall initiate an investigation to determine whether a violation of this subchapter has occurred if:

(1) The commissioner has knowledge that a contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with this subchapter.

(2) The contractor informs the commissioner that the contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with this subchapter.

(3) A worker for a contractor or for a supplier at the point of assembly of goods subject to a contract files a written complaint directly with the commissioner stating that the contractor or supplier, to the best of the worker's knowledge, is not in compliance with this subchapter.

(4) A third party established and based in the United States, on behalf of or on the basis of information from a worker or workers, files directly with the commissioner a written complaint, signed and dated under oath before an official authorized by applicable law to administer oaths, stating that, to the best of the third party's knowledge, a contractor or a supplier at the point of assembly of goods subject to a contract is not in compliance with this subchapter.

(5) A third party established and based outside the United States, on behalf of or on the basis of information from a worker or workers, files directly with the commissioner a signed and dated written complaint stating that, to the best of the third party's knowledge, a contractor or a supplier at the point of

assembly of goods subject to a contract is not in compliance with this subchapter.

(b) After receiving a complaint alleging noncompliance with this subchapter, the commissioner shall contact in a timely manner, in writing and by certified letter, the contractor that is the subject of the complaint or whose supplier is the subject of the complaint.

§ 926. DETERMINATIONS OF NONCOMPLIANCE WITH SUBCHAPTER

(a) In making a determination of whether a violation of this subchapter has occurred, the commissioner may take into account any factors, information, sources of information, and materials determined reliable and relevant by the commissioner, as determined on a case-by-case basis. The commissioner has specific authority and discretion to employ an independent monitor to investigate a complaint.

(b) The determination of whether a party subject to a complaint is in compliance with this subchapter is solely that of the commissioner.

(c) After rendering a determination under this section, the commissioner promptly shall inform the complainant and contractor in writing.

§ 927. CONSEQUENCES OF NONCOMPLIANCE WITH SUBCHAPTER

If, in the opinion of the commissioner, a contractor that has been determined to be not in compliance with this subchapter does not make good-faith efforts to change its practices or use its bargaining position with an offending supplier to change the supplier's practices, the commissioner may take appropriate remedial action, including barring the contractor from bidding on future state contracts or terminating the state's contract with the contractor. Reference to the authority given in this section shall be specifically referenced in state contracts with contractors that are subject to this subchapter.

§ 928. COORDINATION WITH OTHER JURISDICTIONS

The commissioner shall coordinate with other jurisdictions of the United States of America with those jurisdictions' efforts to develop an effective strategy to monitor vendor compliance with the requirements of this subchapter or similar requirements of those jurisdictions.

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

"AN ACT RELATING TO STATE PURCHASING OF APPAREL, FOOTWEAR, OR TEXTILES"

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 641

Rep. McCormack of Rutland City, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to nursing mothers in the workplace;

Reported in favor of its passage when amended as by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 305 is added to read:

§ 305. NURSING MOTHERS IN THE WORKPLACE

(a) For an employee who is a nursing mother for up to three years after the birth of a child, the employer shall:

(1) Provide uncompensated time throughout the day to express breast milk for her nursing child.

(2) Make a reasonable accommodation to provide appropriate private space that is not a bathroom stall or a small storage area.

(b) An employer may be exempted from the provisions of subsection (a) of this section if providing time for expressing breast milk would seriously disrupt the employer's operations.

(c) An employer shall not discriminate against an employee who exercises the rights provided under this section.

Sec. 2. 21 V.S.A. § 303 is amended to read:

§ 303. PENALTY

Any employer who violates the provisions of this subchapter shall be ~~fin~~assessed a civil penalty of not more than \$100.00 for each and every violation.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committee on General, Housing and Military Affairs? **Rep. McCormack of Rutland City** moved to amend the report of the committee on General, Housing and Military Affairs, as follows:

By adding a new Sec. 3 to read as follows:

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(14) Violations of 21 V.S.A. § 305, relating to employment practices for nursing mothers in the workplace.

Which was agreed to.

Thereupon, the report of the committee on General, Housing and Military Affairs, as amended, was agreed to and third reading was ordered.

Speaker Symington back in Chair.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 108

Rep. Pearson of Burlington, for the committee on Government Operations, to which had been referred Senate bill, entitled

An act relating to the election of U.S. representative and U.S. senator by the instant runoff voting method;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

In Sec. 3, 17 V.S.A. § 2473a(b), by striking "the Vermont municipal clerks and treasurers association" and inserting in lieu thereof "local election officials"

Rep. Larson of Burlington, for the committee on Appropriations, recommended the bill ought to pass in concurrence when amended as recommended by the committee on Government Operations.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time and the report of the committees on Government Operations and Appropriations was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 81. Nays, 60.

Those who voted in the affirmative are:

Ancel of Calais
Anderson of Montpelier

Aswad of Burlington
Atkins of Winooski

Barnard of Richmond
Botzow of Pownal

Bray of New Haven	Hosford of Waitsfield	Moran of Wardsboro
Chen of Mendon	Howard of Rutland City	Mrowicki of Putney
Cheney of Norwich	Hutchinson of Randolph	Nease of Johnson
Clarkson of Woodstock	Jerman of Essex	Nuovo of Middlebury
Consejo of Sheldon	Jewett of Ripton	Obuchowski of Rockingham
Copeland-Hanzas of Bradford	Johnson of South Hero	Ojibway of Hartford
Davis of Washington	Kitzmiller of Montpelier	Orr of Charlotte
Deen of Westminster	Klein of East Montpelier	Partridge of Windham
Donahue of Northfield	Kupersmith of S. Burlington	Pearson of Burlington
Donovan of Burlington	Larson of Burlington	Pellett of Chester
Dostis of Waterbury	Lenes of Shelburne	Peltz of Woodbury
Edwards of Brattleboro	Lerich of Hardwick	Pillsbury of Brattleboro
Emmons of Springfield	Lippert of Hinesburg	Pugh of S. Burlington
Evans of Essex	Lorber of Burlington	Randall of Troy
Fisher of Lincoln	Maier of Middlebury	Shand of Weathersfield
Fitzgerald of St. Albans City	Malcolm of Pawlet	Sharpe of Bristol
Frank of Underhill	Manwaring of Wilmington	Smith of Morristown
French of Randolph	Marek of Newfane	Spengler of Colchester
Gervais of Enosburg	Martin, C. of Springfield	Stevens of Shoreham
Gilbert of Fairfax	Martin of Wolcott	Sweaney of Windsor
Godin of Milton	Masland of Thetford	Trombley of Grand Isle
Grad of Moretown	McCormack of Rutland City	Weston of Burlington
Haas of Rochester	McCullough of Williston	Zenie of Colchester
Head of S. Burlington	Milkey of Brattleboro	Zuckerman of Burlington
Heath of Westford	Minter of Waterbury	
	Mitchell of Barnard	

Those who voted in the negative are:

Acinapura of Brandon	Fallar of Tinmouth	McDonald of Berlin
Adams of Hartland	Flory of Pittsford	McFaun of Barre Town
Allard of St. Albans Town	Grenier of St. Johnsbury	McNeil of Rutland Town
Andrews of Rutland City	Helm of Castleton	Mook of Bennington
Audette of S. Burlington	Howrigan of Fairfield	Morrissey of Bennington
Baker of West Rutland	Hube of Londonderry	Myers of Essex
Bissonnette of Winooski	Hunt of Essex	Otterman of Topsham
Bostic of St. Johnsbury	Keenan of St. Albans City	Oxholm of Vergennes
Branagan of Georgia	Keogh of Burlington	Peaslee of Guildhall
Brennan of Colchester	Kilmartin of Newport City	Perry of Richford
Browning of Arlington	Koch of Barre Town	Peterson of Williston
Canfield of Fair Haven	Komline of Dorset	Potter of Clarendon
Clerkin of Hartford	Krawczyk of Bennington	Rodgers of Glover
Condon of Colchester	Larocque of Barnet	Scheuermann of Stowe
Corcoran of Bennington	LaVoie of Swanton	Turner of Milton
Courcelle of Rutland City	Lawrence of Lyndon	Valliere of Barre City
Crawford of Burke	Lewis of Derby	Westman of Cambridge
Devereux of Mount Holly	Livingston of Manchester	Wheeler of Derby
Donaghy of Poultney	Marcotte of Coventry	Winters of Williamstown
Errecart of Shelburne	McAllister of Highgate	Wright of Burlington

Those members absent with leave of the House and not voting are:

Ainsworth of Royalton
Clark of Vergennes
Johnson of Canaan

Larrabee of Danville
Miller of Shaftsbury
Monti of Barre City

Morley of Barton
O'Donnell of Vernon

Rep. Kilmartin of Newport City explained his vote as follows:

“Madam Speaker:

I vote “No”. The Constitution does not give me two or more choices in descending order. It gives me one vote for each position. In a two member House District or a six member Senate District, the confusion and convolution is beyond the comprehension of the brightest among us.”

Rep. Marcotte of Coventry explained his vote as follows:

“Madam Speaker:

I cannot vote for a \$90,000 appropriation for IRV which our town clerks do not support and only 53 towns support. Yet two weeks ago we could not find any money to help educate parents on the dangers of lead.”

Rep. Moran of Wardsboro explained his vote as follows:

“Madam Speaker:

I support S.108 because:

1.) I believe in majority rule . At my town meeting we vote as many times as necessary to arrive at a majority accepted candidate. S.108 accomplishes this democratic process in a realistic fashion;

2.) I believe every citizen should have a real, equal say in how we are governed. Either by espousing a cause or by running for office. Regardless of political party and without abandoning what they stand for in the process.”

Rep. Zuckerman of Burlington explained his vote as follows:

“Madam Speaker:

To clarify for the record – 53 out of 56 towns that voted, supported using IRV.

Kenneth Arrow won the Nobel Prize for proving that there can never be a perfect voting method.

But it is also worth noting that the American Political Science Association has adopted IRV to elect their own national president, because it is the fairest method to find a majority winner.”

Action on Bill Postponed**H. 617**

House bill, entitled

An act relating to guardianships;

Was taken up and pending third reading of the bill, on motion of **Rep. Jewett of Ripton**, action on the bill was postponed until Tuesday, March 18, 2008.

Third Reading; Resolution Adopted**J.R.H. 54**

Joint resolution, entitled

Joint resolution urging Congress to eliminate the Enron Loophole regulatory exemption for energy and metal commodities traded on electronic commodities markets.

Was taken up, read the third time and adopted on the part of the House.

Bill Read Second Time; Bill Amended and Third Reading Ordered

H. 875

Rep. Errecart of Shelburne spoke for the committee on Natural Resources and Energy.

House bill entitled

An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity;

Having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the bill be read the third time? **Rep. Errecart of Shelburne** moved to amend the bill as follows:

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

Sec. 1. 30 V.S.A. § 109 is amended to read:

§ 109. SALES AND LEASES; HEARINGS

(a) Except in connection with replacement or exchange, a corporation or a foreign corporation subject to the jurisdiction of the public service board, shall not make a sale or lease or series of sales or leases in any one calendar year constituting ten percent or more of the company's property located within this

state and actually used in or required for public service operations nor merge nor consolidate pursuant to the provisions of sections 301-307 of this title, nor after any such sale, lease, consolidation, or merger shall any subsequent like action be taken, except after opportunity for hearing by the public service board and a finding by such board that the same will promote the general good of the state. Such notice of the hearing shall be given as the board directs. A certificate of consent of the public service board shall be filed with the secretary of state.

(b) No company owning or operating an electric generating plant in this state with a capacity of 80 megawatts, or greater, may sell or lease any real property or transmission facilities located at that plant that are required or may be required to generate electricity, interconnect generation facilities with electric transmission facilities, or transmit electricity from the plant, without first obtaining a certificate of consent from the public service board.

(c) No company owning or operating an electric transmission facility located in this state that is capable of operating at 100 kilovolts or greater may sell or lease any real property or equipment that is required or may be required to transmit electricity using that facility without first obtaining a certificate of consent from the public service board.

(d) To obtain a certificate of consent pursuant to subsection (b) or (c) of this section, the company shall notify the board and department in writing of its intention to enter into such a sale or lease at least 45 days before the effective date of the proposed transaction. Within 30 days of receiving this notice, the department shall file a written recommendation with the board as to whether it should consent to the proposed sale or lease, and whether further inquiry or hearing is warranted. Within 15 days of receiving the department's recommendation, and after considering the company's notice and the department's recommendation, the board shall determine whether further inquiry into the proposed sale or lease is warranted and, if so, shall so proceed. If the department recommends approval of the proposed transaction without further inquiry or opportunity for hearing, and if the board takes no further action within 15 days after the department has filed such a recommendation, then the proposed transaction shall be deemed approved as consistent with the general good of the state.

(e) The public service board shall issue a certificate of consent under this section only if it determines that the proposed transaction shall promote the general good of the state.

(f) Any notice provided by a company pursuant to subsection (d) of this section shall be accompanied by a statement containing the material terms of

the proposed transaction and such further explanation of the proposed transaction as the board may prescribe. The board may adopt such rules as it deems appropriate for determining the necessity for and scope of any inquiry or hearing concerning a request for board consent to a sale or lease under subsection (b) or (c) of this section. In developing these rules, the board shall ensure that due consideration is given to issues such as potential rate payer impacts of the transactions to be reviewed and least cost integrated planning principles as defined in subdivision 218c(a)(1) of this title. The board's rulemaking authority under this section shall include the discretion to:

(1) decrease to no less than 50 megawatts the threshold for review under subsection (b) of this section;

(2) establish a minimum value threshold to trigger review under subsection (b) or (c) of this section; and

(3) adopt or amend other rules appropriately to minimize duplicative regulatory review under this title.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

Which was agreed to and third reading was ordered.

Bill Amended; Third Reading Ordered

H. 636

Rep. Flory of Pittsford, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to embezzlement by a public official;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2537 is amended to read:

§ 2537. PERSON HOLDING PROPERTY IN OFFICIAL CAPACITY OR BELONGING TO THE STATE OR A MUNICIPALITY

A state, county, town, or municipal officer or other person who in his or her official capacity receives, collects, controls, or holds money, obligations, ~~or securities belonging to a corporation, public or private, or to a private person, or other property~~, who embezzles or fraudulently converts to his or her own use any of such money, obligations ~~or~~ securities, or other property, or a person who embezzles or fraudulently converts to his or her own use; money or other property belonging to the state or to a county or municipality, or a municipal corporation, or a special purpose district, shall be guilty of larceny

and shall be imprisoned not more than ten years or fined not more than \$1,000.00, or both.

Sec. 2. 13 V.S.A. § 7554 is amended to read:

§ 7554. RELEASE PRIOR TO TRIAL

(a) Any person charged with an offense, other than a person held without bail under section 7553 or 7553a of this title, shall at his or her appearance before a judicial officer be ordered released pending trial in accordance with this section.

* * *

(2) If the judicial officer determines that conditions of release imposed to assure appearance will not reasonably protect the public, the judicial officer may in addition impose the least restrictive of the following conditions or the least restrictive combination of the following conditions which will reasonably assure protection of the public:

(A) Place the person in the custody of a designated person or organization agreeing to supervise him or her.

(B) Place restrictions on the travel, association, or place of abode of the person during the period of release.

(C) Require the person to participate in an alcohol or drug treatment program. The judicial officer shall take into consideration the defendant's ability to comply with an order of treatment and the availability of treatment resources.

(D) Impose any other condition found reasonably necessary to protect the public, except that a physically restrictive condition may only be imposed in extraordinary circumstances

(E) If the person is a state, county, or municipal officer charged with violating section 2537 of this title, the court may suspend the officer's duties in whole or in part, if the court finds that it is necessary to protect the public.

* * *

Sec. 3. 24 V.S.A. § 176 is amended to read:

§ 176. DEPUTY CLERK

A county clerk may, subject to the approval of the assistant judges, appoint one or more deputies who may perform the duties of clerk for whose acts he or she shall be responsible and whose deputations he or she may revoke at pleasure. A record of the appointments shall be made in the office of the clerk. In case of the death of the clerk or his or her inability to act, the deputy or

deputies in order of appointment shall perform the duties of the office until a clerk is appointed. In case of the suspension of the clerk's duties as a condition of release pending trial for violating 13 V.S.A. § 2537, the deputy or deputies in order of appointment shall perform the duties of the office until the charge of violating 13 V.S.A. § 2537 is resolved. The compensation for the deputy clerk shall be fixed by the assistant judges and paid for by the county. Such compensation may include such employment benefits as are presently provided to state employees including, but not limited to, health insurance, life insurance, and pension plan, the expense for which shall be borne by the county and the employees.

Sec. 4. 24 V.S.A. § 211 is amended to read:

§ 211. APPOINTMENT; VACANCY

Biennially, on February 1, the assistant judges of the superior court shall appoint a treasurer for the county who shall hold office for two years and until his or her successor is appointed and qualified. If such treasurer dies or in the opinion of the assistant judges becomes disqualified, they may appoint a treasurer for the unexpired term. If the treasurer has his or her duties suspended as a condition of release pending trial for violating 13 V.S.A. § 2537, the assistant judges may appoint a person to perform the duties of the treasurer until the charge of violating 13 V.S.A. § 2537 is resolved.

Sec. 5. 24 V.S.A. § 294 is amended to read:

§ 294. SHERIFF IMPRISONED

If a sheriff is confined in prison by legal process, or has his or her duties suspended as a condition of release pending trial for violating 13 V.S.A. § 2537, his or her functions as sheriff shall be suspended. When he or she is released from imprisonment during his or her term of office, he or she shall file a certificate of his or her discharge signed by one of the judges of the superior court, in the office of the county clerk, and deliver a like certificate to the high bailiff. Thereupon he or she shall resume the powers and execute the duties of sheriff.

Sec. 6. 24 V.S.A. § 363 is amended to read:

§ 363. DEPUTY STATE'S ATTORNEYS

A state's attorney may appoint as many deputy state's attorneys as necessary for the proper and efficient performance of his or her office, and with the approval of the governor, fix their pay not to exceed that of the state's attorney making the appointment, and may remove them at pleasure. Deputy state's attorneys shall be compensated only for periods of actual performance of the duties of such office. Deputy state's attorneys shall be reimbursed for

their necessary expenses incurred in connection with their official duties when approved by the state's attorneys and the commissioner of finance. Deputy state's attorneys shall exercise all the powers and duties of the state's attorneys except the power to designate someone to act in the event of their own disqualification. If the state's attorney's duties are suspended as a condition of release pending trial for violating 13 V.S.A. § 2537, the deputy or deputies in order of appointment shall perform the duties of the state's attorney until the charge of violating 13 V.S.A. § 2537 is resolved. Deputy state's attorneys may not enter upon the duties of the office until they have taken the oath or affirmation of allegiance to the state and the oath of office required by the constitution, and until such oath together with their appointment is filed for record with the county clerk. In case of a vacancy in the office of state's attorney, the appointment of the deputy shall expire upon the appointment of a new state's attorney.

Sec. 7. 24 V.S.A. § 961 is amended to read:

§ 961. VACANCY OR SUSPENSION OF OFFICER'S DUTIES

(a) When a town officer resigns his or her office, or has been removed therefrom, or dies, or becomes insane or removes from town, such office shall become vacant. Notice of this vacancy shall be posted by the legislative body in at least two public places in the town, and in and near the town clerk's office, within 10 days of the creation of the vacancy.

(b) In the event there are so many vacancies on the selectboard that a quorum cannot be achieved, the remaining selectperson or selectpersons shall be authorized to draw orders for payment of continuing obligations and necessary expenses until the vacancies are filled pursuant to section 963 of this title.

(c) The legislative body of a town may designate a person to perform the duties of an officer whose duties have been suspended as a condition of release pending trial for violating 13 V.S.A. § 2537.

Sec. 8. 24 V.S.A. § 962 is amended to read:

§ 962. SPECIAL MEETING

A town at a special meeting may fill a vacancy in a town office or designate a person to perform the duties of an officer whose duties have been suspended as a condition of release pending trial for violating 13 V.S.A. § 2537.

Sec. 9. 24 V.S.A. § 1171 is amended to read:

§ 1171. -DUTIES

Such assistant clerk shall be sworn and is authorized to perform the

recording and filing duties of the town clerk, to issue licenses and certified copies of records and, in the absence, death or disability of the town clerk, or the suspension of the town clerk's duties as a condition of release pending trial for violating 13 V.S.A. § 2537, is further authorized to perform all other duties of such clerk. If the town clerk dies, the authority of the assistant town clerk to perform the duties of the town clerk shall continue until a successor is appointed by the selectmen under section 963 of this title.

Sec. 10. 32 V.S.A. § 167(b) is amended to read:

(b) In connection with any of his or her duties, the auditor of accounts may administer oaths and may subpoena any person to appear before him or her. Such persons shall testify under oath and be subject to the penalties of perjury, and may be examined concerning any matter relating to the statutory duties of the auditor provided by section 163 of this title. Nothing in this subsection shall limit a person's fifth amendment rights against self-incrimination.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Message from the Senate No. 36

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 246. An act relating to electronic access to criminal and family court records.

S. 247. An act relating to scrap metal processors.

S. 336. An act relating to juvenile judicial proceedings.

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

The Senate has on its part adopted a joint resolution of the following title:

J.R.S. 56. Joint resolution relating to weekend adjournment.

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

Adjournment

At three o'clock and fifteen minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

FRIDAY, MARCH 14, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Representative Johanna Donovan of Burlington, Vt.

Committee Bill Introduced**H. 879**

Rep. Ancel of Calais, for the committee on Education, introduced a bill, entitled

An act relating to the repeal of unnecessary, duplicative, and burdensome reports; the improved timelines and efficiency of special education audits; and the simplification of union school district formation;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Committee Bill Introduced**H. 880**

Rep. Sweaney of Windsor, for the committee on Government Operations, introduced a bill, entitled

An act relating to Vermont Pension Investment Committee;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Committee Bill Introduced**H. 881**

Rep. Kitzmiller of Montpelier, for the committee on Commerce, introduced a bill, entitled

An act relating to the role of electric and gas utilities in facilitating the development of communications facilities throughout the state;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 246

Senate bill, entitled

An act relating to electronic access to criminal and family court records;

To the committee on Judiciary.

S. 247

Senate bill, entitled

An act relating to scrap metal processors;

To the committee on Commerce.

S. 336

Senate bill, entitled

An act relating to juvenile judicial proceedings;

To the committee on Judiciary.

Bill Referred to Committee on Ways and Means**H. 878**

House bill, entitled

An act relating to elevator safety;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Joint Resolution Referred to Committee**J.R.H. 55**

Reps. Obuchowski of Rockingham, Dostis of Waterbury and Kitzmiller of Montpelier offered a joint resolution, entitled

Joint resolution requesting the public service department to adopt a revised state energy plan with new implementation recommendations in accordance with 30 V.S.A. §202b(c);

Whereas, in accordance with 30 V.S.A. § 202b(c), the department of public service “no less frequently than every five years” is directed to update the state energy plan’s implementation recommendations that were initially adopted in 1994, and

Whereas, this statutory subsection further directs that “these recommendations shall be updated prior to the expiration of five years if the general assembly passes a joint resolution making a request to that effect,” and

Whereas, a state energy plan was last released in 1998, and in 2005, at the time the department released its most recent state electric energy plan, it stated that a revised state energy plan with new implementation recommendations was a work in progress, and

Whereas, on March 5, 2008, the price for a barrel of oil hit a new record when its midday trading price on the New York Mercantile Exchange reached slightly above \$104.00 per barrel, and

Whereas, the previous high in inflation-adjusted dollars was \$103.95 in April 1980, and by 1998, the price for a barrel of oil on the world market had dropped slightly below \$20.00 per barrel, and

Whereas, the 1998 state energy plan, citing 1993 dollars when the inflation-adjusted price of oil was approximately \$20.00 per barrel, projected an increase to \$25.00 by 2015, a mark that has long since been surpassed, and

Whereas, this now-dated pricing projection is only one example of the urgent necessity for the department of public service to update the 1998 energy plan’s implementation recommendations, and

Whereas, Vermonters are placed at great risk, from the perspective of economic development, as well as short- and long-term planning, if the data in the state energy plan does not reflect current market realities and trends, and

Whereas, the General Assembly’s adoption of a joint resolution in accordance with 30 V.S.A. § 202b(c) will provide new impetus for the department of public service to issue a revised state energy plan with new implementation recommendations in the foreseeable future, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly, in accordance with 30 V.S.A. § 202b(c), requests that the department of public service issue a revised state comprehensive energy plan with new implementation recommendations and that the plan be submitted to the house and senate committees on natural resources and energy by December 1, 2008, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to Commissioner David O’Brien at the department of public service.

Which was read and, in the Speaker’s discretion, treated as a bill and referred to the committee on Natural Resources and Energy.

Joint Resolution Adopted in Concurrence**J.R.S. 56**

Joint resolution, entitled

Joint resolution relating to weekend adjournment;

By Senator Shumlin,

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 14, 2008, it be to meet again no later than Tuesday, March 18, 2008.

Was taken up read and adopted in concurrence.

Bill Referred to Committee on Appropriations**H. 736**

House bill, entitled

An act relating to children of incarcerated parents;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 338

An act relating to a state purchasing code of conduct.

H. 636

An act relating to embezzlement by a public official.

H. 641

An act relating to nursing mothers in the workplace.

H. 875

An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity.

Bill Messaged to Senate Forthwith**H. 875**

House bill, entitled

An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity.

On motion of **Rep. Adams of Hartford**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Proposal of Amendment Agreed to; Bill Read Third Time and Passed in Concurrence With Proposals of Amendment

S. 108

Senate bill, entitled

An act relating to the election of U.S. representative and U.S. senator by the instant runoff voting method;

Was taken up and pending third reading of the bill **Rep. Pearson of Burlington** moved that the House propose to the Senate to amend the bill as follows:

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

Sec. 8. EFFECTIVE DATE

This act shall take effect upon passage and shall apply to the 2008 general election and subsequent general elections.

Which was agreed to.

Pending third reading of the bill **Rep. Wright of Burlington** moved to propose to the Senate to amend the bill as follows:

By adding a Sec. 1a as follows: Sec. 1a. 2 V.S.A. chapter 27 is added to read:

CHAPTER 27. CITIZENS' INITIATIVE PROCESS

§ 1001. INITIATIVES AUTHORIZED

The citizens of this state may propose legislation for enactment by the general assembly, provided that prior to presentation to the general assembly, the legislation is first approved by the voters at a statewide election in accordance with the process set forth in this chapter.

§ 1002. APPLICATION FOR INITIATIVE PROPOSITION

Twenty-five registered voters may apply to the secretary of state to prepare an initiative petition. The application shall be filed between January 1 and June 1 of even-numbered years. The application shall contain the text of the proposition, a proposed concise description of the proposition, the names and addresses of the applicants, and the name and address of their designated agent.

§ 1003. REVIEW OF PETITION

(a) Within 14 days after the initiative proposition is filed, the secretary of state shall:

(1) review the petition and, after consultation with the legislative council, make any nonsubstantive changes the secretary deems appropriate to ensure clarity and consistency of form and expression with the Vermont Statutes Annotated;

(2) revise, if necessary, the concise description to assure that it is accurate, fair, and impartial; and

(3) return the documents to the designated agent.

(b) Upon request, the secretary of state or the secretary's designee shall meet with the designated agent within 10 days after return of the documents to attempt to resolve any disagreements about form, style, or wording. Within 10 days after return, the agent shall give or withhold his or her assent to the wording of the petition and the description. If the agent withholds his or her assent, a petition shall not be prepared.

§ 1004. INITIATIVE BALLOT

(a) With the assent of the agent, the secretary of state shall assign the petition a number.

(b) Within 10 days after assent, the secretary shall prepare the form of the petition which shall be used for the initiative proposition. The petition shall contain on each page a caption describing the subject of the initiative proposition, the number assigned to the petition, the description of the initiative proposition, the statement of the proposition, and space for the signatures and addresses of registered voters. Reproduction of the petition shall not be the responsibility of the secretary of state.

(c) The statement of the petition shall be in the following form:

"We, the undersigned, being registered voters in the State of Vermont, request that the following question be placed on the ballot of the general election to be held November ____ :

Shall Proposition ____, relating to [subject], be brought before the ____ session of the general assembly for a recorded vote?"

§ 1005. VALIDITY OF PETITION

(a) The petition shall be filed with the secretary of state on or before September 1 of the year in which the application was filed under section 2002 of this title.

(b) The petition shall contain the signatures of 30,000 individuals registered to vote in the state and shall contain at least 1,000 signatures from each county in the state.

(c) The secretary of state shall, within 10 days after the filing of the petition, determine whether sufficient legal names have been submitted to satisfy the requirements of subsection (b) of this section. The secretary of state may use a random sampling method in making the determination.

(d) If the secretary of state finds that the number of legal names is insufficient, he or she shall promptly notify the agent, who may request a name-by-name validation until a sufficient number of legal names has been found to validate the petition, or until it is mathematically impossible for the requirement to be met. The secretary of state shall assess the agent \$0.25 for each name validated under this subsection and whether the number of names is found to be sufficient, and may require the posting of adequate surety before undertaking the name-by-name validation.

§ 1006. INITIATIVE BALLOT

(a) In each year in which an application for a petition is accepted under section 1002 of this section, the secretary of state shall prepare at most two initiative ballots. The first two petitions determined to be valid under section 1005 of this section shall be the petitions for which an initiative ballot is prepared.

(b) The article for a statewide public question on an initiative proposition shall be prepared by the secretary of state. The article shall identify the proposition by its assigned number and contain the concise summary approved under section 1003 of this title and a question worded to describe the chief purpose of the proposition so that an affirmative response to the question corresponds to an affirmative vote on the proposition.

(c) A copy of the complete text of the initiative proposition shall be filed in the town clerk's office prior to the date of the general election. Copies of the proposition shall be available to members of the public upon request, free of charge, and shall be conspicuously posted at the polling place.

(d) If the initiative proposition is approved by a majority of the votes cast on that question, the secretary of state shall immediately forward the certificate of the canvassing committee, together with the full text of the proposition, to the clerk of the house of representatives.

§ 1007. ACTION OF THE GENERAL ASSEMBLY

(a) Upon organization of the general assembly in the January following the general election at which an initiative proposition is approved by the voters, the speaker of the house shall promptly cause the proposition to be introduced without alteration as a bill.

(b) Within 20 legislative days after the beginning of the session, the committee to which the bill was referred, if any, shall report the bill to the house, without amendment or with proposed committee amendments. The house shall proceed promptly to consider the bill, and the vote on final passage shall be by roll call.

(c) If the vote in the house is in the affirmative, the bill shall forthwith be messaged to the senate. Within 20 legislative days after the beginning of the session, the committee to which the bill was referred, if any, shall report the bill to the senate, without amendment or with proposed committee amendments. The senate shall proceed promptly to consider the bill, and the vote on final passage shall be by roll call.

(d) Except as otherwise provided in this section, the rules of the house of representatives and the senate, including those related to presentment of bills to the governor, shall apply to enactment of an initiative proposition.

Thereupon, **Rep. Marek of Newfane** raised a Point of Order that the proposal of amendment was not germane to the bill, which Point of Order the Speaker ruled well taken.

Rep. Adams of Hartland moved to suspend the rules to permit consideration of a non-germane question.

Pending the question, Shall the House suspend the rules to permit consideration of a non-germane question? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House suspend the rules to permit consideration of a non-germane question? was decided in the negative. Yeas, 41. Nays, 94. A $\frac{3}{4}$ vote of 102 required.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Allard of St. Albans Town
Baker of West Rutland
Bostic of St. Johnsbury
Brennan of Colchester
Canfield of Fair Haven
Clark of Vergennes
Clerkin of Hartford

Crawford of Burke
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield
Errecart of Shelburne
Flory of Pittsford
Grenier of St. Johnsbury
Helm of Castleton
Howrigan of Fairfield

Hube of Londonderry
Kilmartin of Newport City
Komline of Dorset
Krawczyk of Bennington
Larocque of Barnet
LaVoie of Swanton
Lawrence of Lyndon
Lewis of Derby
Livingston of Manchester

Marcotte of Coventry
McAllister of Highgate
McNeil of Rutland Town
Morley of Barton
Morrissey of Bennington

Myers of Essex
Oxholm of Vergennes
Peaslee of Guildhall
Scheuermann of Stowe
Turner of Milton

Valliere of Barre City
Wheeler of Derby
Winters of Williamstown
Wright of Burlington

Those who voted in the negative are:

Ancel of Calais
Andrews of Rutland City
Aswad of Burlington
Atkins of Winooski
Barnard of Richmond
Bissonnette of Winooski
Botzow of Pownal
Branagan of Georgia
Bray of New Haven
Browning of Arlington
Chen of Mendon
Cheney of Norwich
Clarkson of Woodstock
Condon of Colchester
Consejo of Sheldon
Copeland-Hanzas of
Bradford
Corcoran of Bennington
Courcelle of Rutland City
Davis of Washington
Deen of Westminster
Donovan of Burlington
Dostis of Waterbury
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinmouth
Fisher of Lincoln
Fitzgerald of St. Albans City
Frank of Underhill
French of Randolph
Gervais of Enosburg

Gilbert of Fairfax
Grad of Moretown
Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howard of Rutland City
Hunt of Essex
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Keenan of St. Albans City
Keogh of Burlington
Kitzmiller of Montpelier
Klein of East Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick
Lippert of Hinesburg
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Manwaring of Wilmington
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford
McCormack of Rutland City
McCullough of Williston
McFaun of Barre Town

Milkey of Brattleboro
Minter of Waterbury
Mitchell of Barnard
Monti of Barre City
Mook of Bennington
Moran of Wardsboro
Mrowicki of Putney
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
Ojibway of Hartford
Otterman of Topsham
Pearson of Burlington
Pellett of Chester
Peltz of Woodbury
Perry of Richford
Peterson of Williston
Pillsbury of Brattleboro
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Shand of Weathersfield
Sharpe of Bristol
Smith of Morristown
Spengler of Colchester
Sweaney of Windsor
Trombley of Grand Isle
Weston of Burlington
Zenie of Colchester
Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Ainsworth of Royalton
Anderson of Montpelier
Audette of S. Burlington
Godin of Milton
Johnson of Canaan

Koch of Barre Town
Larrabee of Danville
McDonald of Berlin
Miller of Shaftsbury
O'Donnell of Vernon

Orr of Charlotte
Partridge of Windham
Stevens of Shoreham
Westman of Cambridge

Thereupon, the bill was read the third time and pending the question, Shall the bill pass in concurrence with proposals of amendment? **Rep. Adams of**

Hartland demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass in concurrence with proposals of amendment? was decided in the affirmative. Yeas, 77. Nays, 60.

Those who voted in the affirmative are:

Ancel of Calais	Haas of Rochester	Milkey of Brattleboro
Aswad of Burlington	Head of S. Burlington	Minter of Waterbury
Atkins of Winooski	Heath of Westford	Mitchell of Barnard
Barnard of Richmond	Hosford of Waitsfield	Monti of Barre City
Botzow of Pownal	Howard of Rutland City	Moran of Wardsboro
Bray of New Haven	Hutchinson of Randolph	Mrowicki of Putney
Chen of Mendon	Jerman of Essex	Nease of Johnson
Cheney of Norwich	Jewett of Ripton	Nuovo of Middlebury
Clarkson of Woodstock	Johnson of South Hero	Obuchowski of Rockingham
Consejo of Sheldon	Kitzmiller of Montpelier	Ojibway of Hartford
Copeland-Hanzas of	Klein of East Montpelier	Orr of Charlotte
Bradford	Kupersmith of S. Burlington	Pearson of Burlington
Davis of Washington	Larson of Burlington	Pellett of Chester
Deen of Westminster	Lenes of Shelburne	Peltz of Woodbury
Donahue of Northfield	Leriche of Hardwick	Pillsbury of Brattleboro
Donovan of Burlington	Lippert of Hinesburg	Pugh of S. Burlington
Dostis of Waterbury	Lorber of Burlington	Randall of Troy
Edwards of Brattleboro	Maier of Middlebury	Shand of Weathersfield
Emmons of Springfield	Malcolm of Pawlet	Sharpe of Bristol
Evans of Essex	Manwaring of Wilmington	Smith of Morristown
Fisher of Lincoln	Marek of Newfane	Spengler of Colchester
Fitzgerald of St. Albans City	Martin, C. of Springfield	Sweaney of Windsor
Frank of Underhill	Martin of Wolcott	Trombley of Grand Isle
French of Randolph	Masland of Thetford	Weston of Burlington
Gervais of Enosburg	McCormack of Rutland City	Zenie of Colchester
Gilbert of Fairfax	McCullough of Williston	Zuckerman of Burlington

Those who voted in the negative are:

Acinapura of Brandon	Corcoran of Bennington	Koch of Barre Town
Adams of Hartland	Courcelle of Rutland City	Komline of Dorset
Allard of St. Albans Town	Crawford of Burke	Krawczyk of Bennington
Andrews of Rutland City	Devereux of Mount Holly	Larocque of Barnet
Audette of S. Burlington	Donaghy of Poultney	LaVoie of Swanton
Baker of West Rutland	Errecart of Shelburne	Lawrence of Lyndon
Bissonnette of Winooski	Fallar of Tinmouth	Lewis of Derby
Bostic of St. Johnsbury	Flory of Pittsford	Livingston of Manchester
Branagan of Georgia	Grenier of St. Johnsbury	Marcotte of Coventry
Brennan of Colchester	Helm of Castleton	McAllister of Highgate
Browning of Arlington	Howrigan of Fairfield	McDonald of Berlin
Canfield of Fair Haven	Hube of Londonderry	McFaun of Barre Town
Clark of Vergennes	Hunt of Essex	McNeil of Rutland Town
Clerkin of Hartford	Keenan of St. Albans City	Mook of Bennington
Condon of Colchester	Keogh of Burlington	Morley of Barton

Morrissey of Bennington
 Myers of Essex
 Otterman of Topsham
 Oxholm of Vergennes
 Peaslee of Guildhall

Perry of Richford
 Peterson of Williston
 Potter of Clarendon
 Rodgers of Glover
 Scheuermann of Stowe

Turner of Milton
 Valliere of Barre City
 Wheeler of Derby
 Winters of Williamstown
 Wright of Burlington

Those members absent with leave of the House and not voting are:

Ainsworth of Royalton
 Anderson of Montpelier
 Godin of Milton
 Grad of Moretown

Johnson of Canaan
 Kilmartin of Newport City
 Larrabee of Danville
 Miller of Shaftsbury

O'Donnell of Vernon
 Partridge of Windham
 Stevens of Shoreham
 Westman of Cambridge

Rep. Fisher of Lincoln explained his vote as follows:

“Madam Speaker:

The Burlington experience with IRV has demonstrated that Vermonters can easily understand what it means to say my first choice is for candidate “A” and my second choice is for candidate “B”.

There is nothing hypothetical about such a vote.”

Rep. Mrowicki of Putney explained his vote as follows:

“Madam Speaker:

I support IRV because I believe it will encourage voter participation and democracy works best when more people participate.

I also note that the testimony we heard on the floor states this bill will not cost towns more money or work.”

Rep. Wright of Burlington explained his vote as follows:

“Madam Speaker:

I vote no on S. 108 despite the fact that it has worked well mechanically in local elections in Burlington. If instant runoff voting had been in place for all elections throughout our country’s history, Abraham Lincoln and Woodrow Wilson might well have been replaced by President Douglas and President Fairbanks, and Bernie Sanders’ career may never have happened.

A major change in our voting procedures like IRV should have been voted on by the entire electorate, as it was in Burlington.”

Message from the Senate No. 37

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 89. An act relating to permitting payment of rent into court pursuant to a commercial lease.

S. 210. An act relating to the appointment of a town school district treasurer pending election at a special or annual meeting.

S. 357. An act relating to domestic violence.

S. 364. An act relating to a comprehensive vertical audit and reliability assessment of the Vermont Yankee nuclear facility

S. 365. An act relating to capital construction and state bonding.

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

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 227. House concurrent resolution congratulating the Poultney High School Blue Devils Division III 2008 cheerleading champions.

H.C.R. 228. House concurrent resolution congratulating Howard Herrington on being named the 2007 Wal-Mart Vermont Teacher of the Year.

H.C.R. 229. House concurrent resolution in memory of former Representative Peter Martin of St. Albans Town.

H.C.R. 230. House concurrent resolution congratulating the Governor's Institutes of Vermont on their 25th anniversary.

H.C.R. 231. House concurrent resolution congratulating the Girl Scout Council of Vermont's 2007 Gold and Silver Award winners.

H.C.R. 232. House concurrent resolution honoring the Girl Scout Council of Vermont during Girl Scout Week.

H.C.R. 233. House concurrent resolution honoring the Federal TRIO Programs in Vermont.

H.C.R. 234. House concurrent resolution congratulating the 2008 BFA-St. Albans Comets girls' Division I championship hockey team.

H.C.R. 235. House concurrent resolution in memory of former speaker of the house and lieutenant governor John Burgess of Brattleboro.

Adjournment

At eleven o'clock and twenty-five minutes in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until Monday, March 17, 2008, at ten o'clock in the forenoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 227

House concurrent resolution congratulating the Poultney High School Blue Devils Division III 2008 cheerleading champions

H.C.R. 228

House concurrent resolution congratulating Howard Herrington on being named the 2007 Wal-Mart Vermont Teacher of the Year

H.C.R. 229

House concurrent resolution in memory of former Representative Peter Martin of St. Albans Town

H.C.R. 230

House concurrent resolution congratulating the Governor's Institutes of Vermont on their 25th anniversary

H.C.R. 231

House concurrent resolution congratulating the Girl Scout Council of Vermont's 2007 Gold and Silver Award winners

H.C.R. 232

House concurrent resolution honoring the Girl Scout Council of Vermont during Girl Scout Week

H.C.R. 233

House concurrent resolution honoring the Federal TRIO Programs in Vermont

H.C.R. 234

House concurrent resolution congratulating the 2008 BFA-St. Albans Comets girls' Division I championship hockey team

H.C.R. 235

House concurrent resolution in memory of former speaker of the house and lieutenant governor John Burgess of Brattleboro

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the volume of the Public Acts and Resolves of the 2008, sixty-ninth Adjourned session]

MONDAY, MARCH 17, 2008

At eleven o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Speaker Gaye Symington of Jericho.

House Bill Introduced**H. 882**

Rep. Haas of Rochester introduced a bill, entitled

An act relating to prohibiting the feeding of moose;

Which was read the first time and referred to the committee on Fish, Wildlife and Water Resources.

Committee Bills Introduced

The following committee bills were read the first time and, under the rule, placed on the Calendar for notice tomorrow.

H. 883

Rep. Sweaney of Windsor, for the committee on Government Operations, introduced a bill, entitled

An act relating to miscellaneous amendments to Vermont's Public Retirement Systems;

H. 884

Rep. Ancel of Calais, for the committee on Education, introduced a bill, entitled

An act relating to ensuring quality in prekindergarten education programs offered by or through school districts;

H. 885

Rep. Kitzmiller of Montpelier, for the committee on Commerce, introduced a bill, entitled

An act relating to developing consistent measurement standards for economic growth;

H. 886

Rep. Maier of Middlebury, for the committee on Health Care, introduced a bill, entitled

An act relating to Vermont Health E-Fund.

Bill Referred to Committee on Ways and Means**H. 574**

House bill, entitled

An act relating to requiring beverage container manufacturers to pay an additional one-half cent per container to retailers who do not comingle containers;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Bills Referred to Committee on Appropriations

House bills of the following titles, appearing on the Calendar, carrying appropriations, under the rule, were referred to the committee on Appropriations:

H. 170

House bill, entitled

An act relating to retirees of the University of Vermont;

H. 230

House bill, entitled

An act relating to legislative appointments to the Human Rights Commission;

H. 619

House bill, entitled

An act relating to the regulation of sexual assault nurse examiners;

H. 685

House bill, entitled

An act relating to enforcement of environmental laws;

H. 690

House bill, entitled

An act relating to Vermont Milk Commission;

H. 755

House bill, entitled

An act relating to economic development of the forestry and forest products industries;

H. 784

House bill, entitled

An act relating to energy conservation in public schools;

Adjournment

At eleven o'clock and thirty-five minutes in the forenoon, the Speaker adjourned the House until tomorrow at ten o'clock in the forenoon pursuant to Rule 9.

TUESDAY, MARCH 18, 2008

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Representative Partridge of Windham.

Pledge of Allegiance

Page Callie-Rae Cashin of Westmore led the House in the Pledge of Allegiance.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 89

Senate bill, entitled

An act relating to permitting payment of rent into court pursuant to a commercial lease;

To the committee on Judiciary.

S. 210

Senate bill, entitled

An act relating to the appointment of a town school district treasurer pending election at a special or annual meeting;

To the committee on Government Operations.

S. 357

Senate bill, entitled

An act relating to domestic violence;

To the committee on Judiciary.

S. 364

Senate bill, entitled

An act relating to a comprehensive vertical audit and reliability assessment of the Vermont Yankee nuclear facility;

To the committee on Natural Resources and Energy.

S. 365

Senate bill, entitled

An act relating to capital construction and state bonding;

To the committee on Corrections and Institutions.

Bill Referred to Committee on Ways and Means**H. 886**

House bill, entitled

An act relating to Vermont Health E-Fund;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

**Bill Read Second Time; Bill Amended;
Consideration Interrupted by Recess****H. 863**

Rep Head of South Burlington spoke for the committee on General, Housing and Military Affairs.

Rep. Klein of East Montpelier, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

An act relating to and preservation of affordable housing and smart growth development;

Recommended the bill be amended as follows:

By striking Secs.1 through 4, Secs. 5 through 7, and Sec.10 in their entirety, by inserting in lieu thereof the following, and by renumbering the remaining sections to be numerically correct:

*** * * Vermont Neighborhoods Program * * ***

Sec. 1. 24 V.S.A. § 2791(15) is added to read:

(15) "Vermont neighborhood" means an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws, and subdivision regulations, and:

(A) that is located in one of the following:

(i) A designated downtown, village center, new town center, or growth center; or

(ii) An area of land that is within the municipality and outside but contiguous to a designated downtown, village center, or new town center, and is not more than 50 percent of the total acreage of the designated downtown, village center, or new town center; and

(B) that contains substantially the following characteristics:

(i) Its contiguous land, if any, complements the existing downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and is consistent with smart growth principles.

(ii) It is served by either a municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources.

(iii) It incorporates minimum residential densities of no fewer than four units of single-family, detached dwelling units per acre, and higher densities for duplexes and multi-family housing.

(iv) It incorporates neighborhood design standards that promote compact, pedestrian-oriented development patterns and networks of sidewalks or paths for both pedestrians and bicycles that connect with adjacent development areas.

Sec. 2. 24 V.S.A. § 2793d is added to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) A municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources, is authorized to apply for designation of a Vermont neighborhood. A municipal decision to apply for designation shall be developed according to the procedures established in sections 4441 and 4442 of this title, with regard to the development by the planning commission of a proposed bylaw, and its adoption or rejection by the municipal legislative body.

Designation is possible in two different situations:

(1) If an application is submitted in compliance with this subsection for a designated Vermont neighborhood that would have boundaries that are entirely within the boundaries of a designated downtown district, designated village center, designated new town center, or designated growth center, the downtown board shall issue the designation.

(2) If an application is submitted in compliance with this subsection, by a municipality that does not have a designated growth center and that proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the downtown board, in its expanded configuration in which it considers growth center applications, shall consider the application. This application may be for approval of one or more Vermont neighborhoods that is outside but contiguous to a designated downtown district, designated village center, or designated new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and evidence that the municipality has notified the regional planning commission and the regional development corporation of its application for this designation.

(b) Within 45 days of receipt of a completed application, the expanded downtown board shall designate a Vermont neighborhood if the board finds the applicant has met the requirements of subsections (a) and (c) of this section. When designating a Vermont neighborhood, the board may change the boundaries that were contained in the application by reducing the size of the area proposed to be included in the designated neighborhood, but may not include in the designation land that was not included in the application for

designation. Any Vermont neighborhood designation shall terminate when the underlying downtown, village center, new town center, or growth center designation terminates.

(c) The applicant shall demonstrate all of the following:

(1) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, and has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title.

(2) The cumulative total of all Vermont neighborhood land located within the municipality but outside a designated downtown district, designated village center, or designated new town center is not more than 50 percent of the total acreage of the designated downtown district, village center, or new town center.

(3) The contiguous land of the Vermont neighborhood complements the existing designated downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and the contiguous land, in combination with the designated downtown development district, village center, or new town center, is consistent with smart growth principles established under subdivision 2791(13) of this title.

(4) The Vermont neighborhood will be served by either:

(A) a municipal sewer infrastructure; or

(B) a community or alternative wastewater system approved by the agency of natural resources.

(5) The municipal zoning bylaw requires both of the following:

(A) Minimum residential densities that may be calculated by excluding land occupied by community wastewater systems, flood hazard areas, wetlands, rare and irreplaceable natural areas, necessary wildlife habitat, or other resource lands that are not able to be developed due to state or federal regulation, and that shall require the following:

(i) No fewer than four units of single-family, detached dwelling units per acre, exclusive of accessory apartments.

(ii) Higher density for duplexes and multi-family housing.

(B) Neighborhood design standards that promote compact, pedestrian-oriented development patterns that include the following:

(i) Pedestrian scale and orientation of development. Networks of sidewalks or paths, or both, are provided and available to the public to connect the Vermont neighborhood with adjacent development areas, existing and planned adjacent sidewalks, paths, and public streets and the designated downtown, village center, or new town center.

(ii) Interconnected and pedestrian-friendly street networks. Street networks are designed to safely accommodate both pedestrians and bicycles through the provisions of sidewalks on at least one side of the street, on-street parking, and traffic-calming features.

(d) Incentives for Vermont neighborhoods include the following:

(1) The agency of natural resources shall charge no more than a \$50.00 fee for wastewater applications where the applicant has received an allocation for sewer capacity from an approved municipal system. Act 250 fees for residential developments in Vermont neighborhoods shall be 50 percent of the fee normally charged.

(2) Fifty percent of Act 250 fees for all proposed development in Vermont neighborhoods shall be paid upon application, and 50 percent shall be paid within 30 days of the issuance of a decision.

(3) No land gains tax shall be levied on a transfer of land in Vermont neighborhoods.

(e) Initial designation shall be for a period of three years. After that time has expired, the expanded state board shall review a Vermont neighborhood concurrently with the next periodic review conducted of the underlying designated entity, even if the underlying designated entity was not designated originally by the expanded state board. However, the expanded board may review compliance with the designation requirements at more frequent intervals. If at any time the expanded state board determines that the designated Vermont neighborhood no longer meets the standards for designation established in this section, it may take any of the following actions:

(1) require corrective action;

(2) remove the Vermont neighborhood designation, with that removal not affecting any of the benefits previously awarded to the designated Vermont neighborhood; or

(3) limit eligibility for the benefits established in this chapter, with the limitation not affecting any of the benefits previously awarded to the designated Vermont neighborhood.

(f) Designation decisions made under this section may be appealed to the environmental court pursuant to Rule 5 of the Vermont Rules for Environmental Proceedings by an interested person as defined in subsection 4465(b) of this title. Review by the environmental court shall be de novo.

* * * Agency of Natural Resources Fees * * *

Sec. 3. 3 V.S.A. § 2822(j)(4)(D) is amended to read:

(D) Notwithstanding the other provisions of this subdivision;

* * *

(ii) when a potable water supply is subject to the fee provisions of this subdivision and subdivision (j)(7)(A) of this section, only the fee required by subdivision (j)(7)(A) shall be assessed; and

(iii) when a project is subject to the fee provision for the subdivision of land and the fee provision for potable water supplies and wastewater systems of this subdivision, only the higher of the two fees shall be assessed; and

(iv) when a project is located in a Vermont neighborhood, as designated under 24 V.S.A. chapter 76A, the fee shall be no more than \$50.00 in situations in which the application has received an allocation for sewer capacity from an approved municipal system.

* * * Act 250 Provisions * * *

Sec. 4. 10 V.S.A. § 6001(3)(B) and (C) are amended to read:

(3)(A) "Development" means:

* * *

(B)(i) Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of any combination of mixed income housing or mixed use and is located entirely within a growth center designated pursuant to 24 V.S.A. § 2793c or within a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:

(i)(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 25,000 or more.

(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of 20,000 15,000 or more, but less than 25,000.

~~(ii)~~(III) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of ~~10,000~~ 7,000 or more but less than ~~20,000~~ 15,000.

~~(iii)~~(IV) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of ~~5,000~~ 3,000 or more and less than ~~10,000~~ 7,000.

~~(iv)~~(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than 5,000 3,000.

~~(v)~~(VI) Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places. However, demolition shall not be considered to create jurisdiction under this subdivision if the division for historic preservation has determined the proposed demolition will have no adverse effect, an effect that will not be adverse provided that specified conditions are met, or an adverse effect that will be adequately mitigated, and if any imposed conditions are enforceable through a grant condition, deed covenant, or other legally binding document.

(ii) Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing located entirely within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d, but outside of a growth center designated pursuant to 24 V.S.A. § 2793c or a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" shall be determined in accordance with the numerical thresholds established in subdivision (3)(B)(i) of this section.

(C) For the purposes of determining jurisdiction under subdivisions (3)(A) and (3)(B) of this section:

~~(i) Housing units constructed by a person partially or completely outside a designated downtown development district or designated growth center shall not be counted to determine jurisdiction over housing units constructed by a person entirely within a designated downtown development district or designated growth center.~~

(ii) Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, or designated growth center, or designated Vermont neighborhood shall be

counted together with housing units constructed by a person partially or completely outside a designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood~~ to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood~~ and within a five-mile radius.

(iii) All housing units constructed by a person within a designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood~~ ~~within any continuous period of five years,~~ commencing on or after the effective date of this subdivision, shall be counted together, but only if they are part of a discrete project located on a single tract or multiple contiguous tracts of land.

(iv) In the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved.

(v) ~~Notwithstanding subdivision (C)(iii) of this subdivision (3), any affordable housing units, as defined by this section, (3)(A)(iv) and subdivision (19) of this section, jurisdiction shall be determined exclusively by counting housing units, and when counting housing units to determine jurisdiction, only housing units in a discrete project on a single tract or multiple contiguous tracts of land shall be counted, regardless of whether located within an area designated under 24 V.S.A. chapter 76A, provided that the housing units are affordable housing units, as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that preserve their affordability for a period of 99 years or longer, and that are constructed by a person within a designated downtown development district, designated village center, or designated growth center, shall count toward the total number of housing units used to determine jurisdiction only if they were constructed within the previous 12-month period, commencing on or after the effective date of this subdivision.~~

Sec. 5. REPEAL

10 V.S.A. § 6001(16)(rural growth areas definition) is repealed.

Sec. 6. 10 V.S.A. § 6001(31) and (32) are added to read:

(31) "Existing settlement" means an extant community center similar to the traditional Vermont center which is compact in size and contains a mixture

of uses which may include commercial, industrial, and residential components which are, to a large extent, within walking distance of each other, and which have appreciably higher densities than densities that occur outside these areas. For the purposes of this subdivision, the term shall include downtown development districts designated in accordance with 24 V.S.A. § 2793, village centers designated in accordance with 24 V.S.A. § 2793a, new town centers designated in accordance with 24 V.S.A. § 2793b, growth centers designated in accordance with 24 V.S.A. § 2793c, and Vermont neighborhoods designated in accordance with 24 V.S.A. § 2793d. This term specifically excludes areas of commercial, highway-oriented uses commonly referred to as "strip development."

(32) "Strip development" means linear commercial development along an arterial highway leading from an existing settlement or connecting two existing settlements. The characteristics of strip development, which need not all be present in order for strip development to exist, include the following: broad road frontage; individual curb cuts for individual projects; lack of connection to existing settlements by anything except highway; limited accessibility to pedestrians; and lack of coordination with surrounding projects in terms of design, signs, lighting and parking.

Sec. 7. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

* * *

(d) Fees for residential development in a Vermont neighborhood designated according to 24 V.S.A. § 2793d shall be no more than 50 percent of the fee otherwise charged, with 50 percent due with the application and 50 percent due within 30 days after issuance of a decision.

Sec. 8. 10 V.S.A. § 6086(a)(5) is amended to read:

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, sidewalks, bikeways, waterways, railways, airports, and airways, and other means of transportation existing or proposed and provides appropriate connections to transit, bicycle, and pedestrian networks, where existing or planned, with the objective of minimizing motor vehicle use.

Sec. 9. 10 V.S.A. § 6086(a)(9)(L) is amended to read:

(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in

~~accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.~~

Settlement Patterns.

(i) Inside existing settlements, a permit shall be granted for development or subdivision of land if the applicant, in addition to other applicable criteria, demonstrates that the project will not significantly detract from Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by complying with planned densities that are appreciably higher than densities outside existing settlements within the municipality and region.

(ii) In rural areas outside existing settlements, a permit shall be granted for development or subdivision if, in addition to all other applicable criteria, the applicant demonstrates that the project:

(I) will not substantially detract from Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by contributing to overall densities that are appreciably lower than densities planned for existing settlements within the municipality and region;

(II) will not establish or extend a pattern of strip development along public highways. In situations in which a pattern of strip development has already been established, development should reinforce compact in-fill site design;

(III) will promote an efficient use of land, energy, roads, utilities and other supporting infrastructure through compact site development, clustering, or conservation subdivision design, in order to avoid conflicts with agriculture, forestry, and other natural resource-based land uses; and will promote the preservation of open space, as well as the protection of headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forest lands, and primary agricultural soils.

* * * Consolidated Appeals * * *

Sec. 10. 10 V.S.A. § 8502(9) is added to read:

(9) "State board," also referred to as the "Vermont downtown development board," means a board created pursuant to 24 V.S.A. § 2792.

Sec. 11. 10 V.S.A. § 8503(b)(4) is added to read:

(4) Appeals from designation decisions issued by the state board in its review of a Vermont neighborhood for conformance with the criteria of 24 V.S.A. § 2793d.

Sec. 12. 10 V.S.A. § 8504(a) is amended to read:

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, a district coordinator, or a district commission under the provisions of law listed in section 8503 of this title, or any party by right, may appeal to the environmental court. Within 30 days of the date of a Vermont neighborhood designation decision issued by the state board under 24 V.S.A. chapter 76A, an interested person, as defined in 24 V.S.A. § 4465(b), may appeal to the environmental court.

Sec. 13. 10 V.S.A. § 8504(c)(2) is amended to read:

(2) Upon the filing of an appeal from the act or decision of the secretary or from a Vermont neighborhood designation decision of the state board under the provisions of law listed in section 8503 of this title, the appellant shall provide notice of the filing of an appeal to the following persons: the applicant before the agency of natural resources or the state board, if other than the appellant; the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for the municipality in which the project is located; if the project site is located on a boundary, any adjacent Vermont municipality and the municipal and regional planning commissions for that municipality; any state agency affected; the solid waste management district in which the project is located, if the project constitutes a facility pursuant to subdivision 6602(10) of this title; all persons required to receive notice of receipt of an application or notice of the issuance of a draft permit; and all persons on any mailing list for the decision involved. In addition, the appellant shall publish notice not more than 10 days after providing notice as required under this subsection, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the decision.

Sec. 14. 10 V.S.A. § 8504(n) is amended to read:

(n) Intervention. Any person may intervene in a pending appeal if that person:

(1) appeared as a party in the action appealed from and retained party status;

- (2) is a party by right;
- (3) is the natural resources board, or either panel of the board;
- (4) is a person aggrieved, as defined in this chapter;
- (5) qualifies as an "interested person," as established in 24 V.S.A. § 4465, with respect to appeals under 24 V.S.A. chapter 117 or appeals of a Vermont neighborhood designation decision by the state board; or
- (6) meets the standard for intervention established in the Vermont Rules of Civil Procedure.

* * * Chapter 117 Conditional Use Appeals * * *

Sec. 15. 24 V.S.A. § 4471(e) is added to read:

(e) Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel that the density of a proposed residential development within a designated downtown development district, designated growth center, or Vermont neighborhood seeking conditional use approval shall not result in an undue adverse effect on the character of the area affected as provided in subdivision 4414(3)(A)(ii) of this title is not subject to appeal.

* * * Reports * * *

Sec. 16. REPORT ON POLLUTION CONTROL SYSTEM

By no later than January 15, 2009, the secretary of natural resources shall report to the legislative committees on natural resources and energy with regard to the agency's implementation of and compliance with the municipal pollution control priority system rules, and as to the impact of these rules on development.

Sec. 17. STATE SURPLUS LAND AND HOUSING

The department of housing and community affairs, in consultation with the Vermont housing finance agency, the Vermont housing and conservation board, and other interested parties, shall develop program recommendations for the use of state land that may be available and appropriate for the creation of affordable housing, exclusively. The proposal shall include methods to ensure that each affordable housing project shall include a substantial number of permanently affordable units. The department shall present the program recommendations no later than January 15, 2009 to the house committee on general, housing and military affairs, the senate committee on economic development, housing and general affairs, and the house and senate committees on natural resources and energy.

Rep. Peterson of Williston, for the committee on Ways and Means, recommended the amendment offered by the committee on Natural Resources and Energy be amended as follows:

First: In Sec. 2, in 24 V.S.A. § 2793d(d), by striking subdivisions (1) through (3) and inserting new subdivisions (1) through (3) to read:

(1) The agency of natural resources shall charge no more than a \$50.00 fee for wastewater applications under 3 V.S.A. § 2822(j)(4) where the applicant has received an allocation for sewer capacity from an approved municipal system. Act 250 fees under 10 V.S.A. § 6083a for residential developments in Vermont neighborhoods shall be 50 percent of the fee otherwise applicable.

(2) Fifty percent of Act 250 fees under 10 V.S.A. § 6083a for proposed development in Vermont neighborhoods shall be paid upon application, and 50 percent shall be paid within 30 days of the issuance or denial of the permit.

(3) No land gains tax under Chapter 236 of Title 32 shall be levied on a transfer of land in a Vermont neighborhood.

Second: By striking Sec. 7 and inserting a new Sec. 7 to read:

Sec. 7. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

* * *

(d) Fees for residential development in a Vermont neighborhood designated according to 24 V.S.A. § 2793d shall be no more than 50 percent of the fee otherwise charged under this section, with 50 percent due with the application and 50 percent due within 30 days after issuance or denial of the permit.

and the committee further recommends that the underlying bill be amended as follows:

First: On pages 14 and 15, by striking Sec. 4a and inserting a new Sec. 4a to read:

Sec. 4a. 24 V.S.A. § 2793e is added to read:

§2793e. MUNICIPAL FEE FOR EXEMPT HOUSING UNIT IN A VERMONT NEIGHBORHOOD

(a) The developer of a project in a Vermont neighborhood designated in accordance with 24 V.S.A. § 2793d and exempted from Act 250 review under the definition of "development" in 10 V.S.A. § 6001(3)(B) shall pay a municipal fee of \$500.00 for each housing unit in the exempt project. The fee

shall be paid to the municipality in which the development is located at the time of the closing of the initial sale of the unit. Municipalities shall have the authority to collect and enforce fees imposed by this section in the manner authorized for the collection of municipal impact fees under chapter 131 of Title 24.

(b) Revenues from the fees imposed by this section may be used by the municipality only to improve or create public infrastructure required by the Vermont neighborhoods program under 24 V.S.A. § 2793d; to cover the municipality's expenses of the planning process relating to the Vermont neighborhoods program; or to create pedestrian and multimodal transportation infrastructure, recreation facilities, or other services deemed necessary by the municipality as a result of new housing units created under the Vermont neighborhoods program.

Second: On page 27, by striking Sec. 14 and inserting a new Sec. 14 to read:

Sec. 14. 32 V.S.A. § 9602(1) is amended to read:

A tax is hereby imposed upon the transfer by deed of title to property located in this state. The amount of the tax equals one and ~~one-quarter~~

one-quarter percent of the value of the property transferred, or \$1.00, whichever is greater, except as follows:

(1) with respect to the transfer of property to be used for the principal residence of the transferee; the tax shall be imposed at the rate of five-tenths of one percent of the first \$100,000.00 in value of the property transferred and at the rate of one and ~~one-quarter~~ one-quarter percent of the value of the property transferred in excess of \$100,000.00; except that no tax shall be imposed on the first \$110,000.00 in value of the property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont housing and conservation trust fund or which the Vermont housing and finance agency or U.S. Department of Agriculture and Rural Development has committed to make or purchase and tax at the rate of one and one-quarter percent shall be imposed on the value of that property in excess of \$110,000.00.

Rep. Heath of Westford, for the committee on Appropriations, recommends the bill ought to pass when amended as recommended by the Committee on Natural Resources and Energy and when further amended as recommended by the Committee on Ways and Means.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Thereupon, **Rep. Klein of East Montpelier** moved to withdraw the report of the committee on Natural Resources and Energy, which was agreed to and **Rep. Peterson of Williston** moved to withdraw the report of the committee on Ways and Means, which was agreed to.

Pending the question, Shall the bill be read the third time? **Rep. Head of South Burlington** moved to amend the bill as follows:

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

* * * Vermont Neighborhoods Program * * *

Sec. 1. 24 V.S.A. § 2791(15) is added to read:

(15) "Vermont neighborhood" means an area of land that is in a municipality with an approved plan, a confirmed planning process, zoning bylaws, and subdivision regulations, and:

(A) that is located in one of the following:

(i) A designated downtown, village center, new town center, or growth center; or

(ii) An area of land that is within the municipality and outside but contiguous to a designated downtown, village center, or new town center, and is not more than 50 percent of the total acreage of the designated downtown, village center, or new town center; and

(B) that contains substantially the following characteristics:

(i) Its contiguous land, if any, complements the existing downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and is consistent with smart growth principles.

(ii) It is served by either a municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources.

(iii) It incorporates minimum residential densities of no fewer than four units of single-family, detached dwelling units per acre, and higher densities for duplexes and multi-family housing.

(iv) It incorporates neighborhood design standards that promote compact, pedestrian-oriented development patterns and networks of sidewalks or paths for both pedestrians and bicycles that connect with adjacent development areas.

Sec. 2. 24 V.S.A. § 2793d is added to read:

§ 2793d. DESIGNATION OF VERMONT NEIGHBORHOODS

(a) A municipality that has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title, and has a designated downtown district, a designated village center, a designated new town center or a designated growth center served by municipal sewer infrastructure or a community or alternative wastewater system approved by the agency of natural resources, is authorized to apply for designation of a Vermont neighborhood. A municipal decision to apply for designation shall be developed according to the procedures established in sections 4441 and 4442 of this title, with regard to the development by the planning commission of a proposed bylaw, and its adoption or rejection by the municipal legislative body.

Designation is possible in two different situations:

(1) If an application is submitted in compliance with this subsection for a designated Vermont neighborhood that would have boundaries that are entirely within the boundaries of a designated downtown district, designated village center, designated new town center, or designated growth center, the downtown board shall issue the designation.

(2) If an application is submitted in compliance with this subsection, by a municipality that does not have a designated growth center and that proposes to create a Vermont neighborhood that has boundaries that include land that is not within its designated downtown, village center, or new town center, the downtown board, in its expanded configuration in which it considers growth center applications, shall consider the application. This application may be for approval of one or more Vermont neighborhoods that is outside but contiguous to a designated downtown district, designated village center, or designated new town center. The application for designation shall include a map of the boundaries of the proposed Vermont neighborhood, including the property outside but contiguous to a designated downtown district, village center, or new town center and evidence that the municipality has notified the regional planning commission and the regional development corporation of its application for this designation.

(b) Within 45 days of receipt of a completed application, the expanded downtown board shall designate a Vermont neighborhood if the board finds the applicant has met the requirements of subsections (a) and (c) of this section. When designating a Vermont neighborhood, the board may change the boundaries that were contained in the application by reducing the size of the

area proposed to be included in the designated neighborhood, but may not include in the designation land that was not included in the application for designation. Any Vermont neighborhood designation shall terminate when the underlying downtown, village center, new town center, or growth center designation terminates.

(c) The applicant shall demonstrate all of the following:

(1) The municipality has a duly adopted and approved plan and a planning process that is confirmed in accordance with section 4350 of this title, and has adopted zoning bylaws and subdivision regulations in accordance with section 4442 of this title.

(2) The cumulative total of all Vermont neighborhood land located within the municipality but outside a designated downtown district, designated village center, or designated new town center is not more than 50 percent of the total acreage of the designated downtown district, village center, or new town center.

(3) The contiguous land of the Vermont neighborhood complements the existing designated downtown district, village center, or new town center by integrating new housing units with existing residential neighborhoods, commercial and civic services and facilities, and transportation networks, and the contiguous land, in combination with the designated downtown development district, village center, or new town center, is consistent with smart growth principles established under subdivision 2791(13) of this title.

(4) The Vermont neighborhood will be served by either:

(A) a municipal sewer infrastructure; or

(B) a community or alternative wastewater system approved by the agency of natural resources.

(5) The municipal zoning bylaw requires both of the following:

(A) Minimum residential densities that may be calculated by excluding land occupied by community wastewater systems, flood hazard areas, wetlands, rare and irreplaceable natural areas, necessary wildlife habitat, or other resource lands that are not able to be developed due to state or federal regulation, and that shall require the following:

(i) No fewer than four units of single-family, detached dwelling units per acre, exclusive of accessory apartments.

(ii) Higher density for duplexes and multi-family housing.

(B) Neighborhood design standards that promote compact, pedestrian-oriented development patterns that include the following:

(i) Pedestrian scale and orientation of development. Networks of sidewalks or paths, or both, are provided and available to the public to connect the Vermont neighborhood with adjacent development areas, existing and planned adjacent sidewalks, paths, and public streets and the designated downtown, village center, or new town center.

(ii) Interconnected and pedestrian-friendly street networks. Street networks are designed to safely accommodate both pedestrians and bicycles through the provisions of sidewalks on at least one side of the street, on-street parking, and traffic-calming features.

(d) Incentives for Vermont neighborhoods include the following:

(1) The agency of natural resources shall charge no more than a \$50.00 fee for wastewater applications under 3 V.S.A. § 2822(j)(4) where the applicant has received an allocation for sewer capacity from an approved municipal system. Act 250 fees under 10 V.S.A. § 6083a for residential developments in Vermont neighborhoods shall be 50 percent of the fee otherwise applicable.

(2) Fifty percent of Act 250 fees under 10 V.S.A. § 6083a for proposed development in Vermont neighborhoods shall be paid upon application, and 50 percent shall be paid within 30 days of the issuance or denial of the permit.

(3) No land gains tax under Chapter 236 of Title 32 shall be levied on a transfer of land in a Vermont neighborhood.

(e) Initial designation shall be for a period of three years. After that time has expired, the expanded state board shall review a Vermont neighborhood concurrently with the next periodic review conducted of the underlying designated entity, even if the underlying designated entity was not designated originally by the expanded state board. However, the expanded board may review compliance with the designation requirements at more frequent intervals. If at any time the expanded state board determines that the designated Vermont neighborhood no longer meets the standards for designation established in this section, it may take any of the following actions:

(1) require corrective action;

(2) remove the Vermont neighborhood designation, with that removal not affecting any of the benefits previously awarded to the designated Vermont neighborhood; or

(3) limit eligibility for the benefits established in this chapter, with the limitation not affecting any of the benefits previously awarded to the designated Vermont neighborhood.

(f) Designation decisions made under this section may be appealed to the environmental court pursuant to Rule 5 of the Vermont Rules for Environmental Proceedings by an interested person as defined in subsection 4465(b) of this title. Review by the environmental court shall be de novo.

* * * Agency of Natural Resources Fees * * *

Sec. 3. 3 V.S.A. § 2822(j)(4)(D) is amended to read:

(D) Notwithstanding the other provisions of this subdivision;

* * *

(ii) when a potable water supply is subject to the fee provisions of this subdivision and subdivision (j)(7)(A) of this section, only the fee required by subdivision (j)(7)(A) shall be assessed; ~~and~~

(iii) when a project is subject to the fee provision for the subdivision of land and the fee provision for potable water supplies and wastewater systems of this subdivision, only the higher of the two fees shall be assessed; and

(iv) when a project is located in a Vermont neighborhood, as designated under 24 V.S.A. chapter 76A, the fee shall be no more than \$50.00 in situations in which the application has received an allocation for sewer capacity from an approved municipal system.

* * * Act 250 Provisions * * *

Sec. 4. 10 V.S.A. § 6001(3)(B) and (C) are amended to read:

(3)(A) "Development" means:

* * *

(B)(i) Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of any combination of mixed income housing or mixed use and is located entirely within a growth center designated pursuant to 24 V.S.A. § 2793c or within a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" means:

(i)(I) Construction of mixed income housing with 200 or more housing units or a mixed use project with 200 or more housing units, in a municipality with a population of 25,000 or more.

(II) Construction of mixed income housing with 100 or more housing units or a mixed use project with 100 or more housing units, in a municipality with a population of ~~20,000~~ 15,000 or more, ~~but less than 25,000~~.

~~(ii)~~(III) Construction of mixed income housing with 50 or more housing units or a mixed use project with 50 or more housing units, in a municipality with a population of ~~10,000~~ 7,000 or more but less than ~~20,000~~ 15,000.

~~(iii)~~(IV) Construction of mixed income housing with 30 or more housing units or a mixed use project with 30 or more housing units, in a municipality with a population of ~~5,000~~ 3,000 or more and less than ~~10,000~~ 7,000.

~~(iv)~~(V) Construction of mixed income housing with 25 or more housing units or a mixed use project with 25 or more housing units, in a municipality with a population of less than ~~5,000~~ 3,000.

~~(v)~~(VI) Construction of 10 or more units of mixed income housing or a mixed use project with 10 or more housing units where the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the state or national register of historic places. However, demolition shall not be considered to create jurisdiction under this subdivision if the division for historic preservation has determined the proposed demolition will have no adverse effect, an effect that will not be adverse provided that specified conditions are met, or an adverse effect that will be adequately mitigated, and if any imposed conditions are enforceable through a grant condition, deed covenant, or other legally binding document.

(ii) Notwithstanding the provisions of subdivision (3)(A) of this section, if a project consists exclusively of mixed income housing located entirely within a Vermont neighborhood designated pursuant to 24 V.S.A. § 2793d, but outside of a growth center designated pursuant to 24 V.S.A. § 2793c or a downtown development district designated pursuant to 24 V.S.A. § 2793, "development" shall be determined in accordance with the numerical thresholds established in subdivision (3)(B)(i) of this section.

(C) For the purposes of determining jurisdiction under subdivisions (3)(A) and (3)(B) of this section:

~~(i) Housing units constructed by a person partially or completely outside a designated downtown development district or designated growth center shall not be counted to determine jurisdiction over housing units constructed by a person entirely within a designated downtown development district or designated growth center.~~

(ii) Within any continuous period of five years, housing units constructed by a person entirely within a designated downtown district, ~~or designated growth center, or designated Vermont neighborhood~~ shall be counted together with housing units constructed by a person partially or completely outside a designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood~~ to determine jurisdiction over the housing units constructed by a person partially or completely outside the designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood~~ and within a five-mile radius.

(iii) All housing units constructed by a person within a designated downtown development district, ~~or designated growth center, or designated Vermont neighborhood within any continuous period of five years,~~ commencing on or after the effective date of this subdivision, shall be counted together, but only if they are part of a discrete project located on a single tract or multiple contiguous tracts of land.

(iv) In the case of a project undertaken by a railroad, no portion of a railroad line or railroad right-of-way that will not be physically altered as part of the project shall be included in computing the amount of land involved. In the case of a project undertaken by a person to construct a rail line or rail siding to connect to a railroad's line or right-of-way, only the land used for the rail line or rail siding that will be physically altered as part of the project shall be included in computing the amount of land involved.

(v) ~~Notwithstanding subdivision (C)(iii) of this subdivision (3), any affordable housing units, as defined by this section, (3)(A)(iv) and subdivision (19) of this section, jurisdiction shall be determined exclusively by counting housing units, and when counting housing units to determine jurisdiction, only housing units in a discrete project on a single tract or multiple contiguous tracts of land shall be counted, regardless of whether located within an area designated under 24 V.S.A. chapter 76A, provided that the housing units are affordable housing units, as defined by this section, that are subject to housing subsidy covenants as defined in 27 V.S.A. § 610 that preserve their affordability for a period of 99 years or longer, and that are constructed by a person within a designated downtown development district, designated village center, or designated growth center, shall count toward the total number of housing units used to determine jurisdiction only if they were constructed within the previous 12-month period, commencing on or after the effective date of this subdivision.~~

Sec. 4a. 24 V.S.A. § 2793e is added to read:

§2793e. MUNICIPAL FEE FOR EXEMPT HOUSING UNIT IN A VERMONT NEIGHBORHOOD

(a) The developer of a project in a Vermont neighborhood designated in accordance with 24 V.S.A. § 2793d and exempted from Act 250 review under the definition of "development" in 10 V.S.A. § 6001(3)(B) shall pay a municipal fee of \$500.00 for each housing unit in the exempt project. The fee shall be paid to the municipality in which the development is located at the time of the closing of the initial sale of the unit. Municipalities shall have the authority to collect and enforce fees imposed by this section in the manner authorized for the collection of municipal impact fees under chapter 131 of Title 24.

(b) Revenues from the fees imposed by this section may be used by the municipality only to improve or create public infrastructure required by the Vermont neighborhoods program under 24 V.S.A. § 2793d; to cover the municipality's expenses of the planning process relating to the Vermont neighborhoods program; or to create pedestrian and multimodal transportation infrastructure, recreation facilities, or other services deemed necessary by the municipality as a result of new housing units created under the Vermont neighborhoods program.

* * * Rules on Mixed Income Housing * * *

Sec. 4b. 3 V.S.A. § 2472(a) is amended to read:

(a) The department of housing and community affairs is created within the agency of commerce and community development. The department shall:

* * *

(4) In partnership with the division for historic preservation, direct, supervise, and administer the Vermont downtown program, and any other program designed to preserve the continued economic vitality of the state's traditional commercial districts. By no later than May 1, 2009, the commissioner, in consultation with the Vermont housing finance agency and the Vermont housing and conservation trust, shall adopt rules that establish mechanisms and options for assuring affordability, which shall be used in determinations of jurisdiction over mixed income housing, under 10 V.S.A. chapter 151.

Sec. 4c. 10 V.S.A. § 6001(27) is amended to read:

(27) "Mixed income housing" means a housing project in which at least ~~15~~ 20 percent of the total housing units are ~~affordable housing units~~:

(A) Owner-occupied housing, the purchase price of which does not exceed 80 percent of the new construction targeted area purchase price limits established by the Vermont housing finance agency. Owner household income shall meet Vermont housing finance agency income limits. The housing shall be in compliance with affordability requirements established in rules adopted by the commissioner of housing and community affairs, in consultation with the Vermont housing finance agency and the Vermont housing and conservation board, and shall have a duration of affordability of no less than 15 years; or

(B) Housing that is rented by the occupants whose gross annual household income does not exceed 60 percent of the county median income, or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development for use with the Housing Credit Program under Section 42(g) of the Internal Revenue Code, and the total annual cost of the housing, as defined at Section 42(g)(2)(B) is not more than 30 percent of the gross annual household income as defined at Section 42(g)(2)(C), and with a duration of affordability of no less than 15 years.

Sec. 4d. EFFECTIVE DATES

The following sections shall take effect upon May 1, 2009: Sec. 4, which amends the 10 V.S.A. § 6001(3), definition of “development”; Sec. 4c, which amends the 10 V.S.A. § 6001(27), definition of “mixed income housing”; and Sec. 4a, as proposed by the Committee on Ways and Means, which adds 24 V.S.A. § 2793e, municipal incentives.

Sec. 5. REPEAL

10 V.S.A. § 6001(16)(rural growth areas definition) is repealed.

Sec. 6. 10 V.S.A. § 6001(31) and (32) are added to read:

(31) “Existing settlement” means an extant community center similar to the traditional Vermont center which is compact in size and contains a mixture of uses which may include commercial, industrial, and residential components which are, to a large extent, within walking distance of each other, and which have appreciably higher densities than densities that occur outside these areas. For the purposes of this subdivision, the term shall include downtown development districts designated in accordance with 24 V.S.A. § 2793, village centers designated in accordance with 24 V.S.A. § 2793a, new town centers designated in accordance with 24 V.S.A. § 2793b, growth centers designated in accordance with 24 V.S.A. § 2793c, and Vermont neighborhoods designated in accordance with 24 V.S.A. § 2793d. This term specifically excludes areas of

commercial, highway-oriented uses commonly referred to as "strip development."

(32) "Strip development" means linear commercial development along an arterial highway leading from an existing settlement or connecting two existing settlements. The characteristics of strip development, which need not all be present in order for strip development to exist, include the following: broad road frontage; individual curb cuts for individual projects; lack of connection to existing settlements by anything except highway; limited accessibility to pedestrians; and lack of coordination with surrounding projects in terms of design, signs, lighting and parking.

Sec. 7. 10 V.S.A. § 6083a is amended to read:

§ 6083a. ACT 250 FEES

* * *

(d) Fees for residential development in a Vermont neighborhood designated according to 24 V.S.A. § 2793d shall be no more than 50 percent of the fee otherwise charged under this section, with 50 percent due with the application and 50 percent due within 30 days after issuance or denial of the permit.

Sec. 8. 10 V.S.A. § 6086(a)(5) is amended to read:

(5) Will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, sidewalks, bikeways, waterways, railways, airports, and airways, and other means of transportation existing or proposed and provides appropriate connections to transit, bicycle, and pedestrian networks, where existing or planned, with the objective of minimizing motor vehicle use.

Sec. 9. 10 V.S.A. § 6086(a)(9)(L) is amended to read:

~~(L) Rural growth areas. A permit will be granted for the development or subdivision of rural growth areas when it is demonstrated by the applicant that in addition to all other applicable criteria provision will be made in accordance with subdivisions (9)(A) "impact of growth," (G) "private utility service," (H) "costs of scattered development" and (J) "public utility services" of subsection (a) of this section for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage.~~

Settlement Patterns.

(i) Inside existing settlements, a permit shall be granted for development or subdivision of land if the applicant, in addition to other

applicable criteria, demonstrates that the project will not significantly detract from Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by complying with planned densities that are appreciably higher than densities outside existing settlements within the municipality and region.

(ii) In rural areas outside existing settlements, a permit shall be granted for development or subdivision if, in addition to all other applicable criteria, the applicant demonstrates that the project:

(I) will not substantially detract from Vermont's historic settlement pattern of compact village and urban centers separated by rural countryside, which shall be accomplished by contributing to overall densities that are appreciably lower than densities planned for existing settlements within the municipality and region;

(II) will not establish or extend a pattern of strip development along public highways. In situations in which a pattern of strip development has already been established, development should reinforce compact in-fill site design;

(III) will promote an efficient use of land, energy, roads, utilities and other supporting infrastructure through compact site development, clustering, or conservation subdivision design, in order to avoid conflicts with agriculture, forestry, and other natural resource-based land uses; and will promote the preservation of open space, as well as the protection of headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forest lands, and primary agricultural soils.

* * * Consolidated Appeals * * *

Sec. 10. 10 V.S.A. § 8502(9) is added to read:

(9) "State board," also referred to as the "Vermont downtown development board," means a board created pursuant to 24 V.S.A. § 2792.

Sec. 11. 10 V.S.A. § 8503(b)(4) is added to read:

(4) Appeals from designation decisions issued by the state board in its review of a Vermont neighborhood for conformance with the criteria of 24 V.S.A. § 2793d.

Sec. 12. 10 V.S.A. § 8504(a) is amended to read:

(a) Act 250 and agency appeals. Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, a district coordinator, or a district commission under the provisions of law listed in

section 8503 of this title, or any party by right, may appeal to the environmental court. Within 30 days of the date of a Vermont neighborhood designation decision issued by the state board under 24 V.S.A. chapter 76A, an interested person, as defined in 24 V.S.A. § 4465(b), may appeal to the environmental court.

Sec. 13. 10 V.S.A. § 8504(c)(2) is amended to read:

(2) Upon the filing of an appeal from the act or decision of the secretary or from a Vermont neighborhood designation decision of the state board under the provisions of law listed in section 8503 of this title, the appellant shall provide notice of the filing of an appeal to the following persons: the applicant before the agency of natural resources or the state board, if other than the appellant; the owner of the land where the project is located if the applicant is not the owner; the municipality in which the project is located; the municipal and regional planning commissions for the municipality in which the project is located; if the project site is located on a boundary, any adjacent Vermont municipality and the municipal and regional planning commissions for that municipality; any state agency affected; the solid waste management district in which the project is located, if the project constitutes a facility pursuant to subdivision 6602(10) of this title; all persons required to receive notice of receipt of an application or notice of the issuance of a draft permit; and all persons on any mailing list for the decision involved. In addition, the appellant shall publish notice not more than 10 days after providing notice as required under this subsection, at the appellant's expense, in a newspaper of general circulation in the area of the project which is the subject of the decision.

Sec. 14. 10 V.S.A. § 8504(n) is amended to read:

(n) Intervention. Any person may intervene in a pending appeal if that person:

(1) appeared as a party in the action appealed from and retained party status;

(2) is a party by right;

(3) is the natural resources board, or either panel of the board;

(4) is a person aggrieved, as defined in this chapter;

(5) qualifies as an "interested person," as established in 24 V.S.A. § 4465, with respect to appeals under 24 V.S.A. chapter 117 or appeals of a Vermont neighborhood designation decision by the state board; or

(6) meets the standard for intervention established in the Vermont Rules of Civil Procedure.

* * * Chapter 117 Conditional Use Appeals * * *

Sec. 15. 24 V.S.A. § 4471(e) is added to read:

(e) Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel that the density of a proposed residential development within a designated downtown development district, designated growth center, or Vermont neighborhood seeking conditional use approval shall not result in an undue adverse effect on the character of the area affected as provided in subdivision 4414(3)(A)(ii) of this title is not subject to appeal.

* * * Reports * * *

Sec. 16. REPORT ON POLLUTION CONTROL SYSTEM

By no later than January 15, 2009, the secretary of natural resources shall report to the legislative committees on natural resources and energy with regard to the agency's implementation of and compliance with the municipal pollution control priority system rules, and as to the impact of these rules on development.

Sec. 17. STATE SURPLUS LAND AND HOUSING

The department of housing and community affairs, in consultation with the Vermont housing finance agency, the Vermont housing and conservation board, and other interested parties, shall develop program recommendations for the use of state land that may be available and appropriate for the creation of housing. The proposal shall include methods to ensure that each housing project shall include a substantial amount of affordable housing, including permanently affordable units. The department shall present the program recommendations no later than January 15, 2009 to the house committee on general, housing and military affairs, the senate committee on economic development, housing and general affairs, and the house and senate committees on natural resources and energy.

* * * Sales and Use Tax provisions * * *

Sec. 18. 32 V.S.A. § 9819(c)(2) is amended to read:

(2) "Qualified project" means expansion or rehabilitation of contiguous real property that is or will be used at the completion of the expansion or rehabilitation as of a structure in a downtown development district or Vermont neighborhood, designated under in accordance with chapter 76A of Title 24, but only to the extent that the expansion or rehabilitation becomes an integral component of the real property and the project does not seek qualification for either tax credit authorized under subsection 5930cc(a) or (b) of this title. "Qualified project" also means new construction of contiguous real property

that will be used at the completion of the construction ~~as a structure~~ in a downtown development district or Vermont neighborhood, ~~designated under in accordance with~~ chapter 76A of Title 24, but only to the extent that the new construction is compatible with the buildings that contribute to the integrity of the district or Vermont neighborhood in terms of materials, features, size, scale, and proportion, and massing of buildings.

* * * Land Gains Tax * * *

Sec. 19. 32 V.S.A. § 10002(p) is added to read:

(p) Also excluded from the definition of "land" is any land in a Vermont neighborhood designated in accordance with 24 V.S.A. § 2793d.

* * * VHFA Sunset Repeal * * *

Sec. 20. 10 V.S.A. § 625(1) is amended to read:

(1) The residential housing is primarily for occupancy by persons and families of low and moderate income, or qualifies for financing with proceeds of federally tax-exempt obligations, or at least 20 percent of the units are for occupancy by persons and families of low and moderate income;

Sec. 21. EFFECTIVE DATE

Sec. 20 of this act shall take effect July 1, 2008. The prospective repeal provisions of Sec. 7a of No. 189 of the 2005 Adj. Sess. (2006) shall have no force or effect.

* * * Housing Tax Credit * * *

Sec. 22. 32 V.S.A. § 5930u is amended to read:

§ 5930u. TAX CREDIT FOR AFFORDABLE HOUSING

(a) As used in this section:

(1) "Affordable housing project" or "project" means a rental housing project identified in 26 U.S.C. § 42(g) or owner-occupied housing identified in 26 U.S.C. § 143(e) and (f) and eligible under the Vermont housing finance agency allocation plan criteria.

(2) "Affordable housing tax credits" means the tax credit provided by this subchapter.

(3) "Allocating agency" means the Vermont housing finance agency.

(4) "Committee" means the joint committee on tax credits consisting of five members; a representative from the department of housing and community affairs, the Vermont housing and conservation board, the Vermont housing

finance agency, the Vermont state housing authority, and the office of the governor.

(5) "Credit certificate" means a certificate issued by the allocating agency to a taxpayer that specifies the amount of affordable housing tax credits that can be applied against the taxpayer's individual or corporate income tax or franchise or insurance premium tax liability as provided in this subchapter.

(6) "Eligible applicant" means any municipality, private sector developer, department of state government as defined in 10 V.S.A. § 6302(a), nonprofit organization qualifying under Section 501(c)(3) of the Internal Revenue Code, or cooperative housing organization, the purpose of which is the creation and retention of affordable housing for lower income Vermonters, and the bylaws that require that housing to be maintained as affordable housing for lower income Vermonters on a perpetual basis.

(7) "Eligible cash contribution" means an amount of cash contributed to the owner, developer, or sponsor of an affordable housing project and determined by the allocating agency as eligible for affordable housing tax credits.

(8) "Section 42 credits" means tax credit provided by 26 U.S.C. §§ 38 and 42.

(9) "Allocation plan" means the plan recommended by the committee and approved by the Vermont housing finance agency, which sets forth the eligibility requirements and process for selection of eligible housing projects to receive affordable housing tax credits under this section. The allocation plan shall include requirements for creation and retention of affordable housing for low income persons, and requirements to ensure that eligible housing is maintained as affordable by subsidy covenant, as defined in 27 V.S.A. § 610 on a perpetual basis, and meets all other requirements of the Vermont housing finance agency related to affordable housing.

(b)(1) ~~Affordable housing credit allocation. Prior to the placement of an affordable housing project in service, the owner, or a person having the right to acquire ownership of a building, may apply to the committee for an allocation of affordable housing tax credits under this section. The committee shall advise the allocating agency on an affordable housing tax credit application based upon published priorities and criteria. An eligible applicant may apply to the allocating agency for an allocation of affordable housing tax credits under this section related to an affordable housing project authorized by the allocating agency under the allocation plan. In the case of a specific affordable rental housing project, the eligible applicant must also be the owner or a person~~

having the right to acquire ownership of the building and must apply prior to placement of the affordable housing project in service. In the case of owner-occupied housing units, the applicant must apply prior to purchase of the unit and must ensure that the allocated funds will be used to ensure that the housing qualifies as affordable for all future owners of the housing. The allocating agency shall issue a letter of approval if it finds that the applicant meets the priorities, criteria, and other provisions of subdivision (2) of this subsection. The burden of proof shall be on the applicant.

(2) Upon receipt of a completed application, an allocation of affordable housing tax credits with respect to a project under this section shall be granted to an applicant, provided the applicant demonstrates to the satisfaction of the committee all of the following:

(A) The owner of the project has received from the allocating agency a binding commitment for, a reservation or allocation of, an out-of-cap determination letter for, Section 42 credits, or meets the requirements of the allocation plan for development of units to be owner-occupied;

(B) The project has received community support.

(c) Amount of credit. A taxpayer who makes an eligible cash contribution shall be entitled to claim against the taxpayer's individual income, corporate, franchise, or insurance premium tax liability a credit in an amount specified on the taxpayer's credit certificate. The first-year allocation of a credit amount to a taxpayer shall also be deemed an allocation of the same amount in each of the following four years.

* * *

(e) Claim for credit. A taxpayer claiming affordable housing tax credits shall submit with each return on which such credit is claimed a copy of the allocating agency's credit allocation to the affordable housing project and the taxpayer's credit certificate. Any unused affordable housing tax credit may be carried forward to reduce the taxpayer's tax liability for no more than 14 succeeding tax years, following the first year the affordable housing tax credit is allowed.

(f) [Deleted.]

(g) In any fiscal year, the allocating agency may award up to \$400,000.00 in total first-year credit allocations to all applicants under this subchapter for rental housing projects; and may award up to \$100,000.00 per year for owner-occupied unit applicants. In any fiscal year, total first-year allocations plus succeeding-year deemed allocations shall not exceed \$2,000,000.00 \$2,500,000.00.

* * * Property Transfer Tax * * *

Sec. 23. 32 V.S.A. § 9602(1) is amended to read:

A tax is hereby imposed upon the transfer by deed of title to property located in this state. The amount of the tax equals one and ~~one-quarter~~

one-quarter percent of the value of the property transferred, or \$1.00, whichever is greater, except as follows:

(1) with respect to the transfer of property to be used for the principal residence of the transferee; the tax shall be imposed at the rate of five-tenths of one percent of the first \$100,000.00 in value of the property transferred and at the rate of one and ~~one-quarter~~ one-quarter percent of the value of the property transferred in excess of \$100,000.00; except that no tax shall be imposed on the first \$110,000.00 in value of the property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont housing and conservation trust fund or which the Vermont housing and finance agency or U.S. Department of Agriculture and Rural Development has committed to make or purchase and tax at the rate of one and one-quarter percent shall be imposed on the value of that property in excess of \$110,000.00.

Sec 24. EFFECTIVE DATES

(a) Sec. 22 of this act, amending 32 V.S.A. § 5930u, shall apply to fiscal years 2009 and after.

(b) Sec. 23 of this act, amending 32 V.S.A. § 9602, shall apply to transfers on or after July 1, 2008.

* * * Preservation of Affordable Housing * * *

Sec. 25. 20 V.S.A. Part 7A, chapter 181 is added to read:

CHAPTER 181. RENTAL HOUSING SAFETY AND HABITABILITY
§ 3201. LEGISLATIVE PURPOSE AND INTENT

It is the intent of the general assembly to provide for rental housing safety and habitability and to establish a statewide rental housing inspection program and registry to achieve the following goals:

- (1) Promote the health and safety of the citizens of Vermont;
- (2) Facilitate compliance with existing health and safety standards;
- (3) Provide support to municipal health officers;
- (4) Create a resource for tenants and landlords;

(5) Enable communities to focus on problem properties;

(6) Encourage a private sector response to a public health and safety need;

(7) Reduce fire fatalities.

§ 3202. SAFE RENTAL HOUSING TASK FORCE

(a) A safe rental housing task force is created to consist of the following 12 members:

(1) The director of the division of fire safety or designee;

(2) The commissioner of the department of health or designee;

(3) The commissioner of the department of housing and community affairs or designee;

(4) The attorney general or designee;

(5) The executive director of the Vermont housing finance agency or designee.

(6) A representative of commercial landlords.

(7) A representative of nonprofit landlords.

(8) A tenant representative.

(9) A municipal inspection program representative.

(10) A town health officer from a municipality without an exempt program.

(11) A regional revolving loan fund representative.

(12) An architect.

(b) The speaker of the house and the senate president pro tempore shall appoint members of the task force that are not ex-officio and shall designate a chair.

(c) The task force shall, before January 15, 2009:

(1) Identify information to be gathered for the rental housing registry, develop a questionnaire for rental unit sites and coordinate with existing data collected by the department of health, the department of taxes, the department of housing and community affairs, and the department of public service.

(2) Develop a simplified rental housing code, to include lead safety, habitability, and basic life safety standards.

(3) Establish a priority for inspections based on factors including: the age of the rental unit, a score of the rental units' self-assessment, and complaints from rental units at the address.

(4) Develop procedures for scheduled, complaint-based, emergency and time-of-sale inspections, including a time frame and a priority for scheduled inspections.

(5) Develop standards for licensed rental housing inspectors, including:

(A) Training standards;

(B) A code of professional ethics.

(C) Curriculum outlines and a delivery mechanism.

(6) Recommend a fee structure necessary and appropriate to implement the inspection program and registry.

(7) Establish a procedure for issuing a certificate of habitability.

(8) Develop procedures to assure enforcement and compliance.

(9) Make recommendations regarding the role of town health officers in regard to safe rental housing in municipalities without an exempt program.

(10) Develop training and education resources for landlords and tenants, including all the following:

(A) A rental housing code self-assessment checklist.

(B) A one-stop shopping resource for rental unit owners and managers that provides:

(i) Lead safety, minimum housing habitability, and basic life safety standards available from one site.

(ii) Coordinated training across disciplines for owners and managers of rental housing units.

(11) Recommend incentives and develop a process for nonexempt municipalities to establish an inspection program.

(12) Establish an implementation schedule, to begin July 1, 2009, to include all the following:

(A) Training of inspectors and certification by the department of public safety.

(B) Collection of rental housing information for the registry.

(C) Collection of fees.

(D) Commencement of inspections beginning January 1, 2010.

(13) Recommend staffing levels necessary to establish and maintain the program and provide for enforcement.

(14) Recommend an appropriation sufficient to fund the certification program, licensing, complaint-driven inspections, enforcement, and the registry.

(15) Develop a system for coordinating appropriate displacement services.

(16) Develop a program and identify resources for repair and improvement.

(d) The task force shall submit a written report on its progress on or before January 15 of each year to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs.

§ 3203. RENTAL HOUSING SAFETY AND HABITABILITY FUND;
ESTABLISHED

(a) A rental housing safety and habitability fund is established in the state treasury for the purpose of creating a statewide rental housing inspection program to be administered by the department of public safety for the purposes of collecting and maintaining data about rental housing units in Vermont and providing education, training, and support to landlords and tenants to assure that the safety and habitability of rental housing are maintained for the benefit of owners, tenants, and communities. The fund shall provide financing for scheduled, complaint-based, and emergency inspections of rental housing units, the enforcement of orders issued in conjunction with inspections, and enhancing communications among owners, tenants, and compliance personnel.

(b) Proceeds from fees, grants, donations, contributions, and other sources of revenue that may be provided by statute or by rule may be deposited in the fund. Interest earned on the fund and any balances remaining at the end of a fiscal year shall be retained in the fund.

§ 3204. RENTAL HOUSING REGISTRY

The department of public safety in association with the Vermont housing finance agency, the department of health, and the department of housing and community affairs shall manage a database set up by a private contractor to include all rental housing, including rented single-family homes and rental units in owner-occupied multi-family buildings of two or more rental units and excluding vacation homes.

§ 3205. RENTAL HOUSING SAFETY INSPECTOR LICENSING PROGRAM

The department of public safety shall establish and manage a licensing program for rental housing safety inspectors beginning July 1, 2009.

§ 3206. RENTAL HOUSING HEALTH AND SAFETY STANDARDS

The department of public safety shall adopt minimum standards that apply to existing rental housing. The standards shall include life safety, electrical, plumbing, and boiler codes, the rental housing health code, and lead paint requirements.

§ 3207. RENTAL HOUSING SAFETY INSPECTION PROGRAM

The department of public safety shall establish a cyclical and point-of-sale rental housing safety inspection program beginning January 1, 2010.

(1) Regular inspections shall be carried out by a licensed rental housing safety inspector under contract with the unit owner to assure units meet the rental housing health and safety standards.

(2) Complaint-driven inspections shall be carried out by a licensed rental housing safety inspector under contract with the state or the municipality.

§ 3208. RULES

The department of public safety shall adopt rules to implement the recommendations of the safe rental housing task force to carry out the purposes of this chapter. The department shall propose such rules no later than January 15, 2009.

§ 3209. EXEMPTIONS

Rental housing units subject to the jurisdiction of municipal housing programs organized pursuant to 24 V.S.A. chapter 123 are exempt from the provisions of this chapter. This chapter shall not be interpreted to limit or decrease the authority of the exempt municipal housing program in regard to building, housing, and fire safety codes. A municipal program may lose this exemption if the commissioner of public safety determines that any of the following is true:

(1) The habitability and enforcement criteria, including standards for issuing certificates of habitability, are less stringent than those of the state program.

(2) Regularly scheduled inspections of the municipal program are less frequent than those of the state program.

(3) The municipal program permits rental of units that lack a current certificate of habitability.

(4) Any other aspect of the municipal program is less stringent than the state program.

Sec. 26. APPROPRIATION

In fiscal year 2009, there is appropriated from the general fund to the department of public safety the amount of \$30,000.00 to be used by the department for the purpose of retaining a consultant to assist the safe rental housing task force in carrying out its duties under chapter 181 of Title 20.

Which was agreed to.

Pending the question, Shall the bill be read the third time?

Recess

At eleven o'clock and twenty minutes in the forenoon, the Speaker declared a recess until the fall of the gavel.

At one o'clock and ten minutes in the afternoon, the Speaker called the House to order.

Rep. Jewett of Ripton in Chair.

Consideration Resumed; Third Reading Ordered

H. 863

Consideration resumed on House bill, entitled

An act relating to and preservation of affordable housing and smart growth development;

Pending the recurring question, Shall the bill be read the third time? **Rep. Atkins of Winooski** moved to amend the bill as follows:

By adding a new Sec. 6a to read as follows:

Sec. 6a. 10 V.S.A. §6025(f) is added to read:

(f) Any amendment to rules adopted under this section shall apply only to permits that have application dates after the effective date of the amendment.

Thereupon, **Rep. Atkins of Winooski** asked and was granted leave of the House to withdraw his amendment.

Speaker Symington back in Chair.

Pending the recurring question, Shall the bill be read the third time? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was

sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read the third time? was decided in the affirmative. Yeas, 78. Nays, 60.

Those who voted in the affirmative are:

Ancel of Calais	Haas of Rochester	Mitchell of Barnard
Anderson of Montpelier	Head of S. Burlington	Mook of Bennington
Andrews of Rutland City	Heath of Westford	Moran of Wardsboro
Atkins of Winooski	Hosford of Waitsfield	Mrowicki of Putney
Bissonnette of Winooski	Howrigan of Fairfield	Nease of Johnson
Botzow of Pownal	Hunt of Essex	Nuovo of Middlebury
Bray of New Haven	Hutchinson of Randolph	Obuchowski of Rockingham
Browning of Arlington	Jerman of Essex	Ojibway of Hartford
Chen of Mendon	Jewett of Ripton	Orr of Charlotte
Cheney of Norwich	Keogh of Burlington	Partridge of Windham
Clarkson of Woodstock	Kitzmiller of Montpelier	Pearson of Burlington
Consejo of Sheldon	Klein of East Montpelier	Pellett of Chester
Copeland-Hanzas of Bradford	Kupersmith of S. Burlington	Peltz of Woodbury
Courcelle of Rutland City	Larson of Burlington	Peterson of Williston
Davis of Washington	Lenes of Shelburne	Pillsbury of Brattleboro
Deen of Westminster	Leriche of Hardwick	Pugh of S. Burlington
Donovan of Burlington	Lippert of Hinesburg	Randall of Troy
Dostis of Waterbury	Lorber of Burlington	Shand of Weathersfield
Emmons of Springfield	Maier of Middlebury	Smith of Morristown
Fallar of Tinmouth	Malcolm of Pawlet	Spengler of Colchester
Fisher of Lincoln	Marek of Newfane	Sweaney of Windsor
French of Randolph	Martin, C. of Springfield	Trombley of Grand Isle
Gervais of Enosburg	Masland of Thetford	Weston of Burlington
Gilbert of Fairfax	McCormack of Rutland City	Zenie of Colchester
Godin of Milton	McCullough of Williston	Zuckerman of Burlington
Grad of Moretown	Milkey of Brattleboro	
	Minter of Waterbury	

Those who voted in the negative are:

Acinapura of Brandon	Devereux of Mount Holly	Koch of Barre Town
Adams of Hartland	Donaghy of Poultney	Komline of Dorset
Ainsworth of Royalton	Donahue of Northfield	Krawczyk of Bennington
Allard of St. Albans Town	Errecart of Shelburne	Larocque of Barnet
Audette of S. Burlington	Evans of Essex	Lawrence of Lyndon
Baker of West Rutland	Fitzgerald of St. Albans City	Lewis of Derby
Barnard of Richmond	Flory of Pittsford	Livingston of Manchester
Bostic of St. Johnsbury	Grenier of St. Johnsbury	Manwaring of Wilmington
Branagan of Georgia	Helm of Castleton	Marcotte of Coventry
Brennan of Colchester	Howard of Rutland City	Martin of Wolcott
Canfield of Fair Haven	Hube of Londonderry	McAllister of Highgate
Clark of Vergennes	Johnson of South Hero	McDonald of Berlin
Condon of Colchester	Johnson of Canaan	McNeil of Rutland Town
Corcoran of Bennington	Keenan of St. Albans City	Morley of Barton
Crawford of Burke	Kilmartin of Newport City	Morrissey of Bennington

Myers of Essex
O'Donnell of Vernon
Otterman of Topsham
Oxholm of Vergennes
Peaslee of Guildhall

Potter of Clarendon
Rodgers of Glover
Scheuermann of Stowe
Stevens of Shoreham
Turner of Milton

Valliere of Barre City
Westman of Cambridge
Wheeler of Derby
Winters of Williamstown
Wright of Burlington

Those members absent with leave of the House and not voting are:

Aswad of Burlington
Clerkin of Hartford
Edwards of Brattleboro
Frank of Underhill

Larrabee of Danville
LaVoie of Swanton
McFaun of Barre Town
Miller of Shaftsbury

Monti of Barre City
Perry of Richford
Sharpe of Bristol

Rep. Donovan of Burlington explained her vote as follows:

"Madam Speaker:

I vote yes because this bill protects a landlord's investment, while insuring that a tenant has a safe and healthy place to call home."

Rep. Head of South Burlington explained her vote as follows:

"Madam Speaker:

My vote for H. 863 is a vote to create and preserve housing including affordable housing, which working Vermonters' desperately need"

Rep. Kilmartin of Newport City explained his vote as follows:

"Madam Speaker:

I vote no. This "I want Vermont to be a picture postcard in my image" is anti-family, anti-affordable housing, anti-choice, and anti-reason. It claims "noble goals" but defeats them at every turn. Like so many of our other misguided efforts at controlling our citizens and their economic choices it will be swept into meaningless by the economic disaster which is currently bearing down on us."

Rep. Leriche of Hardwick explained her vote as follows:

"Madam Speaker:

I voted yes. Lack of affordable housing in Vermont is having a negative impact on employers ability to recruit a qualified workforce. H. 863 is an important tool that will provide incentives for builders and municipalities to create affordable housing for middle-income workers."

Bill Amended; Third Reading Ordered**H. 331**

Rep. Baker of West Rutland, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to financing the purchase of a mobile home;

Reported in favor of its passage when amended as by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2601 is amended to read:

§ 2601. DEFINITIONS

(a) As used in this chapter, unless the context requires otherwise, "mobile home" means:

(1) Mobile home as defined in 10 V.S.A. § 6201.

(2) An unmotorized vehicle, other than a travel or recreational trailer, designed to be towed and designed or equipped for use as sleeping, eating or living quarters.

(b) A mobile home remains a mobile home for purposes of this chapter even though it may be used for advertising, sales, display or promotion of merchandise or services, or for any other commercial purposes except the transportation of property.

(c) A mobile home that was financed as residential real estate shall be defined as residential real estate.

(d) "Permanently sited" means the mobile home has become affixed to the land. Factors that tend to show a mobile home is permanently sited include:

(1) The mobile home has been set up on blocks or otherwise stabilized so that the wheels do not form a major part of the structural support.

(2) The mobile home has been connected to utilities such as electricity, sewage, water, gas, or oil.

(3) Skirting has been installed around the base of the mobile home.

(4) The wheels or axles have been removed.

(5) The mobile home has been situated in a place that makes removal unlikely.

Sec. 2. 9 V.S.A. § 2603(b) is amended to read:

~~(b) An obligation to finance a mobile home if consummated while the A~~

mobile home that is or is intended to be permanently sited in a manner intended for continuous residential occupancy by the owner on land owned that is:

(1) Owned by the owner of the mobile home shall be financed as a residencee residential real estate.

(2) Leased by the owner of the mobile home may be financed as residential real estate.

Sec. 3. 9 V.S.A. § 2604 is amended to read:

§ 2604. PENALTY REAL ESTATE DEEDS FOR MOBILE HOMES

~~A person who violates a provision of this chapter:~~

~~(1) Except for violations of subsection 2603(e) of this title, shall be fined not more than \$5,000.00 for each occurrence.~~

~~(2) Shall be subject to all the remedies and penalties available to a consumer and the attorney general under chapter 63 of this title.~~

(a) Any mobile home purchased from a mobile home dealer on or after July 1, 2008 that is financed as residential real estate pursuant to subsection 2603(b) of this title shall be conveyed by a warranty deed drafted in substantially the form provided in subsection (c) of this section.

(b) An owner of a mobile home shall, upon financing or refinancing a mobile home as residential real estate or selling a mobile home that has been financed as residential real estate, issue to the grantee either a warranty deed or a quitclaim deed that is drafted in substantially the form provided in subsection (c) or (d) of this section.

(c) A deed that is substantially in the form provided in this subsection shall, when duly executed and delivered, have the force and effect of a deed in fee simple to the grantee, the heirs, successors, and assigns, to their own use, with covenants on the part of the grantor, for the grantor, the grantor's heirs, executors, and administrators that, at the time of the delivery of the deed, the grantor was lawfully seized in fee simple of the mobile home; that the mobile home was free from all encumbrances, except as stated; that the grantor had good right to sell and convey the same to the grantee, the grantee's heirs, successors, and assigns; and that the grantor and the grantor's heirs, executors, and administrators shall warrant and defend the same to the grantee and the grantee's heirs, successors and assigns, against the lawful claims and demands of all persons. No owner of land on which a mobile home is sited shall unreasonably withhold the consent required by this statutory form.

Form for Mobile Home Warranty Deed

_____, of _____, County, State
 of _____, ("Grantor"), for consideration paid, grants
 to _____ of _____ Street, Town (City) of _____
 County, State of _____ ("Grantee"), with warranty covenants, the
 (description of mobile home being conveyed: name of manufacturer, model
 and serial number and encumbrances, exceptions, reservations, if any) which
 mobile home is situated, or is to be situated, at _____ (state name of
 park, if any, and street address), Town (City) of _____,
 County: _____ State _____ of _____ Vermont.
 The tract or parcel of land upon which the mobile home is situated, or is to be
 situated, is owned by _____ by deed dated and recorded at Book _____,
 Page _____ in the land records of the Town (City) of _____.

_____ (wife) (husband) of said Grantor, releases to
 said Grantee all rights and other interests therein.
 Signed this _____ day of _____.

(Here add acknowledgment)

_____, owner of the tract or parcel of land upon which the
 aforesaid mobile home is situated, or is to be situated, hereby consents to the
 conveyance of the mobile home.

Signed this _____ day of _____.

(Here add acknowledgment)

[] Check box if the mobile home has been relocated from one site to another
 within Vermont, and attach a Relocation Statement in the form provided in
 section 2606 of this title.

(d) A deed that is substantially in the form provided in this subsection shall,
 when duly executed and delivered, have the force and effect of a deed in fee
 simple to the grantee, the heirs, successors, and assigns, to their own use. No
 owner of land on which the mobile home is sited shall unreasonably withhold
 consent required by this statutory form.

Form for Mobile Home Quitclaim Deed

_____, of _____, County, State of _____
 ("Grantor"), for
 consideration paid, grants to _____ of _____ Street, Town (City)
 of _____, County, State of _____ ("Grantee"), with quitclaim
 covenants, the (description of mobile home being conveyed: name of
 manufacturer, model and serial number and encumbrances, exceptions,

reservations, if any) which mobile home is situated, or is to be situated, at
(state name of park, if any, and street address), Town
(City) of _____ County, State of Vermont.

The tract or parcel of land upon which the mobile home is situated, or
is to be situated, is owned by _____ by deed dated _____
and recorded at Book _____, Page _____, in the land records of the Town (City) of
_____.

_____ (wife) (husband) of said Grantor releases to said Grantee all
rights and other interest therein.

Signed this _____ day of _____, _____.

(Here add acknowledgment)

_____, owner of the parcel of land upon which the aforesaid mobile
home is situated, or is to be situated, hereby consents to the conveyance of
the mobile home.

Signed this _____ day of _____, _____.

(Here add acknowledgment)

[] Check box if the mobile home has been relocated from one site to
another within Vermont, and attach a relocation statement in the form
provided in section 2606 of this title.

Sec. 4. 9 V.S.A. § 2605 is added to read:

§ 2605. MOBILE HOME BILL OF SALE CONVERSION PROCESS

The owner of any mobile home that was initially financed pursuant to a
motor vehicle loan, motor vehicle retail installment contract, or another form
of chattel mortgage shall, if the mobile home is subsequently financed as
residential real estate pursuant to subsection 2603(b) of this title, file a request
for purging of the security interest with the clerk of the municipality where the
chattel mortgage for the mobile home was last recorded.

(1) A request to purge the security interest of a mobile home shall
include the most recent Vermont uniform bill of sale or certificate of origin,
the terminated UCC financing statement or statements, and an executed
warranty or quitclaim deed, which shall be drafted substantially in the form
provided in section 2604 of this title.

(2) Upon the filing of a request to purge the security interest of a mobile
home with the clerk of the municipality where the chattel mortgage for the
mobile home was last recorded, and upon the owner's procuring the consent of

the holders of any security interest in the mobile home shown to be unreleased, the mobile home shall become residential real estate.

(3) Upon receiving a request to purge the security interest of a mobile home, the municipal clerk shall mark or stamp the originally filed Vermont uniform bill of sale or certificate of origin with the word "converted."

(4) A mobile home that has been converted to residential real estate shall not be converted or redefined as personal property.

Sec. 5. 9 V.S.A. § 2606 is added to read:

§ 2606. RELOCATING MOBILE HOMES TO ANOTHER

MUNICIPALITY OR STATE

(a) If a deed for any mobile home is recorded by the clerk of the municipality in which the mobile home is sited, and if that mobile home is relocated to another site within the state of Vermont, the owner of the mobile home shall, within 10 days of the relocation, do all the following:

(1) File with the clerk of the municipality where the deed was last recorded a relocation statement substantially in the form provided in this subsection.

(2) File with the clerk of the municipality where the mobile home is relocated a copy of the relocation statement as required by subdivision (1) of this subsection, together with the deed filed with the clerk of the municipality where the mobile home was previously sited. If the records of a municipality in which the deed or conveyance is recorded are destroyed, an attested copy of the deed or other conveyance from the county clerk shall have the same validity as a copy from the municipal clerk's office.

(3) Provide a copy of the relocation statement filed pursuant to subdivision (1) of this subsection to the holders of any unreleased, recorded security interests in the mobile home.

Form for Relocation Statement

_____, of _____, County, State of _____, is the owner of (description of mobile home: name of manufacturer, model and serial number and encumbrances, exceptions, reservations, if any), which mobile home has been relocated.

The mobile home was previously located at _____ (state name of park, if any, and street address), Town (City) of _____, County, State of Vermont and title, if any, to the same was recorded at Book _____, Page _____, in the records of the Town (City) of _____.

The mobile home is has been relocated to _____ (state name of park, if any, and street address), Town (City) of _____, County, State of Vermont and title, if any, to the same was recorded at Book _____, Page _____, in the records of the Town (City) of _____.

The tract or parcel of land upon which the mobile home is situated is owned by _____ by deed dated _____ and recorded at Book _____, Page _____ in the land records of the Town (City) of _____.

The mobile home is subject to an existing mortgage by _____ in favor of _____, recorded at Book _____, Page _____, in the land records of the Town (City) of _____.

If the relocation is to a municipality in Vermont other than the municipality in which the deed to the Grantor was recorded, a duplicate original of the deed to the Grantor shall be recorded in the land records of the municipality of the relocation at the same time this statement is recorded.

Signed this _____ day of _____, _____.

(b) An out-of-state transfer statement substantially in the form provided in this subsection shall, when duly executed and recorded by the clerk of the municipality in which the mobile home was previously located, have the force and effect of transferring title of the mobile home to the grantee, the grantee's heirs, successors, and assigns and terminating the record title or deed of the mobile home in the municipal records under circumstances by which the mobile home is relocated outside this state. No owner of land on which a mobile home is sited shall unreasonably withhold the consent required by this statutory form. No mobile home may be relocated to a site outside this state unless all holders of liens, attachments, or encumbrances, if any, consent in writing on the transfer statement.

Form for Out-of-State Transfer Statement

_____, of _____, County, State of _____ ("Grantor"), for consideration paid, grants to _____, (complete mailing address) _____, of _____ Street, Town (City) of _____, County, State of _____ ("Grantee"), the _____ (Description of mobile home being conveyed: name of manufacturer, model and serial number and encumbrances, exceptions, reservations, if any) which mobile home was situated at _____ (state name of park, if any, and street address), Town (City) _____ of _____ County, State of Vermont. The tract or parcel of land upon which the mobile home was situated is owned by _____ by deed _____ dated _____ and recorded at _____

Book , Page in the County Registry of Deeds.
(wife) (husband) of said Grantor, releases to said Grantee all rights and other
interest therein.

The mobile home is transferred subject to an existing mortgage by
in favor of , recorded at Book , Page , in the
land records of the Town (City) of , State of Vermont.

Signed this day of _____.

(Here add acknowledgment)

_____, owner of the tract or parcel of land upon which the
aforesaid mobile home was situated, hereby consents to the conveyance of the
mobile home.

Signed this day of _____.

(Here add acknowledgment)

_____, holder of (lien, attachment or encumbrance) hereby consent
to the conveyance of the aforesaid mobile home, subject to condition that the
aforesaid (lien, attachment or encumbrance) shall remain in force and effect
thereon.

Signed this day of _____.

(Here add acknowledgment)

(c) An attachment, mortgage, security interest, lien, or other encumbrance
on a mobile home, when properly perfected, shall be enforceable until released
or discharged notwithstanding the relocation of the mobile home within or
outside this state.

Sec. 6. 9 V.S.A. § 2607 is added to read:

§ 2607. PENALTY

A person who violates a provision of this chapter:

(1) Except for violations of subsection 2603(e) of this title, shall be
fined not more than \$5,000.00 for each occurrence.

(2) Shall be subject to all the remedies and penalties available to a
consumer and the attorney general under chapter 63 of this title.

The bill, having appeared on the Calendar one day for notice, was taken up,
read the second time, report of the committee on General, Housing and
Military Affairs agreed to and third reading ordered.

Action on Bill Postponed**H. 436**

House bill, entitled

An act relating to discussion of ballot items at town meeting;

Was taken up and pending the reading of the report of the committee on Government Operations, on motion of **Rep. Martin of Wolcott**, action on the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered**H. 588**

Rep. Livingston of Manchester, for the committee on Commerce, to which had been referred House bill, entitled

An act relating to property loaned to museums;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 27 V.S.A. chapter 12 is added to read:

CHAPTER 12. MUSEUM PROPERTY**§ 1151. DEFINITIONS**

As used in this chapter:

(1) “Lender” means a person whose name appears on the records of a museum as the person legally entitled to, or claiming to be legally entitled to, property held by the museum or, if such person is deceased, the legal heirs of such person.

(2) “Loan” means a deposit of property not accompanied by a transfer of title to the property.

(3) “Museum” means an institution operated by a nonprofit corporation or a public agency primarily for educational, scientific, historic preservation, or aesthetic purposes, and the institution owns, cares for, exhibits, studies, collects, archives, or catalogues property. “Museum” also includes historical societies, parks, monuments, and libraries.

(4) “Property” means a tangible object, animate or inanimate, that has intrinsic, historic, artistic, scientific, or cultural value, and the object is under the care of a museum.

§ 1152. PROPERTY HELD WITHOUT A LOAN AGREEMENT

Any property held by a museum that is not subject to a loan agreement and has been held for 10 or more years and has remained unclaimed shall be deemed to be abandoned. The property shall become the property of the museum, provided the museum has given notice pursuant to section 1154 of this title and no assertion of title has been filed for the property within 180 days from the date of the third published notice.

§ 1153. PROPERTY HELD PURSUANT TO A LOAN AGREEMENT

(a) Property in the possession of a museum subject to a loan agreement shall be deemed to be donated to the museum, provided:

(1) No claim is made or action filed to recover the property after termination of the loan.

(2) The museum provided notice as required pursuant to section 1154 of this title.

(3) No assertion of title has been filed within 180 days following the date of the third published notice.

(b) A museum may terminate a loan of property if the loan was for an indefinite term and the property has been held by the museum for 10 years or more by providing notice pursuant to section 1154 of this title. For the purposes of this chapter, property on permanent loan shall be considered property loaned for an indefinite term.

(c) A museum may terminate a loan of property loaned for a specified term by providing notice pursuant to section 1154 of this title any time after the expiration of the specified term or earlier if permitted by the loan agreement.

(d) The owner of property on loan to a museum shall notify the museum promptly of any transfer of ownership or change in address of the owner.

(e) Prior to acceptance of a loan of property, a museum shall provide to the owner of the property written notice of the provisions of this chapter.

§ 1154. NOTICE REQUIREMENTS BY MUSEUMS FOR LOANED PROPERTY

(a) A museum required to provide notice pursuant to this chapter shall mail by certified mail, return receipt requested, written notice to the last known owner at the most recent address. If the museum has no record of the owner's address or the museum has not received written proof of receipt of the mailed notice within 30 days after mailing, the museum shall publish at least one notice each month for three consecutive months in the principal newspaper of general circulation in each of the following:

(1) the county of the last known address of the owner, if known.

(2) the county in which the museum is located. For the purposes of this subdivision, if property is loaned to a branch of a museum, the museum shall be considered to be located in the county in which the branch is located, otherwise a museum shall be located in the county in which it has its principal place of business.

(b) The published notice shall contain all the following:

(1) The notice shall be entitled: "Notice of Abandonment."

(2) A clear description of the unclaimed property.

(3) The last known name and address of the owner.

(4) A request that any person who has any knowledge of the whereabouts of the owner provide written notice to the museum.

(5) The name and address of the museum.

(6) The name, address, and contact information of the person to be contacted regarding the property.

(7) A statement that if written assertion of title is not presented by the owner to the museum within 180 days after the date of the final published notice, the property shall be considered abandoned or donated and shall become the property of the museum.

(c) A copy of all notices required in this chapter relating to property in the form of identifiable works of art that changed hands in Europe between the years 1933 and 1945 shall be sent to The Art Loss Register or any successor organization having similar purposes on or before the date on which the notices are mailed or first published.

§ 1155. PROVISION OF MISSION STATEMENT

(a) Prior to the acquisition of property by gift, a museum, upon request, shall provide a donor or prospective donor with a written copy of its mission statement and collections policy, which shall include policies and procedures of the museum related to deaccessioning.

(b) If the museum has the knowledge of a planned bequest of any property prior to the death of the testator, the museum shall provide the testator with a written copy of its mission statement and collections policy, which shall include policies and procedures of the museum relating to deaccessioning.

(c) Any museum that routinely makes its mission statement and collections policy available on its website shall be deemed to have complied with this section.

§ 1156. PROPERTY VESTED IN MUSEUMS

(a) If no written assertion of title has been presented by the owner to the museum within 180 days after the date of the third published notice, title to the property shall vest in the museum free of all claims of the owner and any other person claiming under the owner.

(b) A person who purchases or otherwise acquires property from a museum acquires good title to the property if the museum has acquired title to the property under this chapter.

§ 1157. EXEMPTIONS

This chapter shall not apply to either of the following:

(1) Any property that changed hands by theft, seizure, confiscation, forced sale, or other involuntary means in Europe between 1933 and 1945.

(2) Any property reported as stolen in writing to a law enforcement officer, insurer, or The Art Loss Register, or any successor organization having similar purposes, notwithstanding any notice provided pursuant to section 1155 of this title.

§ 1158. RECORD OF ACQUISITION

The museum shall maintain or continue to maintain to the extent such information is available a record of acquisition whether by purchase, bequest, gift, loan, or otherwise of property for display or collection and of deaccessioning or loan of property currently held or thereafter acquired for display or collection.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce agreed to and third reading ordered.

Action on Bill Postponed**H. 689**

House bill, entitled

An act relating to utility prescriptive rights

Was taken up and pending the reading of the report of the committee on Commerce, on motion of Rep. Shand of Weathersfield, action on the bill was postponed until Friday, March 21, 2008.

Bill Amended; Third Reading Ordered**H. 704**

Rep. Kitzmiller of Montpelier, for the committee on Commerce, to which had been referred House bill, entitled

An act relating to notices of transfer of policies to an affiliate proved by an insurer;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 3882(c) is added to read:

(c) An insurer may transfer a policy to an affiliate, as defined by subdivision 3681(1) of this title, upon expiration of the policy without providing notice of nonrenewal, provided that:

(1) the rating by A. M. Best or a similarly qualified rating service of the affiliate is equal to or better than the transferring insurer;

(2) there is no diminution in the terms and conditions of coverage; and

(3) notice of the transfer is provided to the insured at least 45 days prior to the transfer by first class mail, and in connection with such notice the insurer:

(A) complies with any requirements of federal law relating to notice of adverse credit determination;

(B) includes in the notice of transfer a telephone number of the insurer, or the producer, if any, and a toll free telephone number of the insurer in the case of personal lines policies, where the insured can learn additional information concerning the transfer and the reasons for the transfer; and

(C) complies with the other provisions of this section relating to renewal policies.

Sec. 2. 8 V.S.A. § 4225a is added to read:

§ 4225a. RENEWAL POLICIES

(a) If the insurer has the necessary information to issue the renewal policy, the insurer shall confirm in writing at least 45 days prior to expiration its intention to renew the policy and the premium at which the policy is to be renewed. The insured shall have the right to renew the policy at this premium.

(b) An insurer not complying with subsection (a) of this section shall grant its insured renewal coverage at the rate or premium in effect under the expiring or expired policy or at rates lawfully in effect on the expiration date, which

have been approved by the commissioner. This shall be done on a pro rata basis and shall continue for 45 days after the insurer confirms renewal coverage and premium. This subsection shall not apply if the insured accepts the renewal policy.

(c) An insurer may transfer a policy to an affiliate, as defined by subdivision 3681(1) of this title, upon expiration of the policy without providing notice of nonrenewal, provided that:

(1) the rating by A. M. Best or a similarly qualified rating service of the affiliate is equal to or better than the transferring insurer;

(2) there is no diminution in the terms and conditions of coverage; and

(3) notice of the transfer is provided to the insured at least 45 days prior to the transfer by first class mail, and in connection with such notice the insurer:

(A) complies with any requirements of federal law relating to notice of adverse credit determination;

(B) includes in the notice of transfer a telephone number of the insurer, or the producer, if any, and a toll free telephone number of the insurer in the case of personal lines policies, where the insured can learn additional information concerning the transfer and the reasons for the transfer; and

(C) complies with the other provisions of this section relating to renewal policies.

Sec. 3. 8 V.S.A. § 4715(c) is added to read:

(c) An insurer may transfer a policy to an affiliate, as defined by subdivision 3681(1) of this title, upon expiration of the policy without providing notice of nonrenewal, provided that:

(1) the rating by A. M. Best or a similarly qualified rating service of the affiliate is equal to or better than the transferring insurer;

(2) there is no diminution in the terms and conditions of coverage; and

(3) notice of the transfer is provided to the insured at least 45 days prior to the transfer by first class mail, and in connection with such notice the insurer:

(A) complies with any requirements of federal law relating to notice of adverse credit determination;

(B) includes in the notice of transfer a telephone number of the insurer, or the producer, if any, and a toll free telephone number of the insurer

in the case of personal lines policies, where the insured can learn additional information concerning the transfer and the reasons for the transfer;

(C) complies with the other provisions of this section relating to renewal policies.

and that upon passage, the title of the bill shall be: "AN ACT RELATING TO NOTICES OF TRANSFER BY AN INSURER OF POLICIES TO AN AFFILIATE"

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 776

Rep. Howrigan of Fairfield, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to computation of the basic needs budget and the livable wage;

Reported in favor of its passage when amended as follows:

In Sec. 2, subsection (b)(3), on line 20, by striking "a minority party" and inserting in lieu thereof "the largest minority party"

Rep. Johnson of South Hero, for the committee on Appropriations, recommended the bill be amended as follows:

First: In Sec. 1, in 2 V.S.A. §505, by striking subsections (c) and (d) and by inserting new subsections (c) and (d) to read:

(c) ~~The report and any revisions shall be presented to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs~~ The methodology for calculating basic needs budgets shall be built on methodology described in the November 9, 1999 livable income study committee report, modified as appropriate by any statutory changes made by the general assembly and subsequent modifications adopted by the joint fiscal committee under subsection (d) of this section.

(d) The joint fiscal committee may adopt modifications to the methodology used to determine the basic needs budget calculations under subsection (c) of this section to account for public policy changes, data availability, or any other factors that have had an impact on any aspects of the methodology. Changes or revisions in methodology adopted by the committee shall be effective no later than November in the year preceding the release of the report.

Second: In Sec. 2, in subsection (a), by striking the second sentence, and adding a new subsection (d) to read:

(d) The council shall convene at least every ten years, or as requested by the joint fiscal committee.

Third: In Sec. 2, in subsection (c), following the second sentence, by adding the following: For service on the council, members of the council who are members of the general assembly shall be entitled to per diem compensation and reimbursement for expenses as provided in 2 V.S.A. §406; and other members of the council who are not also state employees shall be entitled to per diem compensation and reimbursement for expenses as provided to members of state boards by 32 V.S.A. §1010.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on General, Housing and Military Affairs and Appropriations agreed to and third reading ordered.

Favorable Report; Third Reading Ordered

H. 700

Rep. Moran of Wardsboro, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to sale of bottles of wine at festivals;

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Action on Bill Postponed

H. 617

House bill, entitled

An act relating to guardianships;

Was taken up and pending third reading of the bill, on motion of **Rep. Marek of Newfane**, action on the bill was postponed until the next legislative day.

Rep. Partridge of Windham in Chair.

Bill Read Second Time; Third Reading Ordered

H. 879

Rep. Hosford of Waitsfield spoke for the committee on Education.

House bill entitled

An act relating to the repeal of unnecessary, duplicative, and burdensome reports; the improved timeliness and efficiency of special education audits; and the simplification of union school district formation;

Was taken up, read the second time and third reading ordered.

**Bill Read Second Time; Bill Amended
and Third Reading Ordered**

H. 880

Rep. Jerman of Essex spoke for the committee on Government Operations.

House bill entitled

An act relating to the Vermont pension investment committee;

Was taken up and read the second time and pending the question, Shall the bill be read the third time? **Rep. Jerman of Essex** moved to amend the bill as follows:

In Sec. 2, 3 V.S.A. § 522(a)(3), by striking “the members of that board pursuant to subsection 5062(a) of Title 24” and inserting in lieu thereof “the municipal employee and municipal official members of that board”

Which was agreed to and third reading of the bill was ordered.

Speaker Symington back in Chair.

Bill Read Second Time; Third Reading Ordered

H. 881

Rep. Kitzmiller of Montpelier spoke for the committee on Commerce.

House bill entitled

An act relating to the role of electric and gas utilities in facilitating the deployment of communications facilities throughout the state;

Was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered

H. 203

Rep. Jewett of Ripton, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to increasing the amount of an estate to which a surviving spouse is entitled when the deceased spouse dies without a will;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REPEAL

Chapters 41, 43 and 45 of Title 14 are repealed.

Sec. 2. 14 V.S.A. chapter 42 is added to Part 2 to read:

CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

Subchapter 1. General Provisions

§ 301. INTESTATE ESTATE

(a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, except as modified by the decedent's will.

(b) A decedent's will may expressly exclude or limit the right of an individual or a class to inherit property. If such an individual or member of such a class survives the decedent, the share of the decedent's intestate estate which would have passed to that individual or member of such a class passes subject to any such limitation or exclusion set forth in the will.

(c) Nothing in this section shall preclude the surviving spouse of the decedent from making the election and receiving the benefits provided by section 319 of this title.

§ 302. DOWER AND CURTESY ABOLISHED

The estates of dower and curtesy are abolished.

§ 303. AFTERBORN HEIRS

For purposes of this chapter and chapter 1 of this title relating to wills, an individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

Subchapter 2. Survivors Rights and Allowances

§ 311. SHARE OF SURVIVING SPOUSE

After payment of the debts, funeral charges, and expenses of administration, the intestate share of the decedent's surviving spouse is as follows.

(1) The entire intestate estate if no descendant of the decedent survives the decedent or if all of the decedent's surviving descendants are also descendants of the surviving spouse.

(2) In the event there shall survive the decedent one or more descendants of the decedent, who are not descendants of the surviving spouse and are not excluded by decedent's will from inheriting from the decedent, the surviving spouse shall receive one-half of the intestate estate.

§ 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

Upon motion, the surviving spouse of a decedent residing with the decedent at the time of the decedent's death may receive out of the decedent's estate all furnishings and furniture in the decedent's household when the decedent leaves no descendants who object. If any objection is made by any of the descendants, the court shall decide what, if any, of such personality shall pass under this section. Goods and effects so assigned shall be in addition to the distributive share of the estate to which the surviving spouse is entitled under other provisions of law. In making a determination pursuant to this section, the court may consider the length of the decedent's marriage, the sentimental and monetary value of the property, and the source of the decedent's interest in the property.

§ 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR ALL-TERRAIN VEHICLE

Whenever the estate of a decedent who dies intestate consists principally of a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to the surviving spouse.

§ 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

(a) The balance of the intestate estate not passing to the decedent's surviving spouse under section 311 of this title passes to the decedent's descendants by right of representation.

(b) If there is no taker under subsection (a) of this section, the intestate estate passes in the following order:

(1) to the decedent's parents equally if both survive or to the surviving parent;

(2) to the decedent's siblings or the descendants of any deceased siblings by right of representation;

(3) one-half of the intestate estate to the decedent's paternal grandparents equally if they both survive or to the surviving paternal grandparent and one-half of the intestate estate to the decedent's maternal grandparents equally if they both survive or to the surviving maternal

grandparent and if decedent is survived by a grandparent, or grandparents on only one side, to that grandparent or those grandparents;

(4) in equal shares to the next of kin in equal degree.

(c) If property passes under this section by right of representation, the property shall be divided into as many equal shares as there are children or siblings of the decedent, as the case may be, who either survive the decedent or who predecease the decedent leaving surviving descendants.

§ 315. PARENT AND CHILD RELATIONSHIP

For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit from a child unless the parent has openly acknowledged the child and not refused to support the child. The parent and child relationship may be established in parentage proceedings under subchapter 3A of chapter 5 of Title 15.

§ 316. SUPPORT OF SURVIVING SPOUSE AND FAMILY DURING SETTLEMENT

The probate court may make reasonable allowance for the expenses of maintenance of the surviving spouse and minor children or either, constituting the family of a decedent, out of the personal estate or the income of real or personal estate from date of death until settlement of the estate, but for no longer a period than until their shares in the estate are assigned to them or, in case of an insolvent estate, for not more than eight months after administration is granted. This allowance may take priority, in the discretion of the court, over debts of the estate.

§ 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

When a person dies leaving children under 18 years of age, an allowance may be made for the necessary maintenance of such children until they become 18 years of age. Such allowance shall be made before any distribution of the estate among creditors, heirs, or beneficiaries by will.

§ 318. ALLOWANCE TO CHILDREN AFTER PAYMENT OF DEBTS

Before any partition or division of an estate among the heirs or beneficiaries by will, an allowance may be made for the necessary expenses of the support of the children of the decedent under 18 years of age until they arrive at that age. The probate court may order the executor or administrator to retain sufficient estate assets for that purpose, except where some provision is made by will for their support.

§ 319. WAIVER OF WILL BY SURVIVING SPOUSE.

(a) A surviving spouse may waive the provisions of the decedent's will and instead elect to take a percentage of the balance of the estate, after the payment of claims and expenses, equal to 33 percent plus twice the number of years of marriage to the decedent, not to exceed 50 percent. The surviving spouse's percentage of the decedent's probate estate may be increased or decreased in the court's discretion if that percentage share would be inequitable to any interested person, including the surviving spouse, after taking into consideration assets not subject to the probate court's jurisdiction.

(b) The surviving spouse must be living at the time this election is made. If the surviving spouse is mentally disabled and cannot make the election personally, a guardian or attorney in fact under a valid durable power of attorney may do so.

(c) The rights of election of the surviving spouse in subsection 319(a) of this chapter may be waived in whole or in part before or during marriage by a written contract or waiver signed by the surviving spouse that is witnessed and acknowledged. Such an agreement is not enforceable if the surviving spouse proves any of the following:

- (1) the surviving spouse did not execute the waiver voluntarily;
- (2) the waiver was unfair when it was made or distributed;
- (3) one spouse did not have separate legal representation at the time the agreement was executed; or
- (4) the surviving spouse was not provided with a full and fair financial disclosure of the property or financial obligations of the decedent.

§ 320. EFFECT OF DIVORCE ORDER

A final divorce order from any state shall have the effect of nullifying a gift by will or inheritance by operation of law to an individual who was the decedent's spouse at the time the will was executed if the decedent was no longer married to that individual at the time of death, unless his or her will specifically states to the contrary.

§ 321. CONVEYANCES TO DEFEAT SPOUSE'S INTEREST

Except as provided in subsection 319(c) of this title, a voluntary transfer of any property by an individual during marriage, made without adequate consideration and for the primary purpose of defeating a surviving spouse in a claim to a share of the decedent's property so transferred, shall be void and inoperative to bar the claim. The decedent shall be deemed at the time of his or her death to be the owner and seised of an interest in such property

sufficient for the purpose of assigning and setting out the surviving spouse's share.

§ 322. UNLAWFUL KILLING AFFECTING INHERITANCE

Notwithstanding sections 311 through 314 of this title or provisions otherwise made, in any case where an individual is entitled to inherit or receive property under the last will of a decedent, or otherwise, such individual's share in the decedent's estate shall be forfeited and shall pass to the remaining heirs or beneficiaries of the decedent if such person intentionally and unlawfully kills the decedent. In any proceedings to contest the right of an individual to inherit or receive property under a will, the record of such person's conviction of intentionally and unlawfully killing the decedent shall be admissible evidence that such person did intentionally kill the decedent.

Subchapter 3. Descent, Omitted Issue and Lapsed Legacies

§ 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

Kindred of the half-blood shall inherit the same share they would inherit if they were of the whole blood.

§ 332. SHARE OF AFTER-BORN CHILD

When a child of a testator is born after the making of a will and provision is not therein made for that child, he or she shall have the same share in the estate of the testator as if the testator had died intestate unless it is apparent from the will that it was the intention of the testator that provision should not be made for the child.

§ 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED FROM WILL

When a testator omits to provide in his or her will for any of his or her children, or for the descendants of a deceased child, and it appears that the omission was made by mistake or accident, the child or descendants, as the case may be, shall have and be assigned the same share of the estate of the testator as if the testator had died intestate.

§ 334. OMITTED OR AFTER-BORN CHILD; FROM WHAT PART OF STATE SHARE TAKEN

When a share of a testator's estate is assigned to a child born after the making of a will, or to a child or the descendant of a child omitted in the will, the share shall be taken first from the estate not disposed of by the will, if there is any. If that is not sufficient, so much as is necessary shall be taken from the devisees or legatees in proportion to the value of the estate they respectively receive under the will. If the obvious intention of the testator, as to some

specific devise, legacy, or other provision in the will, would thereby be defeated, the specific devise, legacy, or provision may be exempted from such apportionment and a different apportionment adopted in the discretion of the court.

§ 335. BENEFICIARY DYING BEFORE TESTATOR: DESCENDANTS TO TAKE

When a testamentary gift is made to a child or other kindred of the testator, and the designated beneficiary dies before the testator, leaving one or more descendants who survive the testator, such descendants shall take the gift that the designated beneficiary would have taken if he or she had survived the testator, unless a different disposition is required by the will.

§ 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

If an individual entitled to a distributive share of the estate of a decedent is absent and unheard of for six years, two of which are after the death of the decedent, the probate court in which the decedent's estate is pending may order the share of the absent individual distributed in accordance with the terms of the decedent's will or the laws of intestacy as if such absent individual had not survived the decedent. If the absent individual proves to be alive, he or she shall be entitled to the share of the estate notwithstanding prior distribution, and may recover in an action on this statute any portion thereof which any other individual received under order. Before an order is made for the payment of distribution of any money or estate as authorized in this section, notice shall be given as provided by the Vermont Rules of Probate Procedure.

§ 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR 120 HOURS

Except as provided in the decedent's will, an individual who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, intestate succession, and taking under decedent's will, and the decedent's heirs and beneficiaries shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir or beneficiary survived the decedent by 120 hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in escheat.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Bill Amended; Third Reading Ordered**H. 616**

Rep. Bray of New Haven, for the committee on Agriculture, to which had been referred House bill, entitled

An act relating to farm-fresh milk;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 6 V.S.A. § 2723(3) is amended to read:

(3) A person who produces and sells or offers for sale less than ~~25~~ 50 quarts of milk in any one day, but in such case an inspection may be made and reasonable sanitary requirements shall be complied with.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Agriculture agreed to and third reading ordered.

Recess

At five o'clock and fifty-five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At seven o'clock and thirty-five minutes in the evening, the Speaker called the House to order.

Favorable Report; Third Reading Ordered**H. 871**

Rep. Pellett of Chester, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to professional requirements for the deputy attorney general, assistant attorneys general, probate judges, deputy state's attorneys, constables and sheriffs;

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered**H. 777**

Rep. Keogh of Burlington, for the committee on Health Care, to which had been referred House bill, entitled

An act relating to the certificate of need program;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 9432(4) is amended to read:

(4) "Capital expenditure" means an expenditure for the plant or equipment which is not properly chargeable as an expense of operation and maintenance and includes acquisition by purchase, donation, leasehold expenditure, or ~~operating~~ lease which is treated as capital expense in accordance to the accounting standards established for lease expenditures by the Financial Accounting Standards Board, calculated over the length of the lease for plant or equipment, and includes assets having an expected life of at least three years. A capital expenditure includes the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment.

Sec. 2. 18 V.S.A. § 9439(b) is amended to read:

(b) When a letter of intent to compete has been filed, the review process is suspended and the time within which a decision must be made as provided in subdivision ~~9440(e)(2)~~ 9440(d)(4) of this title is stayed until the competing application has been ruled complete or for a period of 55 days from the date of notification under subdivision ~~9440(b)(4)~~ 9440(c)(8) as to the original application, whichever is shorter.

Sec. 3. 18 V.S.A. § 9440(c)(6) is amended to read:

(6) If an applicant fails to respond to an information request under subdivision (4) of this subsection within six months or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule, the application will be deemed inactive unless the applicant ~~has, within said six months, filed an adequate, as determined by the commissioner, amended letter of intent~~ requests in writing that the application be reactivated and the commissioner grants the request. If an applicant fails to respond to an information request within 12 months or, in the case of review cycle applications under section 9439 of this title, within such time limits as the commissioner shall establish by rule, the application

will become invalid unless the applicant requests, and the commissioner grants, an extension.

Sec. 4. 18 V.S.A. § 9440(c)(9) is amended to read:

(9) The health care ombudsman's office established under ~~section 4089; subchapter 1A of chapter 107~~ of Title 8 or, in the case of nursing homes, the long-term care ombudsman's office established under section 7502 of Title 33, is authorized but not required to participate in any administrative or judicial review of an application under this subchapter and shall be considered an interested party in such proceedings upon filing a notice of intervention with the commissioner.

Sec. 5. 18 V.S.A. § 9440(d)(4) and (7) are amended to read:

(4) A review shall be completed and the commissioner shall make a final decision within 120 days after the date of notification under subdivision ~~(b)(4)(c)(4)~~ of this section. Whenever it is not practicable to complete a review within 120 days, the commissioner may extend the review period up to an additional 30 days. Any review period may be extended with the written consent of the applicant and all other applicants in the case of a review cycle process.

(7) Notice of the final decision shall be sent to the applicant, competing applicants, and interested parties. ~~This notice~~ The final decision shall ~~make include~~ written findings and conclusions stating the basis of the decision.

Sec. 5a. 18 V.S.A. § 9440(e) is amended to read:

(e) The commissioner shall adopt rules governing procedures for the expeditious processing of applications for replacement, repair, rebuilding, or reequipping of any part of a health care facility or health maintenance organization destroyed or damaged as the result of fire, storm, flood, act of God, or civil disturbance, or any other circumstances beyond the control of the applicant, and of applications where the health care facility is affected by bankruptcy proceedings, where the commissioner finds that the circumstances require action in less time than normally required for review. If the nature of the emergency requires it, an application under this subsection may be reviewed by the commissioner only, without notice and opportunity for public hearing or intervention by any party.

Sec. 5b. 18 V.S.A. § 9440(g) is added to read:

(g) If the commissioner has reason to believe that the applicant has violated a provision of this subchapter, a rule adopted pursuant to this subchapter, or the terms or conditions of a prior certificate of need, the commissioner may take

into consideration such violation in determining whether to approve, deny, or approve the application subject to conditions. The commissioner may impose as a condition of approval of the application that a violation be corrected or remediated before the certificate may take effect.

Sec. 5c. 18 V.S.A. § 9445(d) is added to read:

(d) The commissioner shall adopt by rule criteria for assessing the circumstances in which a violation of a provision of this subchapter, a rule adopted pursuant to this subchapter, or the terms or conditions of a certificate of need require that a penalty under this section shall be imposed, and criteria for assessing the circumstances in which a penalty under this section may be imposed.

Sec. 5d. 18 V.S.A. § 9440(c)(5) is amended to read:

(5) An applicant seeking expedited review of a certificate of need application may simultaneously file a letter of intent and an application with the commissioner. Upon making a determination that the proposed project may be uncontested and does not substantially alter services, as defined by rule, or upon making a determination that the application relates to a health care facility affected by bankruptcy proceedings, the commissioner shall issue public notice of the application and the request for expedited review and identify a date by which a competing application or petition for interested party status must be filed. If a competing application is not filed and no person opposing the application is granted interested party status, the commissioner may formally declare the application uncontested and may issue a certificate of need without further process, or with such abbreviated process as the commissioner deems appropriate. If a competing application is filed or a person opposing the application is granted interested party status, the applicant shall follow the certificate of need standards and procedures in this section, except that in the case of a health care facility affected by bankruptcy proceedings, the commissioner after notice and an opportunity to be heard may issue a certificate of need with such abbreviated process as the commissioner deems appropriate, notwithstanding the contested nature of the application.

Sec. 5e. 18 V.S.A. § 9440(e) is amended to read:

(e) The commissioner shall adopt rules governing procedures for the expeditious processing of applications for replacement, repair, rebuilding, or reequipping of any part of a health care facility or health maintenance organization destroyed or damaged as the result of fire, storm, flood, act of God, or civil disturbance, or any other circumstances beyond the control of the applicant, ~~and of applications where the health care facility is affected by bankruptcy proceedings,~~ where the commissioner finds that the circumstances

require action in less time than normally required for review. If the nature of the emergency requires it, an application under this subsection may be reviewed by the commissioner only, without notice and opportunity for public hearing or intervention by any party.

Sec. 6. 18 V.S.A. § 9444 is amended to read:

§ 9444. REVOCATION OF CERTIFICATES; MATERIAL CHANGE

The commissioner may revoke a certificate of need for substantial noncompliance with the scope of the project as designated in the application, or for failure to comply with the conditions set forth in the certificate of need granted by the commissioner. In the event that after a project has been approved, its proponent wishes to materially change the scope or cost of the approved project, all such changes are subject to review under this subchapter. If a change itself would be considered a new health care project as defined in ~~subsection 9434(a)~~ section 9434 of this title, it shall be considered as material. If the change itself would not be considered a new health care project as defined in ~~subsection 9434(a)~~ section 9434 of this title, the commissioner may decide not to review the change and shall notify the applicant and all parties of such decision. Where the commissioner decides not to review a change, such change will be deemed to have been granted a certificate of need.

Sec. 7. 18 V.S.A. § 9445 is amended to read:

§ 9445. ENFORCEMENT

(a) Any person who offers or develops any new health care project within the meaning of this subchapter without first obtaining a certificate of need as required herein, or who otherwise violates any of the provisions of this subchapter, ~~shall~~ may be subject to the following administrative sanctions by the commissioner, after notice and an opportunity to be heard:

(1) ~~The state shall not issue a~~ commissioner may order that no license or certificate permitted to be issued by the department or any other state agency may be issued to any health care facility to operate, offer, or develop any new health care project ~~in violation of this subchapter and without a certificate of need or certificate of exemption issued pursuant thereto for a specified period of time, or that remedial conditions be attached to the issuance of such licenses or certificates.~~

(2) ~~The state shall not furnish from any reimbursement program~~ commissioner may order that payments or reimbursements to the entity for claims made under any health insurance policy, subscriber contract, or health benefit plan offered or administered by any public or private health insurer, including the Medicaid program and any other health benefit program

~~administered by the state, nor shall any entity chartered under the laws of this state or any person doing business in the state provide reimbursement for any new health care project offered or developed in contravention of the requirements of this subchapter~~ be denied, reduced, or limited, and in the case of a hospital that the hospital's annual budget approved under subchapter 7 of this chapter be adjusted, modified or reduced.

(3)(b) In addition to all other sanctions, if any person offers or develops any new health care project without first having been issued a certificate of need or certificate of exemption therefore, or violates any other provision of this subchapter or any lawful rule or regulation promulgated thereunder, the commissioner and health care providers or consumers located in the state shall have standing to maintain a civil action in the superior court of the county wherein such alleged violation has occurred, or wherein such person may be found, to enjoin, restrain, or prevent such violation. Upon written request by the commissioner, it shall be the duty of the attorney general of the state to furnish appropriate legal services and to prosecute an action for injunctive relief to an appropriate conclusion, which shall not be reimbursed under subdivision (2) of this subsection.

(b)(c) After notice and an opportunity for hearing, the commissioner may impose on a person who knowingly violates a provision of this subchapter, or a rule or order adopted pursuant to this subchapter or section 15 of Title 8, a civil administrative penalty of no more than \$40,000.00, or in the case of a continuing violation, a civil administrative penalty of no more than \$100,000.00 or one-tenth of one percent of the gross annual revenues of the health care facility, whichever is greater, which shall not be reimbursed under subdivision (a)(2) of this section, and the commissioner may order the entity to cease and desist from further violations, and to take such other actions necessary to remediate a violation. A person aggrieved by a decision of the commissioner under this subdivision may appeal the commissioner's decision to the supreme court.

Sec. 8. EMERGENCY RULES; EFFECTIVE DATE; PROSPECTIVE REPEAL

(a) The commissioner may adopt emergency rules to carry out the purposes of Sec. 5a of this act.

(b) This act shall take effect on July 1, 2008, except that Sec. 5a of this act shall take effect on passage, and Sec. 5e of this act shall take effect on July 1, 2009.

(c) Subsection (a) of this section shall be repealed on June 30, 2009.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Health Care agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 306

Rep. Consejo of Sheldon, for the committee on Commerce, to which had been referred House bill, entitled

An act relating to telemarketing;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2464(a)(1) is amended to read:

(1) "Express oral authorization" means that a consumer has explicitly authorized an electronic funds transfer from his or her financial account for goods or services offered by a telemarketer:

(A) during a telephone call in which the telemarketer has clearly stated that the consumer is authorizing the transfer from his or her account, and has further stated the consumer's name, a description of the specific goods or services offered, any material terms of the transaction, the date on or after which the account will be debited, the amount of the transfer, a telephone number for consumer inquiries that is answered during normal business hours, and the date of the authorization; and

(B) where the telemarketer has either tape-recorded the ~~consumer's authorization~~ entire telemarketing call on which the consumer has authorized the transaction and not disposed of the recording until at least ~~two~~ four years after the authorization, or has provided written notice to the consumer, prior to the settlement date of the transfer, confirming the terms of the authorization as described in subdivision (A) of this subdivision ~~(2)~~, (1) and has not disposed of the written notice until at least four years after the notice was created.

Sec. 2. 9 V.S.A. § 2464(b)(2) is amended to read:

(2) to obtain or submit for payment a check, draft, or other form of negotiable instrument drawn on a person's financial account without the consumer's prior written authorization or to dispose of the written authorization until at least four years after the authorization.

Sec. 3. 9 V.S.A. § 2464(e) is added to read:

(e) It is an unfair and deceptive act and practice in commerce for a party other than a federally-insured depository institution who processes a telemarketing transaction for payment from a consumer's financial account to:

(1) fail to obtain, before processing the transaction, any prior written authorization required by subdivision (2) of subsection (b) of this section, or any tape recording or copy of a written confirmation required by subdivision 3 of subsection (b) of this section as part of the consumer's express oral authorization; or

(2) dispose any document required by subdivision (1) of this subsection, or of telemarketer applications or agreements, records of payments processed or returned, electronic communications relating to telemarketers, consumer complaints, or any other category of record that the attorney general may prescribe by rule, until at least four years after the records were created.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Commerce agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 783

Rep. Lippert of Hinesburg, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to home improvement fraud;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2029 is amended to read:

§ 2029. HOME IMPROVEMENT FRAUD

(a) As used in this section, "home improvement" includes the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building or land, or any portion thereof, which is used or designed to be used as a residence or dwelling unit. Home improvement shall include the construction, replacement, installation, paving, or improvement of driveways, roofs, and sidewalks, and the limbing, pruning, and removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house.

(b) A person commits the offense of home improvement fraud when he or she knowingly enters into a contract or agreement, written or oral, for \$500.00

or more, with an owner for home improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she knowingly:

(1) promises performance that he or she does not intend to perform or knows will not be performed, in whole or in part;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) It shall be a permissive inference that the person acted knowingly under subdivision (b)(1) of this section if the person fails to perform the contract or agreement and, when the owner requests performance of the contract or agreement or a refund of payments made, the person fails to:

(1) return the payments or deliver the materials or make and comply with a reasonable written repayment plan for the return of the payments; or

(2) make and comply with a reasonable written plan for completion of the contract or agreement.

(d) A person convicted of home improvement fraud shall register with the ~~department of labor~~ office of attorney general. The court shall notify the ~~department of labor~~ office of attorney general of a conviction under this section. A person who is sentenced pursuant to subdivisions (e)(2), (3), or (4) of this section shall not engage in home improvement activities for compensation unless he or she has filed a surety bond or an irrevocable letter of credit with the ~~department of labor~~ office of attorney general in an amount of not less than \$50,000.00. The ~~department~~ office shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement fraud; and

(3) the person has not been engaged in home improvement activities for at least six years and has signed an affidavit attesting to such.

(e)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (d) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 809

Rep. Barnard of Richmond, for the committee on Education, to which had been referred House bill, entitled

An act relating to requiring annual fire safety inspections for approved independent residential schools;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 166(b) is amended to read:

(b) Approved independent schools. On application, the state board shall approve an independent school which offers elementary or secondary education if it finds, after opportunity for hearing, that the school provides a minimum course of study and that it substantially complies with the board's rules for approved independent schools. Except as provided in subdivision (6) of this subsection, the board's rules must at minimum require that the school

has the resources required to meet its stated objectives, including financial capacity, faculty who are qualified by training and experience in the areas in which they are assigned, and physical facilities and special services that are in accordance with any state or federal law or regulation. Approval may be granted without state board evaluation in the case of any school accredited by a private, state, or regional agency recognized by the state board for accrediting purposes.

* * *

(7) Approval for independent residential schools under this subsection is also contingent upon proof of the school's satisfactory completion of an annual fire safety inspection by the department of public safety or its designee pursuant to subchapter 2 of chapter 173 of Title 20. A certificate executed by the inspecting entity, declaring satisfactory completion of the inspection and identifying the date by which a new inspection must occur, shall be posted at the school in a public location. The school shall provide a copy of the certificate to the commissioner of education after each annual inspection. The school shall pay the actual cost of the inspection unless waived or reduced by the inspecting entity.

Sec. 2. EFFECTIVE DATE

This act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Education agreed to and third reading ordered.

Favorable Report; Third Reading Ordered

H. 764

Rep. Wright of Burlington, for the committee on General, Housing and Military Affairs, to which had been referred House bill, entitled

An act relating to expanded eligibility for Vermont Veterans' Medal;

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the bill be read the third time? **Rep. Grad of Moretown** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read the third time? was decided in the affirmative. Yeas, 93. Nays, 0.

Those who voted in the affirmative are:

Acinapura of Brandon
Allard of St. Albans Town
Ancel of Calais
Andrews of Rutland City
Baker of West Rutland
Barnard of Richmond
Bissonnette of Winooski
Botzow of Pownal
Branagan of Georgia
Bray of New Haven
Brennan of Colchester
Canfield of Fair Haven
Consejo of Sheldon
Copeland-Hanzas of
Bradford
Corcoran of Bennington
Courcelle of Rutland City
Davis of Washington
Deen of Westminster
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield
Donovan of Burlington
Dostis of Waterbury
Emmons of Springfield
Errecart of Shelburne
Evans of Essex
Fallar of Tinmouth
Flory of Pittsford
French of Randolph
Gervais of Enosburg
Gilbert of Fairfax

Godin of Milton
Grad of Moretown
Haas of Rochester
Head of S. Burlington
Heath of Westford
Helm of Castleton
Howard of Rutland City
Jerman of Essex
Jewett of Ripton
Kitzmiller of Montpelier
Komline of Dorset
Kupersmith of S. Burlington
Larocque of Barnet
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick
Lewis of Derby
Lippert of Hinesburg
Livingston of Manchester
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Manwaring of Wilmington
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford
McAllister of Highgate
McCormack of Rutland City
McCullough of Williston
McDonald of Berlin
McNeil of Rutland Town

Milkey of Brattleboro
Minter of Waterbury
Mitchell of Barnard
Mook of Bennington
Moran of Wardsboro
Morrissey of Bennington
Mrowicki of Putney
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
O'Donnell of Vernon
Orr of Charlotte
Partridge of Windham
Pellett of Chester
Peltz of Woodbury
Perry of Richford
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Scheuermann of Stowe
Shand of Weathersfield
Sharpe of Bristol
Smith of Morristown
Sweaney of Windsor
Westman of Cambridge
Weston of Burlington
Winters of Williamstown
Wright of Burlington
Zenie of Colchester

Those who voted in the negative are:

none

Those members absent with leave of the House and not voting are:

Adams of Hartland
Ainsworth of Royalton
Anderson of Montpelier
Aswad of Burlington
Atkins of Winooski
Audette of S. Burlington
Bostic of St. Johnsbury
Browning of Arlington
Chen of Mendon
Cheney of Norwich
Clark of Vergennes

Clarkson of Woodstock
Clerkin of Hartford
Condon of Colchester
Crawford of Burke
Edwards of Brattleboro
Fisher of Lincoln
Fitzgerald of St. Albans City
Frank of Underhill
Grenier of St. Johnsbury
Hosford of Waitsfield
Howrigan of Fairfield

Hube of Londonderry
Hunt of Essex
Hutchinson of Randolph
Johnson of South Hero
Johnson of Canaan
Keenan of St. Albans City
Keogh of Burlington
Kilmartin of Newport City
Klein of East Montpelier
Koch of Barre Town
Krawczyk of Bennington

Larrabee of Danville
LaVoie of Swanton
Lawrence of Lyndon
Marcotte of Coventry
McFaun of Barre Town
Miller of Shaftsbury
Monti of Barre City
Morley of Barton

Myers of Essex
Ojibway of Hartford
Otterman of Topsham
Oxholm of Vergennes
Pearson of Burlington
Peaslee of Guildhall
Peterson of Williston
Pillsbury of Brattleboro

Spengler of Colchester
Stevens of Shoreham
Trombley of Grand Isle
Turner of Milton
Valliere of Barre City
Wheeler of Derby
Zuckerman of Burlington

Adjournment

At eight o'clock and twenty-five minutes in the evening, on motion of **Rep. Haas of Rochester**, the House adjourned until tomorrow at ten o'clock in the forenoon.

WEDNESDAY, MARCH 19, 2008

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Linda Kulas of the United Church, Northfield, VT.

Bill Amended; Third Reading Ordered

H. 257

Rep. Clarkson of Woodstock, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to the codification of existing community justice centers;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 24 V.S.A. chapter 58 is added to read:

CHAPTER 58. COMMUNITY JUSTICE CENTERS

§ 1961. LEGISLATIVE FINDINGS

(a) Consistent with the policy of restorative justice established in section 2a of Title 28, local communities in the state have established community justice centers to create a community-administered, nonadversarial process that:

(1) Resolves conflicts among citizens.

(2) Repairs damage to communities caused by criminal acts.

(3) Addresses the wrongs that criminal acts inflict on individuals.

(4) Responds to a person's wrongdoing at its earliest onset.

(5) Reduces the risk of an offender committing a more serious crime in the future that would require a more intensive and costly sanction.

(b) A system of community justice centers that operates under the authority of a single statute will:

(1) Help each community justice center collaborate more closely with law enforcement and state's attorneys, state agencies, social service providers, victim advocacy organizations, and other community resources.

(2) Enhance the services each community justice center provides.

(3) Help each community justice center further its policy interest of achieving restorative justice.

§ 1962. DEFINITIONS

As used in this chapter:

(1) "Legislative body" means the mayor and board of aldermen of a city, a city council, a town selectboard, or the president and trustees of an incorporated village.

(2) "Municipality" means a city, town, or incorporated village.

§ 1963. AUTHORITY OF MUNICIPALITIES

The legislative body of any municipality may create within its jurisdiction a community justice center to resolve civil disputes and address the wrongdoings of individuals who have committed municipal, juvenile, or criminal offenses.

§ 1964. STRUCTURE OF THE COMMUNITY JUSTICE BOARDS

Each community justice center:

(1) Shall have an advisory board comprised of 51 percent citizen volunteers.

(2) May use a variety of restorative justice approaches, including community panels or boards, group conferencing, or mediation.

(3) Shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote the rehabilitation of youthful and adult offenders.

§ 1965. DUTIES OF THE COMMUNITY JUSTICE CENTERS

Each community justice center:

(1) Shall work in close coordination with state agencies, law enforcement agencies, state's attorneys, social service providers, victim advocacy organizations, and other community resources in administering the programs defined in subdivision 1964(3) of this title.

(2) Shall, in collaboration with state and local agencies, provide training on the restorative justice process to citizen volunteers to enable their participation in the local community justice center.

(3) May address quality of life issues in the community it serves by providing informational and educational resources to the community.

(4) May, in addition to the funding it receives from the state, apply for funding from private foundations, other governmental sources, or other sources.

§ 1966. COMMUNITY JUSTICE CENTERS' RELATIONSHIP WITH STATE GOVERNMENT ENTITIES

(a) The agency of human services shall provide to the community justice centers the information, analysis, and technical and financial support which the community justice centers, in collaboration with the agency of human services, determine are necessary to further their policy of restorative justice.

(b) Funding from the agency of human services. The agency of human services may provide funding and authorize community justice centers to participate in the implementation of state programs related to juvenile and criminal offenses.

(c) Access to information. Community justice center employees and volunteers participating in state-funded programs shall have access to information, analysis, and technical support as necessary to carry out their duties within the program in accordance with state and federal confidentiality statutes and policies.

(d) Liability.

(1) For the purposes of defining liability, community justice center volunteers participating in programs funded by the agency of human services pursuant to subsection (b) of this section shall be considered volunteers of that agency.

(2) In all other cases, the state and the municipality shall each be liable for the acts and omissions of employees operating within the scope of their employment.

(e) The agency of human services, the attorney general, and community justice center directors shall study methods to expand the number of

community justice centers in order to serve municipalities without community justice centers. The study shall include consideration of how municipalities could work jointly to facilitate the expansion of community justice center services.

§ 1967. CASES PROHIBITED

No case involving domestic violence, domestic assault, sexual violence, sexual assault, or stalking shall be referred to a community justice center except in department of corrections offender reentry programs pursuant to protocols protecting victims.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Judiciary agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 748

Rep. Clark of Vergennes, for the committee on Education, to which had been referred House bill, entitled

An act relating to permitting students to possess and self-administer life-saving medicine;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 1387 is added to read:

§ 1387. POSSESSION AND SELF-ADMINISTRATION OF EMERGENCY MEDICATION

(a) Pursuant to the requirements of this section, each public and approved independent school in the state shall permit students with life-threatening allergies or with asthma to possess and self-administer emergency medication on school grounds, at school-sponsored activities, while on school-provided transportation, and during school-related programs.

(b) In each school year for which possession and self-administration of emergency medication is requested, the student's parent or guardian shall provide the school with:

(1) Written authorization, on a form to be provided by the school, for the student to possess and self-administer emergency medication.

(2) Written documentation from the student's physician:

(A) Stating that the student has one or more life-threatening allergies or asthma or both.

(B) Providing the name of the emergency medication, the dosage, and the times and circumstances under which the medication is to be taken.

(C) Affirming that the student is capable of, and has been instructed in, the proper method of self-administration of the emergency medication.

(c) In each school year for which possession and self-administration of emergency medication is requested, the student's parent or guardian shall develop, in consultation with the school nurse or a nurse under contract with an approved independent school, a plan of action regarding the student's life-threatening allergy or allergies or asthma. The plan of action shall be based upon the written documentation provided by the student's physician and shall include the name of each emergency medication, the dosage, and the times and circumstances under which the medication is to be taken.

(d) The student's parent or guardian shall sign a statement on a form to be provided by the school, releasing the school and its employees and agents, including volunteers, from liability as a result of any injury arising from the student's self-administration of the emergency medication, except when the conduct of the school, school employee, or agent would constitute gross negligence, willful and wanton misconduct, or intentional misconduct.

Sec. 2. EFFECTIVE DATE

This act shall apply during the 2008–2009 academic year and after.
and that upon passage, the title shall be “AN ACT RELATING TO PERMITTING STUDENTS TO POSSESS AND SELF-ADMINISTER EMERGENCY MEDICATION”

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Education agreed to and third reading ordered.

Third Reading; Bill Passed

H. 871

House bill, entitled

An act relating to professional requirements for the deputy attorney general, assistant attorneys general, probate judges, deputy state's attorneys, constables and sheriffs;

Was taken up, read the third time and passed.

Read Third Time and Passed**H. 863**

House bill, entitled

An act relating to creation and preservation of affordable housing and smart growth development;

Was taken up and pending third reading of the bill, **Rep. Helm of Castleton** moved to amend the bill as follows:

By adding a new Sec. 27 to read:

Sec. 27. 32 V.S.A. §3481 (1) is amended to read:

(1) "Appraisal value" shall mean, with respect to property enrolled in a use value appraisal program, the use value appraisal as defined in subdivision 3752(12) of this title, multiplied by the common level of appraisal, and with respect to all other property, the estimated fair market value. The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value. Those elements shall include a consideration of a decrease in value in ~~nonrental residential property~~ due to a housing subsidy covenant as defined in section 610 of Title 27, or the effect of any state or local law or regulation affecting the use of land, including but not limited to chapter 151 of Title 10 or any land capability plan established in furtherance or implementation thereof, rules adopted by the state board of health and any local or regional zoning ordinances or development plans. In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative.

~~For residential rental property that is subject to a housing subsidy covenant or other legal restriction, imposed by a governmental, quasi-governmental, or public purpose entity, on rents that may be charged, fair market value shall be determined by an income approach using the following elements:~~

~~(A) market rents with utility allowance adjustments for the geographic area in which the property is located as determined by the federal office of Housing and Urban Development or in the case of properties authorized under 42 U.S.C. § 1437, 12 U.S.C. § 1701q, 42 U.S.C. § 1485, 12 U.S.C. § 1715z-1, 42 U.S.C. § 1437f, and 24 CFR Part 882 Subpart D and E, the higher of~~

~~contract rents (meaning the amount of federal rental assistance plus any tenant contribution) and HUD market rents;~~

~~(B) actual expenses incurred with respect to the property which shall be provided by the property owner in a format acceptable to the commissioner and certified by an independent third party, such as a certified public accounting firm or public or quasi public funding agency;~~

~~(C) a vacancy rate that is 50 percent of the market vacancy rate as determined by the United States Census Bureau with local review by the Vermont housing finance agency; and~~

~~(D) a capitalization rate that is typical for the geographic area determined and published annually prior to April 1 by the division of property valuation and review after consultation with the Vermont housing finance agency.~~

Thereupon, **Rep. Helm of Castleton** asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill, **Rep. Perry of Richford** moved to amend the bill as follows:

In Sec. 1, 24 V.S.A. § 2791(15)(A)(ii), by striking the number "50" and inserting the number "100" and in Sec. 2, 24 V.S.A. § 2793d(c)(2), by striking the number "50" and inserting the number "100"

Which was agreed to.

Pending third reading of the bill, **Rep. Livingston of Manchester** moved to amend the bill as follows:

By adding a new Sec. 9a to read:

Sec. 9a. 10 V.S.A. § 6093(a)(1) and (2) are amended to read:

§ 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

(a) Mitigation for loss of primary agricultural soils. Suitable mitigation for the conversion of primary agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located: unless the subdivision has affordable housing units as provided for in subdivisions (1)(B)(ii) and (2) of this subsection.

(1) Project located in growth center. If the project tract is located in a designated growth center, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont housing and conservation trust fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or

greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

(A) determining the number of acres of primary agricultural soils affected by the proposed development or subdivision;

(B) multiplying the number of affected acres of primary agricultural soils by a factor resulting in a ratio established as follows:

(i) for development or subdivision within a designated growth center, the ratio shall be 1:1;

(ii) for residential construction that has ~~a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision, whichever is greater~~ at least three units that ~~meets~~ meet the definition of affordable housing established in this chapter, no mitigation shall be required. However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. For purposes of this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual household income that does not exceed 60 percent of the county median income or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area.

(C) multiplying the resulting product by a "price-per-acre" value, which shall be based on the amount that the secretary of agriculture, food and markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

(2) Project located outside designated growth center. If the project tract is not located in a designated growth center, except for a project that has at least three units of affordable housing as defined in this chapter and subject to the provisions of subdivision (1)(B)(ii) of this subsection, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the district commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

* * *

Thereupon, **Rep. Livingston of Manchester** asked and was granted leave of the House to withdraw her amendment and the bill was read the third time.

Pending the question, Shall the bill pass? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the affirmative. Yeas, 79. Nays, 61.

Those who voted in the affirmative are:

Ancel of Calais	Grad of Moretown	Mitchell of Barnard
Anderson of Montpelier	Haas of Rochester	Mook of Bennington
Andrews of Rutland City	Head of S. Burlington	Moran of Wardsboro
Aswad of Burlington	Heath of Westford	Mrowicki of Putney
Atkins of Winooski	Hosford of Waitsfield	Nease of Johnson
Bissonnette of Winooski	Hunt of Essex	Nuovo of Middlebury
Botzow of Pownal	Hutchinson of Randolph	Obuchowski of Rockingham
Bray of New Haven	Jerman of Essex	Ojibway of Hartford
Browning of Arlington	Jewett of Ripton	Orr of Charlotte
Chen of Mendon	Keogh of Burlington	Partridge of Windham
Cheney of Norwich	Kitzmiller of Montpelier	Pearson of Burlington
Clarkson of Woodstock	Klein of East Montpelier	Pellett of Chester
Consejo of Sheldon	Kupersmith of S. Burlington	Peltz of Woodbury
Copeland-Hanzas of	Larson of Burlington	Perry of Richford
Bradford	Lenes of Shelburne	Peterson of Williston
Courcelle of Rutland City	Leriche of Hardwick	Pillsbury of Brattleboro
Davis of Washington	Lippert of Hinesburg	Pugh of S. Burlington
Deen of Westminster	Lorber of Burlington	Randall of Troy
Donovan of Burlington	Maier of Middlebury	Shand of Weathersfield
Dostis of Waterbury	Malcolm of Pawlet	Smith of Morristown
Edwards of Brattleboro	Marek of Newfane	Spengler of Colchester
Emmons of Springfield	Martin, C. of Springfield	Sweaney of Windsor
Fallar of Tinmouth	Masland of Thetford	Trombley of Grand Isle
Fisher of Lincoln	McCormack of Rutland City	Weston of Burlington
French of Randolph	McCullough of Williston	Zenie of Colchester
Gervais of Enosburg	Milkey of Brattleboro	Zuckerman of Burlington
Gilbert of Fairfax	Minter of Waterbury	

Those who voted in the negative are:

Acinapura of Brandon	Brennan of Colchester	Errecart of Shelburne
Adams of Hartland	Canfield of Fair Haven	Evans of Essex
Ainsworth of Royalton	Clark of Vergennes	Fitzgerald of St. Albans City
Allard of St. Albans Town	Condon of Colchester	Flory of Pittsford
Audette of S. Burlington	Corcoran of Bennington	Grenier of St. Johnsbury
Baker of West Rutland	Crawford of Burke	Helm of Castleton
Barnard of Richmond	Devereux of Mount Holly	Howard of Rutland City
Bostic of St. Johnsbury	Donaghy of Poultney	Hube of Londonderry
Branagan of Georgia	Donahue of Northfield	Johnson of South Hero

Keenan of St. Albans City	McAllister of Highgate	Potter of Clarendon
Kilmartin of Newport City	McDonald of Berlin	Rodgers of Glover
Koch of Barre Town	McFaun of Barre Town	Scheuermann of Stowe
Komline of Dorset	McNeil of Rutland Town	Sharpe of Bristol
Krawczyk of Bennington	Monti of Barre City	Stevens of Shoreham
Larocque of Barnet	Morley of Barton	Valliere of Barre City
Lawrence of Lyndon	Morrissey of Bennington	Westman of Cambridge
Lewis of Derby	Myers of Essex	Wheeler of Derby
Livingston of Manchester	O'Donnell of Vernon	Winters of Williamstown
Manwaring of Wilmington	Otterman of Topsham	Wright of Burlington
Marcotte of Coventry	Oxholm of Vergennes	
Martin of Wolcott	Peaslee of Guildhall	

Those members absent with leave of the House and not voting are:

Clerkin of Hartford	Howrigan of Fairfield	LaVoie of Swanton
Frank of Underhill	Johnson of Canaan	Miller of Shaftsbury
Godin of Milton	Larrabee of Danville	Turner of Milton

Rep. Errecart of Shelburne explained her vote as follows:

"Madam Speaker:

This bill probably won't hurt the few lucky Vermonters who received subsidized housing funded with scarce taxpayer dollars, and the few lucky Vermonters who are wealthy enough to build their mansions on 10 acres. This bill will hurt low and middle income Vermonters who need decent housing that they can afford. I must vote no."

Rep. Klein of East Montpelier explained his vote as follows:

"Madam Speaker:

I vote yes to a thoughtful and balanced program to assist development of affordable housing without compromising Vermont's natural resources. Vermont is about housing and conservation NOT housing versus conservation. H. 863 continues our long history of thoughtful development."

Rep. Leriche of Hardwick explained her vote as follows:

"Madam Speaker:

H. 863 provides incentives for builders and municipalities to join the effort in creating more affordable housing for the middle-income working Vermonters. I voted yes, because Vermont is not a gated community."

Rep. Trombley of Grand Isle explained his vote as follows:

"Madam Speaker:

This bill helps create affordable and moderate housing, where communities want housing. It will help builders at a time of economic need. It helps working families. It is a historic step for housing in Vermont."

Rep. Barnard of Richmond explained her vote as follows:

"Madam Speaker:

I would like to explain the reasons for my "belly-aching" and my no vote regarding this bill, H.863. Like most of us here, when I review a piece of proposed legislation, one of the first things I consider is how it will affect the community and constituents that I specifically represent here. It is what I found when considered H.863 and what it would provide, or more specifically what it would NOT provide, for Richmond that has caused my belly aching.

Let me be specific. Richmond does meet the many filters that are required of communities in this bill to apply for a VT Neighborhood designation: we have zoning, subdivision, an approved town plan and we host a designated Village Center. Clearly, Richmond is a community that takes planning for growth seriously and values our traditional village center. We know that in order for our village to remain economically robust we need people to live in or nearby it. In fact, a few years ago we approved the development of a new homeownership development (Church Street) with moderately priced homes within our village center. And people want more similar housing options within or nearby the village.

The problem with this bill is that it would make incremental changes to regulations that pertain to affordable housing, but, not address, in a meaningful way, the market forces that are driving the costs of all housing. This bill makes no attempt to go there."

Message from the Senate No. 38

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House the Senate has considered a bill originating in the House of the following title:

H. 875. An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity.

And has passed the same in concurrence.

Recess

At one o'clock and thirty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At two o'clock and ten minutes in the afternoon, the Speaker called the House to order.

**Third Reading; Bills Passed; Rules Suspended
and Bills Messaged to Senate Forthwith**

House bills of the following titles were severally taken up, read the third time and passed:

H. 203

House bill, entitled

An act relating to increasing the amount of an estate to which a surviving spouse is entitled when the deceased spouse dies without a will;

H. 306

House bill, entitled

An act relating to telemarketing;

H. 331

House bill, entitled

An act relating to financing the purchase of a mobile home;

H. 588

House bill, entitled

An act relating to property loaned to museums.

On motion of **Rep. Adams of Hartland**, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Bill Read Third Time and Passed**H. 616**

House bill, entitled

An act relating to farm-fresh milk;

Was taken up and pending third reading of the bill, **Rep. McAllister of Highgate** moved to amend the bill as follows:

First: By striking Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. 6 V.S.A. § 2723(3) is amended to read:

(3) A person who produces and sells or offers for sale less than ~~25~~ 50 quarts of milk in any one day, but in such case an inspection ~~may~~ shall be made pursuant to section 2742 of this chapter and ~~reasonable~~ sanitary requirements regulations adopted by the secretary pursuant to section 2701 of this chapter shall be complied with.

Second: By inserting a new section, to be Sec. 2, to read as follows:

Sec. 2. 6 V.S.A. § 2742 is amended to read:

§ 2742. DAIRY FARMS

Before a dairy farm may sell or offer for sale, milk to a handler, or to the general public and at least ~~once~~ twice a year thereafter, the secretary shall inspect or cause to be inspected all dairy farms as to their premises, equipment, dairy animals, procedures and sanitation conditions. ~~He~~ The secretary may enter into reciprocal agreements with or accept the inspection reports of appropriate dairy sanitation agencies of other states, municipalities or the federal government in lieu of inspection by the secretary, provided their standards and administration are substantially equal to the standards established by the secretary under the provisions of this part. All milk producers shall comply with state-federal-cooperative livestock disease control ~~and/or~~ and eradication programs.

and by renumbering the remaining section to be numerically correct

Which was disagreed to on a Division Vote. Yeas, 27. Nays, 49.

Thereupon, the bill was read the third time.

Pending the question, Shall the bill pass? **Rep. McAllister of Highgate** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill pass? was decided in the affirmative. Yeas, 124. Nays, 16.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ancel of Calais
Anderson of Montpelier
Aswad of Burlington
Atkins of Winooski
Audette of S. Burlington
Barnard of Richmond
Bissonnette of Winooski
Bostic of St. Johnsbury

Botzow of Pownal
Bray of New Haven
Browning of Arlington
Canfield of Fair Haven
Chen of Mendon
Cheney of Norwich
Clark of Vergennes
Clarkson of Woodstock
Condon of Colchester
Consejo of Sheldon

Copeland-Hanzas of
Bradford
Corcoran of Bennington
Courcelle of Rutland City
Crawford of Burke
Davis of Washington
Devereux of Mount Holly
Donaghy of Poultney
Donovan of Burlington
Dostis of Waterbury

Edwards of Brattleboro	Lenes of Shelburne	O'Donnell of Vernon
Emmons of Springfield	Leriche of Hardwick	Orr of Charlotte
Evans of Essex	Lewis of Derby	Otterman of Topsham
Fallar of Tinmouth	Lippert of Hinesburg	Oxholm of Vergennes
Fisher of Lincoln	Livingston of Manchester	Partridge of Windham
Fitzgerald of St. Albans City	Lorber of Burlington	Pearson of Burlington
French of Randolph	Maier of Middlebury	Peaslee of Guildhall
Gervais of Enosburg	Malcolm of Pawlet	Pellett of Chester
Grad of Moretown	Manwaring of Wilmington	Peltz of Woodbury
Grenier of St. Johnsbury	Marcotte of Coventry	Perry of Richford
Haas of Rochester	Marek of Newfane	Peterson of Williston
Head of S. Burlington	Martin, C. of Springfield	Pillsbury of Brattleboro
Heath of Westford	Martin of Wolcott	Potter of Clarendon
Hosford of Waitsfield	Masland of Thetford	Randall of Troy
Howard of Rutland City	McCormack of Rutland City	Rodgers of Glover
Howrigan of Fairfield	McCullough of Williston	Scheuermann of Stowe
Hube of Londonderry	McDonald of Berlin	Shand of Weathersfield
Hunt of Essex	McFaun of Barre Town	Sharpe of Bristol
Hutchinson of Randolph	McNeil of Rutland Town	Smith of Morristown
Jerman of Essex	Milkey of Brattleboro	Spengler of Colchester
Jewett of Ripton	Minter of Waterbury	Stevens of Shoreham
Johnson of South Hero	Mitchell of Barnard	Sweaney of Windsor
Keogh of Burlington	Monti of Barre City	Trombley of Grand Isle
Kilmartin of Newport City	Mook of Bennington	Valliere of Barre City
Kitzmiller of Montpelier	Moran of Wardsboro	Westman of Cambridge
Klein of East Montpelier	Morley of Barton	Weston of Burlington
Koch of Barre Town	Morrissey of Bennington	Wheeler of Derby
Komline of Dorset	Mrowicki of Putney	Winters of Williamstown
Krawczyk of Bennington	Myers of Essex	Wright of Burlington
Kupersmith of S. Burlington	Nease of Johnson	Zenie of Colchester
Larson of Burlington	Nuovo of Middlebury	Zuckerman of Burlington
Lawrence of Lyndon	Obuchowski of Rockingham	

Those who voted in the negative are:

Ainsworth of Royalton	Donahue of Northfield	Larocque of Barnet
Allard of St. Albans Town	Errecart of Shelburne	McAllister of Highgate
Andrews of Rutland City	Flory of Pittsford	Ojibway of Hartford
Baker of West Rutland	Gilbert of Fairfax	Pugh of S. Burlington
Branagan of Georgia	Helm of Castleton	
Brennan of Colchester	Keenan of St. Albans City	

Those members absent with leave of the House and not voting are:

Clerkin of Hartford	Godin of Milton	LaVoie of Swanton
Deen of Westminster	Johnson of Canaan	Miller of Shaftsbury
Frank of Underhill	Larrabee of Danville	Turner of Milton

Rep. Branagan of Georgia explained her vote as follows:

"Madam Speaker:

This bill has the potential of crating a devastating human health incident that could injure the Vermont dairy industry permanently.”

Rep. Donahue of Northfield explained her vote as follows:

“Madam Speaker:

I’m not an expert in many areas that come before this body. When members I trust who are dairy farmers think it’s a bad idea without inspections, I vote no.”

Rep. Koch of Barre Town explained his vote as follows:

“Madam Speaker:

I vote yes on this bill in support of consumer choice. I just wish this House were also supportive of the concept of choice in other areas, such as education and health care.”

Rep. Zuckerman of Burlington explained his vote as follows:

“Madam Speaker:

If it was so devastatingly dangerous, where were the amendments to eliminate the exemption altogether?”

**Third Reading; Bills Passed; Rules Suspended
and Bills Messaged to Senate Forthwith**

House bills of the following titles were severally taken up, read the third time and passed:

H. 700

House bill, entitled

An act relating to sale of bottles of wine at festivals.

H. 704

House bill, entitled

An act relating to notices of transfer of policies to an affiliate proved by an insurer.

H. 764

House bill, entitled

An act relating to expanded eligibility for Vermont Veterans’ Medal.

H. 776

An act relating to computation of the basic needs budget and the livable wage.

H. 777

House bill, entitled

An act relating to the certificate of need program.

H. 783

House bill, entitled

An act relating to home improvement fraud.

H. 809

House bill, entitled

An act relating to requiring annual fire safety inspections for approved independent residential schools.

H. 879

House bill, entitled

An act relating to the repeal of unnecessary, duplicative, and burdensome reports; the improved timeliness and efficiency of special education audits; and the simplification of union school district formation.

H. 880

House bill, entitled

An act relating to the Vermont pension investment committee.

H. 881

House bill, entitled

An act relating to the role of electric and gas utilities in facilitating the deployment of communications facilities throughout the state.

On motion of **Rep. Adams of Hartland**, the rules were suspended and the bills were ordered messaged to the Senate forthwith.

Bill Read Second Time; Third Reading Ordered**H. 883**

Rep. Atkins of Winooski spoke for the committee on Government Operations.

House bill entitled

An act relating to miscellaneous amendments to Vermont's public retirement system;

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Read Second Time; Third Reading Ordered

H. 884

Rep. Kilmartin of Newport City spoke for the committee on Education.

House bill entitled

An act relating to ensuring quality in prekindergarten education programs offered by or through school districts;

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Read Second Time; Third Reading Ordered

H. 885

Rep. Botzow of Pownal spoke for the committee on Commerce.

House bill entitled

An act relating to developing consistent measurement standards for economic growth;

Having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Bill Amended; Third Reading Ordered

H. 436

Rep. Martin of Wolcott, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to discussion of ballot items at town meeting;

Reported in favor of its passage when amended as by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 17 V.S.A. § 2456 is amended to read:

§ 2456. DISQUALIFICATIONS

Notwithstanding the preceding sections of this subchapter, no person shall serve as an election official in any election in which his or her name appears on a ballot of the Australian ballot system as a candidate for any office unless he

or she is the only candidate for that office, or unless the office for which he or she is a candidate is that of moderator, justice of the peace, town clerk,

~~clerk-treasurer, ward clerk, or inspector of elections. When an Australian ballot is not used, a person shall not serve as an election official during the election to fill any office for which he or she is a nominee. For the purpose of this section, "clerk-treasurer" means a person who is a candidate for the offices of town clerk and town treasurer at the same time.~~

Sec. 2. 17 V.S.A. § 2494 is amended to read:

§ 2494. CONSTRUCTION WITH OTHER LAWS

Except as this subchapter affects the method of registering votes and ascertaining the result, the laws of this state pertaining to elections shall be applicable. The laws pertaining to early or absentee voters shall in no way be affected by this subchapter, and votes cast by early or absentee voters shall be counted with votes registered on voting machines. In towns using voting machines, the board of civil authority may vote to open polling places at 5:00 a.m., provided that at least three elections officials are present, two of whom are from different parties, ~~solely for the purpose of checking voters who voted by early voter absentee ballot off the checklist and depositing the ballots into the ballot box or voting machine.~~ If all early voter absentee ballots have not been deposited into the voting machines before the closing of the polls at 7:00 p.m., the elections officials shall continue to deposit ballots using the same procedure as provided in subsection 2561(b) of this title, treating each ballot as a voter waiting to cast his or her ballot at the close of the polls.

Sec. 3. 17 V.S.A. § 2640(c) is amended to read:

~~(c) In a town which starts its annual meeting on any day before the first Tuesday in March and which uses the Australian ballot system,~~ Notwithstanding section 2508 of this title, public discussion of ballot issues and all other issues appearing in the warning, other than election of candidates, shall be permitted on that day at the annual meeting, regardless of the location of the polling place.

Sec. 4. 17 V.S.A. § 2664 is amended to read:

§ 2664. BUDGET

A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights. It shall express in its vote the specific amounts, or the rate on a dollar of the grand list, to be appropriated for laying out and repairing highways and for other necessary town expenses. If a town votes specific amounts in lieu of a rate on a dollar of the grand list, the ~~selectmen~~ selectboard shall, after the

grand list book has been computed and lodged in the office of the town clerk, set the tax rate necessary to raise the specific amounts voted. The selectboard may apply for grants and may accept and expend grants or gifts above those which are approved in the town budget. The selectboard shall include, in its annual report, a description of all grants or gifts accepted during the year and associated expenditures.

Sec. 5. 17 V.S.A. § 2680(g) is amended to read:

(g) Whenever a municipality has voted to adopt the Australian ballot system of voting on any public question or budget, except the budget revote as provided in subsection (c) of this section, the legislative body shall hold a public informational hearing on the question by posting warnings at least 10 days in advance of the hearing in at least two public places within the municipality and in the town clerk's office. The hearing shall be held within the 10 days preceding the meeting at which the Australian ballot system is to be used. The hearing under this subsection may be held in conjunction with the meeting held under subsection 2640(c), in which case the moderator shall preside.

Sec. 6. 24 V.S.A. § 871 is amended to read:

§ 871. ORGANIZATION OF SELECTMEN SELECTBOARD;
APPOINTMENTS

Forthwith after their election and qualification, the ~~selectmen~~ selectboard shall organize and elect a ~~chairman~~ chair and, if so voted, a clerk from among their number, and file a certificate of such election for record in the office of the town clerk. ~~Such selectmen shall~~ The selectboard shall thereupon appoint from among the legally qualified voters a tree warden and may thereupon appoint from among the legally qualified voters the following officers who shall serve until their successors are appointed and qualified, and shall certify such appointments to the town clerk who shall record the same:

(1) Three fence viewers;

(2) A poundkeeper, for each pound; voting residence in the town need not be a qualification for this office provided appointee gives his or her consent to the appointment;

(3) One or more inspectors of lumber, shingles and wood; and

(4) One or more weighers of coal; and

~~(5) A tree warden.~~

Sec. 7. 24 V.S.A. § 1535(a) is amended to read:

(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:

* * *

Sec. 8. 24 V.S.A. § 4442(c) is amended to read:

(c) Routine adoption.

(1) A bylaw, amendment, or 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, amendment, or 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, by action of the legislative body or 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.

Sec. 9. 32 V.S.A. § 1671(a)(6) is amended to read:

(6) Notwithstanding any other provision of law to the contrary, for the recording or filing, or both, of any document that is to become a matter of public record in the town clerk's office, or for any certified copy of such document, a fee of \$8.00 per page shall be charged; except that for the recording or filing, or both, of a property transfer return, a fee of \$8.00 shall be charged;

Sec. 10. 32 V.S.A. § 4774(b) is amended to read:

(b)(1) The treasurer or collector shall deposit to the general fund any tax overpayment by a taxpayer who has paid by mail or electronic fund transfer, provided that:

(1)(A) the payment made was equal to the taxes due without regard to the discount under section 4773 of this title; and

(2)(B) the overpayment amount is ~~\$2.00~~ \$10.00 or less.

(2) If the taxpayer requests refund of such an overpayment within one year of payment, the treasurer or collector shall refund it.

Sec. 11. 32 V.S.A. § 5137 is amended to read:

§ 5137. RECORDING DELINQUENT PAYMENTS

A collector of taxes for a town or municipality within it shall receipt for every payment made to the collector on account of delinquent taxes. Such receipt shall be written in triplicate in a bound book or other permanent record purchased at the expense of the municipality and shall indicate the date of the payment, the name of the person making the payment, the name of the person against whom was assessed the tax on which the payment is to be applied, the year in which such tax was assessed and if a partial payment on an annual tax bill, whether applied on poll, personal property or real estate taxes. Such collector shall ~~detach and~~ deliver the original receipt forthwith to the person making the payment and one copy thereof within 30 days to the town clerk who shall keep such copy on file. ~~Such collector shall purchase at the expense of the municipality for which the collector is acting a sufficient number of such bound triplicate receipt books having the sets of originals and copies consecutively numbered.~~ Annually, on or before February 5, the collector shall deliver to the auditors of each municipality for which the collector is acting all such bound volumes in which entries pertaining to such municipality have been made during the year ending January 31 next preceding, and the auditors shall audit the books forthwith and after the completion of audit shall return such books to such collector.

and that upon passage, the title of the bill shall read:

"AN ACT RELATING TO MISCELLANEOUS AMENDMENTS TO LOCAL ELECTION AND MUNICIPAL GOVERNMENT LAWS"

Was taken up and read the second time.

Pending the question. Shall the House amend the bill as recommended by the committee on Government Operations? **Rep. Martin of Wolcott** moved to amend the report of the committee on Government Operations as follows:

First: In Sec. 1, in the first sentence, after "town clerk," by inserting "treasurer."

Second: By striking Sec. 7 in its entirety and renumbering the remaining sections to be numerically correct

Which was agreed to.

Pending the question. Shall the House amend the bill as recommended by the committee on Government Operations, as amended? **Rep. Branagan of Georgia** moved to amend the report of the committee on Government Operations, as amended, as follows:

By adding a new Sec. 1 a to read as follows:

Sec. 1a. 17 V.S.A. § 2402(d) is amended to read:

(d) A statement of nomination and a completed and signed consent form shall be filed not ~~later~~ sooner than the time for filing ~~the statements~~ petitions prescribed in section ~~2386~~ 2356 of this title and not later than the time for filing the statements prescribed in section 2386 of this title. No public official receiving nominations shall accept a petition unless a completed and signed consent form is filed at the same time.

Which was agreed to and the recommendation of amendment offered by the committee on Government Operations, as amended, was agreed to and third reading was ordered.

Bill Amended, Read Third Time and Passed

H. 617

House bill, entitled

An act relating to guardianships;

Was taken up and pending third reading of the bill, **Rep. Jewett of Ripton** moved to amend the bill as follows:

First: in Sec.1, 14 V.S.A., by striking § 3060 and inserting in lieu thereof a new § 3060 to read as follows:

§ 3060. POLICY

Guardianship ~~for mentally disabled persons~~ shall be utilized only as necessary to promote the well-being of the individual and to protect the individual from violations of his or her human and civil rights. It shall be designed to encourage the development and maintenance of maximum self-reliance and independence in the individual and only the least restrictive form of guardianship shall be ordered ~~only~~ to the extent required by the individual's actual mental and adaptive limitations. The state of Vermont recognizes the fundamental right of an adult with capacity to determine the extent of health care the individual will receive.

Second: in Sec.1, 14 V.S.A. § 3061, by adding new subdivisions (10), (11), and (12) to read as follows:

(10) "Capacity to make medical decisions" means an individual's ability to make and communicate a decision regarding proposed health care based upon having a basic understanding of the diagnosed condition and the benefits, risks, and alternatives to the proposed health care.

(11) "Informed consent" means the consent given voluntarily by an individual with capacity after being fully informed of the nature, benefits,

risks, and consequences of the proposed health care, alternative health care, and no health care.

(12) "Assent" means a communication by a person under guardianship that a proposed health care decision by his or her guardian is consistent with his or her preferences, when that person has been found to lack the capacity to provide informed consent.

Third: in Sec.1, 14 V.S.A., by striking § 3074 in its entirety and inserting in lieu thereof a new § 3074 to read as follows:

§ 3074. INSTITUTIONALIZATION OF MENTALLY DISABLED PERSONS COMMITMENT, STERILIZATION, INVOLUNTARY TREATMENT, AND INVOLUNTARY MEDICATION

Nothing in this chapter shall give the guardian of a ward person authority to:

(1) place that person in a state school or hospital except pursuant to section 7601 et seq. of Title 18 or section 8801 et seq. of Title 18 a unit of an inpatient hospital which is locked to prevent involuntary patients from eloping, including the Vermont state hospital or any psychiatric unit of a designated hospital as defined under 18 V.S.A. § 7101(4), except as provided in subsection 3075(h) of this title.

(2) consent to an involuntary treatment or medication petition pursuant to chapter 181 of Title 18.

(3) consent to sterilization or to a petition for involuntary sterilization pursuant to chapter 204 of Title 18.

(4) consent to a petition for custody, care, or habilitation filed pursuant to chapter 206 of Title 18.

Fourth: in Sec.1, 14 V.S.A., by striking section § 3075 in its entirety and inserting in lieu thereof a new § 3075 to read as follows:

§ 3075. CONSENT FOR MEDICAL OR DENTAL TREATMENT

(a) When a ward whose right to consent to surgery or other medical procedure has not been restricted pursuant to section 3069(b)(5) of this title is admitted to a hospital for nonemergency surgery or other nonemergency medical procedures requiring consent, the treating physician shall determine if the person's physical condition is such that the person has sufficient capacity to make a responsible decision. If the person has such capacity, his informed consent shall be obtained before such surgery or medical procedure is performed. In such cases, the ward's consent shall be determinative and no other consent is necessary. A person under guardianship retains the right to

make medical and dental decisions unless that right has been restricted pursuant to subdivision 3069(c)(2) of this title.

(b) When a ward whose right to consent to surgery or other medical procedures has been restricted pursuant to section 3069(b)(5) of this title is admitted to a hospital for nonemergency surgery or other nonemergency medical procedures requiring consent, the guardian may give such consent upon the advice of the treating physician and after obtaining permission of the probate court, after hearing, upon such notice as the court may direct. A person whose right to make medical decisions has been restricted pursuant to subdivision 3069(c)(2) of this section who has the capacity to make a specific medical decision retains the right to make that decision.

(c) Unless an advance directive or the authority of an agent is expressly revoked or modified by the court pursuant to section 9718 of Title 18, the advance directive of a person under guardianship shall remain in effect, and the agent shall have sole authority to make health care decisions for the person under guardianship pursuant to chapter 231 of Title 18.

(d) If there is no agent named in the advance directive, or if the office of agent is vacant, the guardian shall follow the instructions contained in the advance directive.

(e) For a person whose right to consent to medical or dental procedures has been restricted pursuant to subdivision 3069(b)(2) of this title, the guardian may give or withhold consent pursuant to this section and subject to any constitutional right of the person under guardianship to refuse treatment.

(f) Consent to the procedure shall be given or withheld consistent with the manner in which the person under guardianship would have given or withheld consent, provided there is sufficient information concerning the person's wishes. In making this determination, the guardian and the court in reviewing a guardian's decision under this section shall:

(1) rely on written and oral expressions of the person under guardianship;

(2) rely on available information concerning the wishes, values, beliefs, and preferences of the person under guardianship if the person's written and oral expressions do not provide sufficient information; and

(3) follow the best interests of the person under guardianship if subdivisions (1) and (2) of this subsection are inapplicable. No decision to withhold or abate medical treatment will be based solely on the age, economic level, or level of disability of the person under guardianship.

(g)(1) The guardian shall obtain prior written approval by the probate court following notice and hearing:

(A) if the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise;

(B) if the court orders prior approval for a specific surgery, procedure, or treatment, either in its initial order pursuant to subdivision 3069(c)(2) of this title or anytime after appointment of a guardian;

(C) except as provided in subdivision (2) of this subsection, and unless the guardian is acting pursuant to an advance directive, before withholding or withdrawing life-sustaining treatment other than antibiotics; or

(D) unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order unless a clinician as defined in subdivision 9701(5) of Title 18 certifies that an attempt to resuscitate would not prevent death and that the person under guardianship is likely to experience cardiopulmonary arrest before court approval can be obtained. The guardian shall obtain the clinician's certification prior to consenting to the

do-not-resuscitate order and shall file the clinician's certification with the court after consent has been given.

(2) The requirements of subdivision (1)(C) of this subsection shall not apply if obtaining a court order would be impracticable due to the imminent death of the person under guardianship.

(h) A guardian may consent to admission of a person under guardianship to a unit of an inpatient hospital which is locked to prevent involuntary patients from eloping, including the Vermont state hospital or any psychiatric unit of a designated hospital as defined under 18 V.S.A. § 7101(4), only if the person under guardianship assents, as evidenced by:

(1) assent in writing on the admission consent form; and

(2) a hospital witness' signature that includes the affirmation that an explanation was provided to the person that his or her inpatient treatment will include admission to a locked unit where only a physician can decide when the patient can be discharged, that the person was informed that the person has the right to a court hearing to object to specific treatments, that the person expressed the desire to be admitted, and that the person assented to admission voluntarily, without any coercion or duress.

(i) The procedures in chapter 181 of Title 18 shall be the exclusive mechanism:

(1) For admission to inpatient psychiatric care when the person under guardianship has not voluntarily assented to the admission under subsection (h) of this section.

(2) To obtain approval for administration of nonemergency involuntary psychiatric medication to a person under guardianship.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Rules Suspended; Bills Messaged to Senate Forthwith

On motion of **Rep. Adams of Hartland**, the rules were suspended and the following bills were ordered messaged to the Senate forthwith:

H. 617

House bill, entitled

An act relating to guardianships;

H. 616

House bill, entitled

An act relating to farm-fresh milk;

H. 863

House bill, entitled

An act relating to creation and preservation of affordable housing and smart growth development;

H. 871

House bill, entitled

An act relating to professional requirements for the deputy attorney general, assistant attorneys general, probate judges, deputy state's attorneys, constables and sheriffs.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the nineteenth day of March, 2008, he approved and signed a bill originating in the House of the following title:

H. 580 An act relating to terms of members of the Vermont tobacco evaluation and review board

Message from the Senate No. 39

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that that the Senate has on its part passed Senate bill of the following title:

S. 168. An act relating to operating a motor vehicle under the influence of alcohol or drugs.

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

Adjournment

At four o'clock and thirty minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

THURSDAY, MARCH 20, 2008

At two o'clock and thirty minutes in the afternoon the Speaker called the House to order.

Devotional Exercises

In memorial, honor and gratitude to Vermont's dedicated soldiers and their families, Speaker Gaye Symington passed a lighted candle to the House members to pass to each other in silence and meditation. Sergeant-at-Arms, Francis Brooks ended devotions by singing "I Believe" by Ervin Drake.

Committee Bill Introduced**H. 887**

Rep. Maier of Middlebury, for the committee on Health Care, introduced a bill, entitled

An act relating to health care reform;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bill Referred**S. 168**

Senate bill, entitled

An act relating to operating a motor vehicle under the influence of alcohol or drugs;

Was taken up, read the first time and referred to the committee on Judiciary.

Joint Resolution Placed on Calendar

The Speaker placed before the House the following resolution which was read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

J.R.H. 56

Joint resolution honoring municipal public works employees and designating May 18–24 as Public Works Week in Vermont

Offered by: Representatives Koch of Barre Town, Ainsworth of Royalton, Browning of Arlington, Devereux of Mount Holly, Emmons of Springfield, Fallar of Tinmouth, Flory of Pittsford, Larocque of Barnet, Lenes of Shelburne, Lorber of Burlington, Marcotte of Coventry, McDonald of Berlin, McFaun of Barre Town, Myers of Essex, Pillsbury of Brattleboro, Rodgers of Glover, Turner of Milton and Valliere of Barre City

Whereas, much of the highway and bridge network in Vermont is municipally owned, and the responsibility for its maintenance is assigned to local public works departments, and

Whereas, the regular duties of city and town public works departments' employees encompass general roadway and bridge maintenance on a year-round basis, and

Whereas, when extremely inclement weather strikes, such as a severe snowstorm or a thunderstorm whose elements include high velocity winds, municipal public works department crews are called upon to perform near-heroic tasks under the worst possible climatic conditions and not infrequently in the middle of the night, and

Whereas, these special but essential jobs can range from removing snow from the highway while blowing drifts are inhibiting steady progress to supporting utility crews removing trees entangled in dangerously electrified cables, and

Whereas, on May 14, the Vermont Municipal Highway Association will hold its annual field day and expo at the Barre Auditorium, and

Whereas, local public works crews from many communities will attend this much-anticipated event, and

Whereas, the Vermont Municipal Highway Association event also serves as a showcase for vendors to exhibit new products that public works staff can examine and consider purchasing, and

Whereas, May is also an important month for these dedicated municipal employees as the week of May 18–24 is being observed as Public Works Week in order to recognize these all-too-often unsung heroes who maintain highways, bridges, and other essential municipal infrastructure 365 days a year, now therefore be it

Resolved by the Senate and House of Representatives:

That the general assembly honors Vermont's outstanding municipal public works employees and designates May 18–24 as Public Works Week in Vermont, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to Todd Law, president of the Vermont Municipal Highway Association in Montpelier and to Barre Town Engineer Harry Hinrichsen.

Remarks Journalized

On motion of **Rep. Zuckerman of Burlington**, the remarks by **Rep. Krawczyk of Bennington** were ordered printed in the Journal.

“Madam Speaker,

As a father of a soldier, a daughter who has spent three of the last five years in Iraq, I want to thank the members of this body, and especially you, Madam Speaker, for the ceremony just completed...one which showed support for our troops serving in harm's way.

In April of this year, my daughter will return to Iraq for what the Army calls a "Leader's RECON", in order to prepare her unit, and her, for their 4th tour of duty. As a father, I worry and pray for her and her soldiers' safe return. However, I trust in the training she has received and I know that her unit and she will successfully accomplish their mission. I am comforted to know that she has your support and the support of the American people. As a soldier of another war for which we did not have the support of the American people, I know how much this symbolic gesture means to our soldiers. It means more than anything else we can give them.

Those who know my family well, say that my daughter has too many of my genes. She is close to her soldiers, and their safety and welfare comes before hers.

Those of us, who have been in this body since this war began, have not always agreed on the purpose of this war, but we have never disagreed on our support for our troops. I love you all for that.

As you look at my size, you may not think that I am a sensitive person, but I am. As I watched this ceremony, and listened to the Sergeant-At-Arms singing such a moving song, I had chills running up and down my back. Those chills are still there. Thank you all and thank you again, Madam Speaker."

**Committee Relieved of Consideration
and Bill Placed on Calendar for Notice**

H. 170

Rep. Morley of Barton moved that the Committee on Appropriations be relieved of House bill entitled

An act relating to retirees of the University of Vermont;

Which was agreed to. Thereupon, under the rule, the bill was placed on the Calendar for notice tomorrow.

Rules Suspended; Action Postponed

H. 170

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Atkins of Winooski**, the rules were suspended and House bill, entitled

An act relating to retirees of the University of Vermont;

Was taken up for immediate consideration.

On motion of **Rep. Atkins of Winooski**, action on the bill was postponed until the end of the orders of the day.

**Committee Relieved of Consideration
and Bill Placed on Calendar for Notice**

H. 574

Rep. Condon of Colchester moved that the Committee on Ways and Means be relieved of House bill entitled

An act relating to requiring beverage container manufacturers to pay an additional one-half cent per container to retailers who do not commingle containers;

Which was agreed to. Thereupon, under the rule, the bill was placed on the Calendar for notice tomorrow.

Third Reading; Bill Passed**H. 257**

House bill, entitled

An act relating to the codification of existing community justice centers;

Was taken up, read the third time and passed.

Bill Amended, Read Third Time and Passed**H. 436**

House bill, entitled

An act relating to discussion of ballot items at town meeting;

Was taken up and pending third reading of the bill, **Rep. Martin of Wolcott** moved to amend the bill as follows:

By adding a Sec. 2a as follows:

Sec. 2a. 17 V.S.A. § 2561(a) is amended to read:

(a) At all elections using the Australian ballot system, the polls ~~shall~~ may open no earlier than 5:00 a.m. and shall open no later than 10:00 a.m. as set by the board of civil authority in each town ~~unless the board of civil authority has elected to open the polls earlier than 6:00 a.m. as provided in section 2494 of this title.~~ The polls in all polling places shall close at 7:00 p.m.

Which was agreed to.

Pending third reading of the bill, **Rep. Branagan of Georgia** moved to amend the bill as follows:

By adding a Sec. 12 to read as follows:

Sec 12. EFFECTIVE DATE

Sec. 1a shall take effect upon passage.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Bill Amended, Read Third Time and Passed**H. 748**

House bill, entitled

An act relating to permitting students to possess and self-administer life-saving medicine;

Was taken up and pending third reading of the bill, **Rep. Clark of Vergennes** moved to amend the bill as follows:

In Sec. 1, by adding a new subsection to be subsection § 1387(e) to read as follows:

(e) Nothing in this section shall prohibit a public school district or an approved independent school from adopting school policies and individual plans of action regarding the possession and self-administration of emergency medication for medical conditions other than asthma and life-threatening allergies.

Which was agreed to. Thereupon, the bill was read the third time and passed with a title amendment to read as follows:

AN ACT RELATING TO PERMITTING STUDENTS TO POSSESS AND SELF-ADMINISTER EMERGENCY MEDICATION

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 883

House bill, entitled

An act relating to miscellaneous amendments to Vermont's public retirement system.

H. 884

House bill, entitled

An act relating to ensuring quality in prekindergarten education programs offered by or through school districts.

H. 885

House bill, entitled

An act relating to developing consistent measurement standards for economic growth.

Consideration Resumed; Action Postponed

H. 170

Consideration resumed on House bill, entitled

An act relating to retirees of the University of Vermont;

Rep. Atkins of Winooski, for the committee on Government Operations, recommended that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 926 is amended to read:

§ 926. GRIEVANCES

(a) The board shall hear and make final determination on the grievances of all employees who are eligible to appeal grievances to the board. Grievance hearings at the board level shall be conducted in accordance with the rules and regulations promulgated by the board. The right to institute grievance proceedings extends to individual employees, groups of employees, and collective bargaining units.

(b) The board shall hear and make final determination on the grievances of all retired individual employees of the University of Vermont, groups of such retired individuals, and retired collective bargaining unit members of the University of Vermont. Grievances shall be limited to those relating to compensation and benefits that were accrued during active employment but are received after retirement. For the purposes of this subsection, "grievance" means an allegation of a violation of a collective bargaining agreement, employee handbook provision, early retirement plan, individual separation agreement or other documented agreement, or rule or regulation of the University of Vermont.

Thereupon, the bill was read the second time and pending the question, Shall the House amend the bill as recommended by the committee on Government Operations? on motion of **Rep. Atkins of Winooski**, action on the bill was postponed until the next legislative day.

Adjournment

At three o'clock and fifteen minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

FRIDAY, MARCH 21, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend David Hall of Christ Church Episcopal, Montpelier, VT.

Message from the Senate No. 40

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 26. An act relating to electronic payment of wages.

S. 112. An act relating to victims compensation.

S. 114. An act relating to enhancing mental health parity.

S. 216. An act designating snowboarding and skiing as the Vermont state sports.

S. 244. An act relating to self-storage facilities.

S. 360. An act relating to increasing substance abuse treatment, vocational training and transitional housing for offenders in order to reduce recidivism, increase public safety, and reduce corrections costs.

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

The Senate has on its part adopted a joint resolution of the following title:

J.R.S. 58. Joint resolution relating to weekend adjournment.

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

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

J.R.H. 45. Joint resolution urging Congress to repeal the planned Competitive Loan Auction Pilot program for the Federal Family Education Loan program's PLUS LOANS to parents.

And has adopted the same in concurrence.

The Senate has considered House proposal of amendment to Senate bill of the following title:

S. 278. An act relating to financing campaigns.

And has concurred therein.

The Governor has informed the Senate that on the nineteenth day of March, 2008, he approved and signed a bill originating in the Senate of the following title:

S. 209. An act relating to the Vermont energy efficiency and affordability act.

Committee Bill Introduced

H. 888

Rep. Obuchowski of Rockingham, for the committee on Ways and Means, introduced a bill, entitled

An act relating to miscellaneous tax amendments;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 26

Senate bill, entitled

An act relating to electronic payment of wages;

To the committee on General, Housing and Military Affairs.

S. 112

Senate bill, entitled

An act relating to victims compensation;

To the committee on Judiciary.

S. 114

Senate bill, entitled

An act relating to enhancing mental health parity;

To the committee on Human Services.

S. 216

Senate bill, entitled

An act designating snowboarding and skiing as the Vermont state sports;

To the committee on General, Housing and Military Affairs.

S. 244

Senate bill, entitled

An act relating to self-storage facilities;

To the committee on Commerce.

S. 360

Senate bill, entitled

An act relating to increasing substance abuse treatment, vocational training and transitional housing for offenders in order to reduce recidivism, increase public safety, and reduce corrections costs;

To the committee on Corrections and Institutions.

Bill Referred to Committee on Appropriations**H. 887**

House bill, entitled

An act relating to health care reform;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Joint Resolution Adopted in Concurrence**J.R.S. 58**

Joint resolution, entitled

Joint resolution relating to weekend adjournment;

By Senator Shumlin,

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 21, 2008, it be to meet again no later than Tuesday, March 25, 2008.

Was taken up read and adopted in concurrence.

Bill Amended; Third Reading Ordered**H. 170**

Rep. Atkins of Winooski, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to retirees of the University of Vermont;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 926 is amended to read:

§ 926. GRIEVANCES

(a) The board shall hear and make final determination on the grievances of all employees who are eligible to appeal grievances to the board. Grievance hearings at the board level shall be conducted in accordance with the rules and regulations promulgated by the board. The right to institute grievance proceedings extends to individual employees, groups of employees, and collective bargaining units.

(b) The board shall hear and make final determination on the grievances of all retired individual employees of the University of Vermont, groups of such retired individuals, and retired collective bargaining unit members of the University of Vermont. Grievances shall be limited to those relating to compensation and benefits that were accrued during active employment but are received after retirement. For the purposes of this subsection, "grievance" means an allegation of a violation of a collective bargaining agreement, employee handbook provision, early retirement plan, individual separation agreement or other documented agreement, or rule or regulation of the University of Vermont.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Government Operations agreed to and third reading ordered.

Bill Ordered to Lie

H. 689

House bill, entitled

An act relating to utility prescriptive rights;

Pending the reading of the report on the committee on Commerce, on motion of **Rep. Shand of Weathersfield**, the bill was ordered to lie.

Bill Amended; Third Reading Ordered

H. 635

Rep. Pugh of South Burlington, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to reports of child abuse or neglect;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 49, subchapter 2 is amended to read:

Subchapter 2. Reporting Abuse of Children

§ 4911. PURPOSE

The purpose of this subchapter is to:

(1) ~~protect~~ Protect children whose health and welfare may be adversely affected through abuse or neglect;

(2) ~~strengthen~~ Strengthen the family and make the home safe for children whenever possible by enhancing the parental capacity for good child care;

(3) ~~provide~~ Provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes require the reporting of suspected child abuse and neglect, an assessment or investigation of such reports and provision of services, when needed, to such child and family.

(4) Establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults.

(5) Establish a tiered child protection registry that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect.

§ 4912. DEFINITIONS

As used in this subchapter:

(1) “Child” means an individual under the age of majority.

(2) An “abused or neglected child” means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child’s welfare. An “abused or neglected child” also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(3) “Harm” can occur by:

(A) Physical injury or emotional maltreatment;

(B) Failure to supply the child with adequate food, clothing, shelter, or health care. For the purposes of this subchapter, “adequate health care” includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child’s care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone; or

(C) Abandonment of the child.

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

(5) "A person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.

(6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

(7) "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

(9) "Multi-disciplinary team" means a group of professionals, paraprofessionals and other appropriate individuals, empanelled by the commissioner of ~~social and rehabilitation services~~ under this chapter, for the purpose of assisting in the identification and investigation review of cases of child abuse and neglect, coordinating treatment services for abused and neglected children and their families and promoting child abuse prevention.

(10) "Substantiated report" means that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.

(11) [Repealed.]

(12) "Member of the clergy" means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, person performing official duties on

behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

(13) "Redacted investigation file" means the intake report, the investigation activities summary, and case determination report that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of this title.

(14) "~~Child abuse and neglect~~ protection registry" means a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.

(15) "Registry record" means an entry in the ~~child abuse and neglect~~ protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(16) "Investigation" means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.

(17) "Assessment" means a response to a report of abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The child and family assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.

§ 4913. SUSPECTED CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A.

§ 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, child care worker, school principal, school guidance counselor, and any other person employed by or contracted to work for a school district, mental health professional, social worker, probation officer, police officer, camp owner,

camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

(b) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title.

(c)(1) ~~Any person enumerated in subsection (a) or (b) of this section, other than a person suspected of child abuse, who in good faith makes a report to the department of social and rehabilitation services shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.~~

(2) An employer or supervisor shall not discharge, demote, transfer, reduce pay, benefits, or work privileges, prepare a negative work performance evaluation, or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

(d) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless:

(1) the person making the report specifically allows disclosure or unless;

(2) a human services board proceeding or a judicial proceeding results therefrom or unless;

(3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the department to make the name of the reporter available; or

(4) a review has been requested pursuant to section 4916a of this title and the department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

(e)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

(f) Except as provided in subsection (g) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

(g) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

(h) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection (g) of this section, he or she is required to report on the basis of that information even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection (g) of this section.

§ 4914. NATURE AND CONTENT OF REPORT; TO WHOM MADE

A report shall be made orally or in writing to the commissioner ~~for children and families~~ or designee. The commissioner or designee shall request the reporter to follow the oral report with a written report, unless the reporter is anonymous. Reports shall contain the name and address or other contact information of the reporter as well as the names and addresses of the child and the parents or other persons responsible for the child's care, if known; the age of the child; the nature and extent of the child's injuries together with any evidence of previous abuse and neglect of the child or the child's siblings; and any other information that the reporter believes might be helpful in establishing the cause of the injuries or reasons for the neglect as well as in protecting the child and assisting the family. If a report of child abuse or neglect involves the acts or omissions of the commissioner ~~for children and families~~ or employees

of that department, then the report shall be directed to the secretary of the agency of human services who shall cause the report to be investigated by other appropriate agency staff ~~other than staff of the department for children and families~~. If the report is substantiated, services shall be offered to the child and to his or her family or caretaker according to the requirements of section 4915 4915b of this title.

§ 4915. ASSESSMENT AND INVESTIGATION; REMEDIAL ACTION

(a) Upon receipt of a report of abuse or neglect, the department shall promptly determine whether it constitutes an allegation of child abuse or neglect as defined in section 4912 of this title. The department shall respond to reports of alleged neglect or abuse that occurred in Vermont and to out-of-state conduct when the child is a resident of or is present in Vermont.

(b) If the report is accepted as a valid allegation of abuse or neglect, the department shall determine whether to conduct an assessment as provided for in section 4915a of this title or to conduct an investigation as provided for in section 4915b of this title. The department shall begin either an assessment or an investigation within 72 hours after the receipt of a report made pursuant to section 4914 of this title, provided that it has sufficient information to proceed.

(c) The decision to conduct an assessment shall include consideration of the following factors:

(1) the nature of the conduct and the extent of the child's injury, if any;

(2) the accused person's prior history of child abuse or neglect, or lack thereof; and

(3) the accused person's willingness or lack thereof to accept responsibility for the conduct and cooperate in remediation.

(d) The department shall conduct an investigation when an accepted report involves allegations indicating substantial child endangerment. For purposes of this section, "substantial child endangerment" includes conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury. The department may conduct an investigation of any report.

(e) The department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is appropriate.

(f) The department may collaborate with child protection, law enforcement, and other departments and agencies in Vermont and other jurisdictions to assess risk to a child and to determine the service needs of the child and

family. The department may enter into reciprocal agreements with other jurisdictions to further the purposes of this subchapter.

~~(b) The investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of child abuse, shall include all of the following:~~

~~(1) A visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect.~~

~~(2) An interview with, or observance of the child reportedly having been abused or neglected. If the investigator elects to interview the child, that interview may take place without the approval of the child's parents, guardian, or custodian, provided that it takes place in the presence of a disinterested adult who may be, but shall not be limited to being, a teacher, a member of the clergy, child care provider regulated by the department, or a nurse.~~

~~(3) Determination of the nature, extent, and cause of any abuse or neglect.~~

~~(4) Determination of the identity of the person alleged to be responsible for such abuse or neglect.~~

~~(5)(A) The identity, by name, of any other children living in the same home environment as the subject child. The investigator shall consider the physical and emotional condition of those children and may interview them, in accordance with the provisions of subdivision (2) of this subsection, unless the subject child is the person who is alleged to be responsible for such abuse or neglect.~~

~~(B) The identity, by name, of any other children who may be at risk if the abuse was alleged to have been committed by someone who is not a member of the subject child's household. The investigator shall consider the physical and emotional condition of those children and may interview them, in accordance with the provisions of subdivision (2) of this subsection, unless the subject child is the person who is alleged to be responsible for such abuse or neglect.~~

~~(6) A determination of the immediate and long term risk to each child if that child remains in the existing home or other environment.~~

~~(7) Consideration of the environment and the relationship of any children therein to the person alleged to be responsible for the suspected abuse or neglect.~~

~~(8) All other data deemed pertinent.~~

~~(c) For cases investigated by the department, the commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family.~~

~~(d) The commissioner, designee, or any person required to report under section 4913 or any other person performing an investigation pursuant to section 4914 may take or cause to be taken, photographs of trauma visible on a child who is the subject of a report. The commissioner or designee may seek consultation with a physician. If it is indicated as appropriate by the physician, the commissioner or designee may cause the child who is subject of a report to undergo a radiological examination, without the consent of the child's parent or guardian.~~

~~(e) Services may be provided to the child's immediate family whether or not the child remains in the home.~~

~~(f) The department shall report to and request assistance from law enforcement in the following circumstances:~~

~~(1) Investigations of child sexual abuse by an alleged perpetrator age 10 or older.~~

~~(2) Investigations of serious physical abuse or neglect of a child likely to result in criminal charges or requiring emergency medical care.~~

~~(3) Situations potentially dangerous to the child or department worker.~~

§ 4915a. PROCEDURES FOR ASSESSMENT

(a) An assessment, to the extent that is reasonable under the facts and circumstances presented by the particular allegation of child abuse or neglect, shall include the following:

(1) An interview with the child's caretakers, focused on ensuring the immediate safety of the child and mitigating the future risk of harm to the child in the home environment.

(2) An evaluation of the safety of the subject child and any other children living in the same home environment. The evaluation may include an interview with or observation of the child or children. Such interviews or observations shall occur with the permission of the child's parent or caretaker.

(3) In collaboration with the family, identification of family strengths, resources, and service needs, and the development of a plan of services that reduces the risk of harm and improves or restores family well-being.

(b) The assessment shall be completed within 45 days. Upon written justification by the department, the assessment may be extended, not to exceed

a total of 60 days.

(c) Families have the option of declining the services offered as a result of the assessment. If the family declines the services, the case shall be closed unless the department determines that sufficient cause exists to begin an investigation or to request the state's attorney to file a CHINS petition pursuant to chapter 55 of this title. In no instance shall a case be investigated solely because the family declines services.

(d) When an assessment case is closed, there shall be no finding of abuse or neglect and no indication of the intervention shall be placed in the registry. However, the department shall document the outcome of the assessment.

§ 4915b. PROCEDURES FOR INVESTIGATION

(a) An investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of child abuse, shall include all of the following:

(1) A visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect.

(2) An interview with or observation of the child reportedly having been abused or neglected. If the investigator elects to interview the child, that interview may take place without the approval of the child's parents, guardian, or custodian, provided that it takes place in the presence of a disinterested adult who may be, but shall not be limited to being, a teacher, a member of the clergy, a child care provider regulated by the department, or a nurse.

(3) Determination of the nature, extent, and cause of any abuse or neglect.

(4) Determination of the identity of the person alleged to be responsible for such abuse or neglect.

(5)(A) The identity, by name, of any other children living in the same home environment as the subject child. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(B) The identity, by name, of any other children who may be at risk if the abuse was alleged to have been committed by someone who is not a member of the subject child's household. The investigator shall consider the physical and emotional condition of those children and may interview them, unless the child is the person who is alleged to be responsible for such abuse or neglect, in accordance with the provisions of subdivision (2) of this subsection.

(6) A determination of the immediate and long-term risk to each child if that child remains in the existing home or other environment.

(7) Consideration of the environment and the relationship of any children therein to the person alleged to be responsible for the suspected abuse or neglect.

(8) All other data deemed pertinent.

(b) For cases investigated and substantiated by the department, the commissioner shall, to the extent that it is reasonable, provide assistance to the child and the child's family. For cases investigated and not substantiated by the department, the commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family.

(c) The commissioner, designee, or any person required to report under section 4913 of this title or any other person performing an investigation may take or cause to be taken photographs of trauma visible on a child who is the subject of a report. The commissioner or designee may seek consultation with a physician. If it is indicated appropriate by the physician, the commissioner or designee may cause the child who is subject of a report to undergo a radiological examination without the consent of the child's parent or guardian.

(d) Services may be provided to the child's immediate family whether or not the child remains in the home.

(e) The department shall report to and request assistance from law enforcement in the following circumstances:

(1) Investigations of child sexual abuse by an alleged perpetrator age 10 or older.

(2) Investigations of serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care.

(3) Situations potentially dangerous to the child or department worker.

(f) The department shall not substantiate cases in which neglect is caused solely by the lack of financial resources of the parent or guardian.

**§ 4916. ~~CHILD ABUSE AND NEGLECT PROTECTION~~ REGISTRY;
RECORDS OF ABUSE AND NEGLECT**

(a)(1) The commissioner shall maintain a child abuse and neglect protection registry which shall contain a record of all investigations that have resulted in a substantiated report on or after January 1, 1992. Except as provided in subdivision (2) of this subsection, prior to placement of a

substantiated report on the registry, the commissioner shall comply with the procedures set forth in section 4916a of this title.

(2) In cases involving sexual abuse or serious physical abuse of a child, the commissioner in his or her sole judgment may list a substantiated report on the registry pending any administrative review after:

(A) Reviewing the investigation file.

(B) Making written findings in consideration of:

(i) the nature and seriousness of the alleged behavior; and

(ii) the person's continuing access to children.

(3) A person alleged to have abused or neglected a child and whose name has been placed on the registry in accordance with subdivision (2) of this subsection shall be notified of the registry entry, provided with the commissioner's findings, and advised of the right to seek an administrative review in accordance with section 4916a of this title.

(4) If the name of a person has been placed on the registry in accordance with subdivision (2) of this subsection, it shall be removed from the registry if the substantiation is rejected after an administrative review.

(b) A registry record means an entry in the child abuse and neglect protection registry that consists of the name of an individual substantiated for child abuse or neglect, the date of the finding, the nature of the finding, and at least one other personal identifier, other than a name, listed in order to avoid the possibility of misidentification.

(c) The commissioner shall adopt rules to permit use of the registry records as authorized by this subchapter while preserving confidentiality of the registry and other department records related to abuse and neglect.

~~(d) Registry records shall only be disclosed to the commissioner or person designated by the commissioner to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, an employer as defined in subsection 4919(e) of this title, or a state's attorney or the attorney general. In no event shall registry records be made available for employment purposes other than as set forth in section 309 or 4919 of this title, or for credit purposes. Any person who violates this subsection shall be fined not more than \$500.00.~~

For all substantiated reports of child abuse or neglect made on or after the date the final rules are adopted, the commissioner shall create a registry record that reflects a designated child protection level related to the risk of future harm to children. This system of child protection levels shall be based upon an

assessment of the risk the person responsible for the abuse or neglect poses to the safety of children. The risk assessment shall include consideration of the following factors:

(A) the nature of the conduct and the extent of the child's injury, if any;

(B) the person's prior history of child abuse or neglect as either a victim or perpetrator;

(C) the person's response to the investigation and willingness to engage in recommended services; and

(D) the person's age and developmental maturity.

~~(e)(1) Verbal Notice. The commissioner or the commissioner's designee shall promptly inform a parent or guardian of the child that a report has been made and substantiated. If a parent or guardian is under investigation for abuse or neglect, such information need only be provided to that parent or guardian in accordance with subsection 4916(d) of this title.~~

~~(2) Written Records. Absent good cause shown by the department, if a report has been substantiated, the commissioner or the commissioner's designee shall provide upon request the redacted investigation file to the child's parent or guardian or, if there is a pending juvenile proceeding or if the child is in custody of the commissioner, to the child's attorney.~~

The commissioner shall develop rules for the implementation of a system of child protection registry levels for substantiated cases. The rules shall address:

(1) the length of time a person's name appears on the registry;

(2) when and how names are expunged from the registry;

(3) whether the person is a juvenile or an adult;

(4) whether the person was charged with or convicted of a criminal offense arising out of the incident of abuse or neglect; and

(5) whether a family court has made any findings against the person.

~~(f)(1) The commissioner or the commissioner's designee may inform the following persons that a report has been substantiated:~~

~~(A) The person responsible for supervising the staff in the child's residential, educational or child care setting.~~

~~(B) Upon request, to the person who made the report under subsection 4913(a) of this title.~~

~~(C) Any person authorized by law to receive such information.~~

~~(2) A person receiving information under this subsection shall not disclose that information to persons who are not involved with the provision of treatment services under section 4915 of this title to the abused or neglected child.~~

§ 4916a. CHALLENGING PLACEMENT ON THE REGISTRY

(a) If an investigation conducted in accordance with section 4915 4915b of this title results in a determination that a report of child abuse or neglect should be substantiated, the department shall notify the person alleged to have abused or neglected a child of the following:

(1) The nature of the substantiation decision, and that the department intends to enter the record of the substantiation into the registry.

(2) Who has access to registry information and under what circumstances.

(3) The implications of having one's name placed on the registry as it applies to employment, licensure, and registration.

(4) The right to request a review of the substantiation determination by an administrative reviewer, the time in which the request for review shall be made, and the consequences of not seeking a review.

(5) The right to receive a copy of the commissioner's written findings made in accordance with subdivision 4916(a)(2) of this title if applicable.

(b) Under this section, notice by the department to a person alleged to have abused or neglected a child shall be by first class mail sent to the person's last known address.

(c) A person alleged to have abused or neglected a child may seek an administrative review of the department's intention to place the person's name on the registry by notifying the department within 14 days of the date the department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The commissioner may grant an extension past the 14-day period for good cause.

(d) The department shall hold an administrative review conference within 14 35 days of receipt of the request for review. At least ~~seven~~ ten days prior to the administrative review conference, the department shall provide to the person requesting review a copy of the redacted investigation file, notice of time and place of the conference, and conference procedures, including information that may be submitted and mechanisms for providing testimony. The department shall also provide to the person those redacted investigation

files that relate to prior investigations that the department has relied upon to make its substantiation determination in the case in which a review has been requested.

(e) At the administrative review conference, the person who requested the review shall be provided with the opportunity to present documentary evidence or other information that supports his or her position and provides information to the reviewer in making the most accurate decision regarding the allegation. The department shall have the burden of proving that it has accurately and reliably concluded that a reasonable person would believe that the child has been abused or neglected by that person. Upon the person's request, the conference may be held by teleconference.

(f) The department shall establish an administrative case review unit within the department and contract for the services of administrative reviewers. An administrative reviewer shall be a neutral and independent arbiter who has no prior involvement in the original investigation of the allegation.

(g) Within seven days of the conference, the administrative reviewer shall:

(1) reject the department's substantiation determination;

(2) accept the department's substantiation; or

(3) place the substantiation determination on hold and direct the department to further investigate the case based upon recommendations of the reviewer.

(h) If the administrative reviewer accepts the department's substantiation determination, a registry record shall be made immediately. If the reviewer rejects the department's substantiation determination, no registry record shall be made.

(i) Within seven days of the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of his or her decision. If the administrative reviewer accepts the department's substantiation, the notice shall advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title. In exceptional circumstances, the commissioner, in his or her sole and nondelegable discretion, may reconsider any decision made by a reviewer. A commissioner's decision that creates a registry record may be appealed to the human services board in accordance with section 4916b of this title.

(j) Persons whose names were placed on the registry on or after January 1,

1992 but prior to July September 1, 2007 shall be entitled to an opportunity to seek an administrative review to challenge the substantiation ~~pursuant to this section.~~

(k) If no administrative review is requested, the department's decision in the case shall be final, and the person shall have no further right of review under this section. The commissioner may grant a waiver and permit such a review upon good cause shown. Good cause may include an acquittal or dismissal of a criminal charge arising from the incident of abuse or neglect.

§ 4916b. HUMAN SERVICES BOARD HEARING

(a) Within 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief. The board shall hold a fair hearing pursuant to 3 V.S.A. § 3091. When the department receives notice of the appeal, it shall make note in the registry record that the substantiation has been appealed to the board.

(b)(1) The board shall hold a hearing within 60 days of the receipt of the request for a hearing and shall issue a decision within 30 days of the hearing.

(2) Priority shall be given to appeals in which there are immediate employment consequences for the person appealing the decision.

(c) A hearing may be stayed upon request of the petitioner if there is a related case pending in court.

(d) If no review by the board is requested, the department's decision in the case shall be final, and the person shall have no further right for review under this section. The board may grant a waiver and permit such a review upon good cause shown.

§ 4916c. PETITION FOR EXPUNGEMENT FROM THE REGISTRY

(a) A person whose name has been listed on the registry for at least seven three years may file a written request with the commissioner, seeking a review for the purpose of expunging an individual registry record. The commissioner shall grant a review upon request.

(b) The person shall have the burden of proving that a reasonable person would believe that he or she no longer presents a risk to the safety or well-being of children. Factors to be considered by the commissioner shall include:

(1) The nature of the substantiation that resulted in the person's name being placed on the registry.

(2) The number of substantiations, if more than one.

(3) The amount of time that has elapsed since the substantiation.

(4) The circumstances of the substantiation that would indicate whether a similar incident would be likely to occur.

(5) Any activities that would reflect upon the person's changed behavior or circumstances, such as therapy, employment, or education.

(6) References that attest to the person's good moral character.

(c) At the review, the person who requested the review shall be provided with the opportunity to present any evidence or other information, including witnesses, that supports his or her request for expungement. Upon the person's request, the review may be held by teleconference.

(d) A person may seek a review under this section no more than once every 36 months.

(e) Within 30 days of the date on which the commissioner mailed notice of the decision pursuant to this section, a person may appeal the decision to the human services board. The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petition for expungement. The hearing shall be on the record below, and determinations of credibility of witnesses made by the commissioner shall be given deference by the board.

(f) The department shall take steps to provide reasonable notice to persons on the registry of their right to seek an expungement under this section. Actual notice is not required. Reasonable steps may include activities such as the production of an informative fact sheet about the expungement process, posting of such information on the department website, and other approaches typically taken by the department to inform the public about the department's activities and policies. The department shall send notice of the expungement process to any person listed on the registry for whom a registry check has been requested.

§ 4916d. AUTOMATIC EXPUNGEMENT OF REGISTRY RECORDS

Registry entries concerning a person who was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has had no additional substantiated registry entries.

§ 4916e. NOTICE TO MINORS

If the person alleged to have abused or neglected a child is a minor, any notice required pursuant to this subchapter shall be sent:

(1) to the minor's parents or guardian; or

(2) if the child is in the custody of the commissioner, to the social worker assigned to the child by the department and the child's counsel of record.

§ 4917. MULTI-DISCIPLINARY TEAMS; EMPANELING

(a) ~~The commissioner of social and rehabilitation services,~~ or his or her designee may empanel a multi-disciplinary team wherever in the state there may be a probable case of child abuse or neglect which warrants the coordinated use of several professional services.

(b) ~~The commissioner of social and rehabilitation services,~~ or his or her designee, in conjunction with professionals and community agencies, shall appoint members to the multi-disciplinary teams which may include persons who are trained and engaged in work relating to child abuse or neglect such as medicine, mental health, social work, nursing, ~~day~~ child care, education, law or law enforcement. Additional persons may be appointed when the services of those persons are appropriate to any particular case.

(c) The empanelling of a multi-disciplinary team shall be authorized in writing and shall specifically list the members of the team. This list may be amended from time to time as needed as determined by the commissioner or his or her designee.

§ 4918. MULTI-DISCIPLINARY TEAMS; FUNCTIONS; GUIDELINES

(a) Multi-disciplinary teams shall assist local district offices of the department ~~of social and rehabilitation services~~ in identifying and treating child abuse and or neglect cases. With respect to any case referred to it, the team ~~shall~~ may assist the district office by providing:

(1) case diagnosis or identification;;

(2) a comprehensive treatment plan~~;~~ and

(3) coordination of services pursuant to the treatment plan.

(b) Multi-disciplinary teams may also provide public informational and educational services to the community about identification, treatment and prevention of child abuse and neglect. It shall also foster communication and cooperation among professionals and organizations in its community, and provide such recommendations or changes in service delivery as it deems necessary.

§ 4919. DISCLOSURE OF INFORMATION REGISTRY RECORDS

(a) The commissioner ~~or the commissioner's designee~~ may disclose a registry information record only as set forth in ~~section 4916 of this title or as follows:~~

(1) To the state's attorney or the attorney general;

(2) To the owner or operator of a facility regulated by the department for the purpose of informing the owner or operator that employment of a specific individual may result in loss of license ~~or~~, registration, certification, or authorization as set forth in section 309 of this title;

(3) To an employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, transportation, or supervision of children or vulnerable adults. The employer may submit a request concerning a current employee, volunteer, grantee, or contractor or an individual to whom the employer has given a conditional offer of a contract, volunteer position, or employment. The request shall be accompanied by a release signed by the current or prospective employee, volunteer, grantee, or contractor. If that individual has a record of a substantiated report, the commissioner shall provide the registry record to the employer. The employer shall not disclose the information contained in the registry report.

(4) To the ~~commissioner~~ commissioners of disabilities, aging, and independent living, and of mental health, ~~or the commissioner's designee their designees~~, for purposes related to the licensing or registration of facilities regulated by ~~the department of disabilities, aging, and independent living; those departments.~~

(5) To the ~~commissioner~~ commissioners of health ~~or~~, of disabilities, aging, and independent living, and of mental health, ~~or the commissioner's designee their designees~~, for purposes related to oversight and monitoring of persons who are served by or compensated with funds provided by the ~~departments of health and of disabilities, aging, and independent living; those departments~~, including persons to whom a conditional offer of employment has been made;

(6) Upon request or when relevant to other states' adult protective services offices; ~~and.~~

(7) Upon request or when relevant to other states' child protection agencies.

(8) To the person substantiated for child abuse and neglect who is the subject of the record.

(b) An employer providing transportation services to children or vulnerable adults may disclose registry records obtained pursuant to subdivision (a)(3) of this section to the agency of human services or its designee for the sole purpose of auditing the records to ensure compliance with this subchapter. An employer shall provide such records at the request of the agency or its designee. Only registry records regarding individuals who provide direct transportation services or otherwise have direct contact with children or vulnerable adults may be disclosed.

(c) Volunteers shall be considered employees for purposes of this section.

(d) Disclosure of registry records or information or other records used or obtained in the course of providing services to prevent child abuse or neglect or to treat abused or neglected children and their families by one member of a multidisciplinary team to another member of that team shall not subject either member of the multidisciplinary team, individually, or the team as a whole, to any civil or criminal liability notwithstanding any other provision of law.

(e) "Employer," as used in this section, means a person or organization who employs or contracts with one or more individuals to care for or provide transportation services to children or vulnerable adults, on either a paid or volunteer basis.

(f) In no event shall registry records be made available for employment purposes other than as set forth in this subsection, or for credit purposes. Any person who violates this subsection shall be fined not more than \$500.00.

(g) Nothing in this subsection shall limit the department's right to use and disclose information from its records as provided in section 4921 of this chapter.

§ 4920. RETALIATORY ACTION BY EMPLOYER PROHIBITED

~~An employer or supervisor shall not discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.~~

§ 4921. DEPARTMENT'S RECORDS OF ABUSE AND NEGLECT

(a) The commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The commissioner shall promptly inform the parent or guardian of the child that a report has been accepted and the department's response to the report.

(c) The redacted investigation file shall be disclosed to:

(1) the child's parent, foster parent, or guardian, absent good cause shown by the department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

(d) Records of abuse and neglect investigations and assessments shall be disclosed to:

(1) the court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the commissioner;

(2) the commissioner or person designated by the commissioner to receive such records;

(3) persons assigned by the commissioner to conduct investigations;

(4) law enforcement officers engaged in a joint investigation with the department, an assistant attorney general or a state's attorney;

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

(6) probate courts involved in guardianship proceedings.

(e) Records relating to an investigation, assessment or review may be disclosed to:

(1) service providers working with a person or child who is the subject of the report; and

(2) other governmental entities for purposes of child protection.

(f) The commissioner may inform the person who made the report under subsection 4913(a) of this title whether a report has been substantiated.

§ 4922. RULEMAKING

(a) The commissioner shall develop rules to implement this subchapter. These shall include:

- (1) rules setting forth criteria for determining whether to conduct an assessment or an investigation;
 - (2) rules setting out procedures for assessment and service delivery;
 - (3) rules outlining procedures for investigations;
 - (4) rules for conducting the administrative review conference; and
 - (5) rules regarding access to and maintenance of department records of investigations, assessments, reviews, and responses.
- (b) The rules shall strike an appropriate balance between protecting children and respecting the rights of a parent or guardian with disabilities, and shall recognize that persons with a disability can be successful parents. The rules shall include the possible use of adaptive equipment and supports.
- (c) These rules shall be adopted no later than July 1, 2009.

Sec. 2. EFFECTIVE DATES

- (a) Sections 4915 and 4915a shall take effect upon adoption of final rules by the department for children and families.
- (b) Section 4916c shall take effect on September 1, 2008.
- (c) All other sections shall take effect upon passage.

Rep. Lippert of Hinesburg, for the committee on Judiciary, recommended the bill ought to pass when amended as recommended by the committee on Human Services and when further amended as follows:

First: In Sec. 1, in 33 V.S.A., by striking section 4913 and inserting in lieu thereof a new § 4913 to read:

**§ 4913. REPORTING SUSPECTED CHILD ABUSE AND NEGLECT;
REMEDIAL ACTION**

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A.

§ 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, school librarian, child

care worker, school principal, school guidance counselor, and any other person employed by or contracted to work for a school district, mental health professional, social worker, probation officer, police officer, camp owner, camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

(b) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title. The commissioner shall inform the person who made the report under subsection (a) of this section:

(1) whether the report was accepted as a valid allegation of abuse or neglect;

(2) whether an assessment was conducted and, if so, whether a need for services was found; and

(3) whether an investigation was conducted and, if so, whether it resulted in a substantiation.

(c) Any other concerned person not listed in subsection (a) of this section who has reasonable cause to believe that any child has been abused or neglected may report or cause a report to be made in accordance with the provisions of section 4914 of this title.

(e)(d)(1) Any person enumerated in subsection (a) or (b) of this section, other than a person suspected of child abuse, who in good faith makes a report to the department of social and rehabilitation services shall be immune from any civil or criminal liability which might otherwise be incurred or imposed as a result of making a report.

(2) An employer or supervisor shall not discharge; demote; transfer; reduce pay, benefits, or work privileges; prepare a negative work performance evaluation; or take any other action detrimental to any employee because that employee filed a good faith report in accordance with the provisions of this subchapter. Any person making a report under this subchapter shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of his or her making a report.

~~(d)~~(e) The name of and any identifying information about either the person making the report or any person mentioned in the report shall be confidential unless;

(1) the person making the report specifically allows disclosure ~~or unless;~~

(2) a human services board proceeding or a judicial proceeding results therefrom or unless;

(3) a court, after a hearing, finds probable cause to believe that the report was not made in good faith and orders the department to make the name of the reporter available; or

(4) a review has been requested pursuant to section 4916a of this title, and the department has determined that identifying information can be provided without compromising the safety of the reporter or the persons mentioned in the report.

~~(e)~~(f)(1) A person who violates subsection (a) of this section shall be fined not more than \$500.00.

(2) A person who violates subsection (a) of this section with the intent to conceal abuse or neglect of a child shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(3) This section shall not be construed to prohibit a prosecution under any other provision of law.

~~(f)~~(g) Except as provided in subsection ~~(g)~~(h) of this section, a person may not refuse to make a report required by this section on the grounds that making the report would violate a privilege or disclose a confidential communication.

~~(g)~~(h) A member of the clergy shall not be required to make a report under this section if the report would be based upon information received in a communication which is:

(1) made to a member of the clergy acting in his or her capacity as spiritual advisor;

(2) intended by the parties to be confidential at the time the communication is made;

(3) intended by the communicant to be an act of contrition or a matter of conscience; and

(4) required to be confidential by religious law, doctrine, or tenet.

~~(h)~~(i) When a member of the clergy receives information about abuse or neglect of a child in a manner other than as described in subsection ~~(g)~~(h) of this section, he or she is required to report on the basis of that information

even though he or she may have also received a report of abuse or neglect about the same person or incident in the manner described in subsection ~~(g)~~(h) of this section.

Second: In Sec. 1, in 33 V.S.A. § 4915(f), by striking out the following: “assess” and inserting in lieu thereof “evaluate”

Third: In Sec. 1, in 33 V.S.A. § 4915a(a), by striking out the following: “particular allegation” and inserting in lieu thereof “particular valid allegation”

Fourth: In Sec. 1, in 33 V.S.A. § 4915b, by striking subsection (b), and inserting in lieu thereof a new subsection (b) to read:

(b) For cases investigated and substantiated by the department, the commissioner shall, to the extent that it is reasonable, provide assistance to the child and the child's family. For cases investigated but not substantiated by the department, the commissioner may, to the extent that it is reasonable, provide assistance to the child and the child's family. Nothing contained in this section or section 4915a of this title shall be deemed to create a private right of action.

Fifth: In Sec. 1, in 33 V.S.A. § 4916, by striking subsection (d), and inserting in lieu thereof a new subsection (d) to read:

~~(d) Registry records shall only be disclosed to the commissioner or person designated by the commissioner to receive such records, persons assigned by the commissioner to investigate reports, the person reported on, an employer as defined in subsection 4919(e) of this title, or a state's attorney or the attorney general. In no event shall registry records be made available for employment purposes other than as set forth in section 309 or 4919 of this title, or for credit purposes. Any person who violates this subsection shall be fined not more than \$500.00.~~

For all substantiated reports of child abuse or neglect made on or after the date the final rules are adopted, the commissioner shall create a registry record that reflects a designated child protection level related to the risk of future harm to children. This system of child protection levels shall be based upon an evaluation of the risk the person responsible for the abuse or neglect poses to the safety of children. The risk evaluation shall include consideration of the following factors:

(A) the nature of the conduct and the extent of the child's injury, if any;

(B) the person's prior history of child abuse or neglect as either a victim or perpetrator;

(C) the person's response to the investigation and willingness to engage in recommended services; and

(D) the person's age and developmental maturity.

Sixth: In Sec. 1, in 33 V.S.A. § 4916a, by striking subsection (c), and inserting in lieu thereof a new subsection (c) to read:

(c) A person alleged to have abused or neglected a child may seek an administrative review of the department's intention to place the person's name on the registry by notifying the department within 14 days of the date the department mailed notice of the right to review in accordance with subsections (a) and (b) of this section. The commissioner may grant an extension past the 14-day period for good cause, not to exceed 28 days after the department has mailed notice of the right to review.

Seventh: In Sec. 1, in 33 V.S.A. 4916a, by striking subsection (i) and inserting a new subsection (i) to read:

(i) Within seven days of the decision to reject or accept or to place the substantiation on hold in accordance with subsection (g) of this section, the administrative reviewer shall provide notice to the person of his or her decision. If the administrative reviewer accepts the department's substantiation, the notice shall advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title.

Eighth: In Sec. 1, in 33 V.S.A. § 4916a, by adding a new subsection (l) to read:

(l) In exceptional circumstances, the commissioner, in his or her sole and nondelegable discretion, may reconsider any decision made by a reviewer. A commissioner's decision that creates a registry record may be appealed to the human services board in accordance with section 4916b of this title.

Ninth: In Sec. 1, in 33 V.S.A. § 4916c, by striking subsection (a) and inserting in lieu thereof a new subsection (a) to read:

(a) A person whose name has been placed on the registry prior to July 1, 2009 and has been listed on the registry for at least seven three years may file a written request with the commissioner, seeking a review for the purpose of expunging an individual registry record. A person whose name has been placed on the registry on or after July 1, 2009 and has been listed on the registry for at least seven years may file a written request with the commissioner, seeking a review for the purpose of expunging an individual registry record. The commissioner shall grant a review upon request.

Tenth: In Sec. 1, by striking 33 V.S.A. § 4921 and inserting in lieu thereof a new § 4921 to read:

§ 4921. Department's Records of abuse and neglect

(a) The commissioner shall maintain all records of all investigations, assessments, reviews, and responses initiated under this subchapter. The department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child's family, or for other legal purposes.

(b) The commissioner shall promptly inform the parents, if known, or guardian of the child that a report has been accepted as a valid allegation pursuant to subsection 4915(b) of this title and the department's response to the report. The department shall inform the parent or guardian of his or her ability to request records pursuant to subsection (c) of this section.

(c) Upon request, the redacted investigation file shall be disclosed to:

(1) the child's parents, foster parent, or guardian, absent good cause shown by the department, provided that the child's parent, foster parent, or guardian is not the subject of the investigation; and

(2) the person alleged to have abused or neglected the child, as provided for in subsection 4916a(d) of this title.

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

(1) the court, parties to the juvenile proceeding, and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in the custody of the commissioner;

(2) the commissioner or person designated by the commissioner to receive such records;

(3) persons assigned by the commissioner to conduct investigations;

(4) law enforcement officers engaged in a joint investigation with the department, an assistant attorney general, or a state's attorney;

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

(6) probate courts involved in guardianship proceedings. The probate court shall provide a copy of the record to the respondent, the respondent's attorney, the petitioner, the guardian upon appointment, and any other individual, including the proposed guardian, determined by the court to have a strong interest in the welfare of the respondent.

(e)(1) Upon request, relevant department records created under this subchapter may be disclosed to:

(A) service providers working with a person or child who is the subject of the report; and

(B) other governmental entities for purposes of child protection.

(2) Determinations of relevancy shall be made by the department.

Eleventh: In Sec. 1, in 33 V.S.A. § 4922, by striking subsection (b), and inserting in lieu thereof a new subsection (b) to read:

(b) The rules shall strike an appropriate balance between protecting children and respecting the rights of a parent or guardian, including a parent or guardian with disabilities, and shall recognize that persons with a disability can be successful parents. The rules shall include the possible use of adaptive equipment and supports.

Twelfth: by striking Sec. 2, inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. EFFECTIVE DATES

(a) Sections 4915 and 4915a of Title 33 shall take effect upon adoption of final rules by the department for children and families.

(b) Sections 4913 and 4921 of Title 33 shall take effect on September 1, 2008.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Human Services and Judiciary agreed to and third reading ordered.

Rep. Jewett of Ripton in Chair.

Bill Amended; Third Reading Ordered

H. 615

Rep. Flory of Pittsford, for the committee on Judiciary, to which had been referred House bill, entitled

An act relating to juvenile judicial proceedings;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 33 V.S.A. chapter 51 is added to read:

CHAPTER 51. GENERAL PROVISIONS

§ 5101. PURPOSES

(a) The juvenile judicial proceedings chapters shall be construed in accordance with the following purposes:

(1) To provide for the care, protection, education, and healthy mental, physical, and social development of children coming within the provisions of the juvenile judicial proceedings chapters.

(2) To remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation which assure:

(A) balanced attention to the protection of the community;

(B) accountability to victims and the community for offenses; and

(C) the development of competencies to enable children to become responsible and productive members of the community.

(3) To preserve the family and to separate a child from his or her parents only when necessary to protect the child from serious harm or in the interests of public safety.

(4) To assure that safety and timely permanency for children are the paramount concerns in the administration and conduct of proceedings under the juvenile judicial proceedings chapters.

(5) To achieve the foregoing purposes, whenever possible, in a family environment, recognizing the importance of positive parent-child relationships to the well-being and development of children.

(6) To provide judicial proceedings through which the provisions of the juvenile judicial proceedings chapters are executed and enforced and in which the parties are assured a fair hearing, and their constitutional and other legal rights are recognized and enforced.

(b) The provisions of the juvenile judicial proceedings chapters shall be construed as superseding the provisions of the criminal law of this state to the extent the same are inconsistent with this chapter.

§ 5102. DEFINITIONS AND PROVISIONS OF GENERAL APPLICATION

As used in the juvenile judicial proceedings chapters, unless the context otherwise requires:

(1) "Care provider" means a person other than a parent, guardian, or custodian who is providing the child with routine daily care but to whom custody rights have not been transferred by a court.

(2) "Child" means any of the following:

(A) An individual who is under the age of 18 and is a child in need of care or supervision as defined in subdivision (3)(A), (B), or (D) of this section (abandoned, abused, without proper parental care, or truant).

(B)(i) An individual who is under the age of 18, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (unmanageable), and was under the age of 16 at the time the petition was filed; or

(ii) an individual who is between the ages of 16 to 17.5, is a child in need of care or supervision as defined in subdivision (3)(C) of this section (unmanageable), and who is at high risk of serious harm to himself or herself or others due to problems such as substance abuse, prostitution, or homelessness, and whose needs transcend any one department of the agency of human services and require complicated clinical interventions from multiple organizations.

(C) An individual who has been alleged to have committed or has committed an act of delinquency after becoming ten years of age and prior to becoming 18 years of age; provided, however:

(i) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 10 but not the age of 14 may be treated as an adult as provided therein;

(ii) that an individual who is alleged to have committed an act specified in subsection 5204(a) of this title after attaining the age of 14 but not the age of 16 shall be subject to criminal proceedings as in cases commenced against adults, unless transferred to the court in accordance with the juvenile judicial proceedings chapters;

(iii) that an individual who is alleged to have committed an act before attaining the age of 10 which would be murder as defined in section 2301 of Title 13 if committed by an adult may be subject to delinquency proceedings; and

(iv) that an individual may be considered a child for the period of time the court retains jurisdiction under section 5104 of this title.

(3) "Child in need of care or supervision (CHINS)" means a child who:

(A) has been abandoned or abused by the child's parent, guardian, or custodian;

(B) is without proper parental care or subsistence, education, medical, or other care necessary for his or her well-being;

(C) is without or beyond the control of his or her parent, guardian, or custodian; or

(D) is habitually and without justification truant from compulsory school attendance.

(4) "Commissioner" means the commissioner of the department for children and families or the commissioner's designee.

(5) "Conditional custody order" means an order issued by the court in a juvenile proceeding conferring legal custody of a child to a parent, guardian, relative, or a person with a significant relationship with the child subject to such conditions and limitations as the court may deem necessary to provide for the safety and welfare of the child.

(6) "Court" means the Vermont family court.

(7) "Custodial parent" means a parent who, at the time of the commencement of the juvenile proceeding, has the right and responsibility to provide the routine daily care and control of the child. The rights of the custodial parent may be held solely or shared and may be subject to the court-ordered right of the other parent to have contact with the child.

(8) "Custodian" means a person other than a parent or legal guardian to whom legal custody of the child has been given by order of a Vermont family or probate court or a similar court in another jurisdiction.

(9) "Delinquent act" means an act designated a crime under the laws of this state, or of another state if the act occurred in another state, or under federal law. A delinquent act shall include 7 V.S.A. §§ 656 and 657; however, it shall not include:

(A) Snowmobile offenses in subchapter 1 and motorboat offenses in subchapter 2 of chapter 29 of Title 23, except for violations of sections 3207a, 3207b, 3207c, 3207d, and 3323.

(B) Motor vehicle offenses committed by an individual who is at least 16 years of age, except for violations of subchapter 13 of chapter 13 and of section 1091 of Title 23.

(10) "Delinquent child" means a child who has been adjudicated to have committed a delinquent act.

(11) "Department" means the department for children and families.

(12) "Guardian" means a person who, at the time of the commencement of the juvenile judicial proceeding, has legally established rights to a child

pursuant to an order of a Vermont probate court or a similar court in another jurisdiction.

(13) "Judge" means a judge of the family court.

(14) "Juvenile judicial proceedings chapters" means this chapter and chapters 52 and 53 of this title.

(15) "Juvenile proceeding" means a proceeding in the family court under the authority of the juvenile judicial proceedings chapters.

(16)(A) "Legal custody" means the legal status created by order of the court under the authority of the juvenile judicial proceedings chapters which invests in a party to a juvenile proceeding or another person the following rights and responsibilities:

(i) The right to routine daily care and control and to determine where and with whom the child shall live.

(ii) The authority to consent to major medical, psychiatric, and surgical treatment for a child.

(iii) The responsibility to protect and supervise a child and to provide the child with food, shelter, education, and ordinary medical care.

(iv) The authority to make decisions which concern the child and are of substantial legal significance, including the authority to consent to marriage and enlistment in the armed forces of the United States, and the authority to represent the child in legal actions.

(B) If legal custody is transferred to a person other than a parent, the rights, duties, and responsibilities so transferred are subject to the residual parental rights of the parents.

(17) "Listed crime" means the same as defined in 13 V.S.A. § 5301.

(18) "Noncustodial parent" means a parent who is not a custodial parent at the time of the commencement of the juvenile proceeding.

(19) "Officer" means a law enforcement officer, including a state police officer, sheriff, deputy sheriff, municipal police officer, or constable who has been certified by the criminal justice training council pursuant to section 2358 of Title 20.

(20) "Parent" means a child's biological or adoptive parent, including custodial parents, noncustodial parents, parents with legal or physical responsibilities or both and parents whose rights have never been adjudicated.

(21) "Parent-child contact" means the right of a parent to have visitation with the child by court order.

(22) "Party" includes the following persons:

(A) The child with respect to whom the proceedings are brought.

(B) The custodial parent, the guardian, or the custodian of the child in all instances except a hearing on the merits of a delinquency petition.

(C) The noncustodial parent for the purposes of custody, visitation, and such other issues for which the court may determine they are proper and necessary to the proceedings, provided that the noncustodial parent has entered an appearance.

(D) The state's attorney.

(E) The commissioner.

(F) Such other persons as appear to the court to be proper and necessary to the proceedings.

(23) "Probation" means the legal status created by order of the family court in proceedings involving a violation of law whereby a delinquent child is subject to supervision by the department under conditions specified in the court's juvenile probation certificate and subject to return to and change of legal status by the family court for violation of conditions of probation at any time during the period of probation.

(24) "Protective supervision" means the authority granted by the court to the department in a juvenile proceeding to take reasonable steps to monitor compliance with the court's conditional custody order, including unannounced visits to the home in which the child currently resides.

(25) "Reasonable efforts" means the exercise of due diligence by the department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan. When making the reasonable efforts determination, the court may find that no services were appropriate or reasonable considering the circumstances. If the court makes written findings that aggravated circumstances are present, the court may make, but shall not be required to make, written findings as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances may exist if:

(A) a court of competent jurisdiction has determined that the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse;

(B) a court of competent jurisdiction has determined that the parent has been convicted of murder or manslaughter of a child;

(C) a court of competent jurisdiction has determined that the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or

(D) the parental rights of the parent with respect to a sibling have been involuntarily terminated.

(26) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody of the child, including the right to reasonable contact with the child, the responsibility for support, and the right to consent to adoption.

(27) "Shelter" means a shelter designated by the commissioner where a child taken into custody pursuant to subdivision 5301(3) of this title may be held for a period not to exceed seven days.

(28) "Youthful offender" means an offender who has been found to be a youthful offender pursuant to section 5281 of this title.

§ 5103. JURISDICTION

(a) The family court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family court proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c) Except as otherwise provided by this title, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(d) The court may terminate its jurisdiction over a child prior to the child's 18th birthday by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

§ 5104. RETENTION OF JURISDICTION OVER YOUTHFUL OFFENDERS

(a) The family court may retain jurisdiction over a youthful offender up to the age of 19.

(b) In relation to the retention of jurisdiction provision of subsection (a) of this section, any party may request, or the court on its own motion may schedule, a hearing to determine the propriety of extending the jurisdictional time period. This hearing shall be held within the three-month time period immediately preceding the child's 18th birthday, and the order of continued jurisdiction shall be executed by the court on or before that birthday. In determining the need for continued jurisdiction, the court shall consider the following factors:

(1) the extent and nature of the child's record of delinquency;

(2) the nature of past and current treatment efforts and the nature of the child's response to them;

(3) the prospects for reasonable rehabilitation of the child by use of procedures, services, and facilities currently available to the court; and

(4) whether the safety of the community will best be served by a continuation of jurisdiction.

(c) A hearing under subsection (b) of this section shall be held in accordance with the procedures provided in section 5113 of this title.

§ 5105. VENUE AND CHANGE OF VENUE

(a) Proceedings under the juvenile judicial proceedings chapters may be commenced in the county where:

(1) the child is domiciled;

(2) the acts constituting the alleged delinquency occurred; or

(3) the child is present when the proceedings commenced, if it is alleged that a child is in need of care or supervision.

(b) If a child or a parent, guardian, or custodian changes domicile during the course of a proceeding under the juvenile judicial proceedings chapters or if the petition is not brought in the county in which the child is domiciled, the court may change venue upon the motion of a party or its own motion, taking

into consideration the domicile of the child and the convenience of the parties and witnesses.

§ 5106. POWERS AND DUTIES OF COMMISSIONER

Subject to the limitations of the juvenile judicial proceedings chapters or those imposed by the court, and in addition to any other powers granted to the commissioner under the laws of this state, the commissioner has the following authority with respect to a child who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters:

(1) To undertake assessments and make reports and recommendations to the court as authorized by the juvenile judicial proceedings chapters.

(2) To investigate complaints and allegations that a child is in need of care or supervision for the purpose of considering the commencement of proceedings under the juvenile judicial proceedings chapters.

(3) To supervise and assist a child who is placed under the commissioner's supervision or in the commissioner's legal custody by order of the court.

(4) To place a child who is in the commissioner's legal custody in a family home or a treatment, rehabilitative, detention, or educational facility or institution subject to the provisions of sections 5292 and 5293 of this title.

(5) To make appropriate referrals to private or public agencies.

(6) To perform such other functions as are designated by the juvenile judicial proceedings chapters.

§ 5107. CONTEMPT POWER

Subject to the laws relating to the procedures therefor and the limitations thereon, the court has the power to punish any person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

§ 5108. AUTHORITY TO ISSUE WARRANTS

(a) The court may order a parent, guardian, or custodian to appear at any hearing or to appear at the hearing with the child who is the subject of a petition.

(b) If, after being summoned, cited, or otherwise notified to appear, a party fails to do so, the court may issue a warrant for the person's appearance. If the child is with the parent, guardian, or custodian, the court may issue a warrant for the person to appear in court with the child or, in the alternative, the court

may issue an order for an officer to pick up the child and bring the child to court.

(c) If a summons cannot be served or the welfare of the child requires that the child be brought forthwith to the court, the court may issue a warrant for the parent, guardian, or custodian to appear in court with the child. In the alternative, the court may issue an order for an officer to pick up the child and bring the child to court during court hours.

(d) A person summoned who fails to appear without reasonable cause may be found in contempt of court.

§ 5109. SUBPOENA

Upon application of a party or on the court's own motion, the clerk of the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the juvenile judicial proceedings chapters.

§ 5110. CONDUCT OF HEARINGS

(a) Hearings under the juvenile judicial proceedings chapters shall be conducted by the court without a jury and shall be confidential.

(b) The general public shall be excluded from hearings under the juvenile judicial proceedings chapters, and only the parties, their counsel, witnesses, persons accompanying a party for his or her assistance, and such other persons as the court finds to have a proper interest in the case or in the work of the court, may be admitted by the court. This subsection shall not prohibit a victim's exercise of his or her rights under sections 5333 and 5234 of this title, and as otherwise provided by law.

(c) There shall be no publicity given by any person to any proceedings under the authority of the juvenile judicial proceedings chapters except with the consent of the child, the child's guardian ad litem, and the child's parent, guardian, or custodian. A person who violates this provision may be subject to contempt proceedings pursuant to Rule 16 of the Vermont Rules for Family Proceedings.

§ 5111. NONCUSTODIAL PARENTS

(a) If a child is placed in the legal custody of the department and the identity of a parent has not been legally established at the time the petition is filed, the court may order that the mother, the child, and the alleged father submit to genetic testing and may issue an order establishing parentage pursuant to subchapter 3A of Title 15. A parentage order issued pursuant to this subsection shall not be deemed to be a confidential record.

(b) If a child is placed in the legal custody of the department, the department shall make reasonably diligent efforts to locate a noncustodial parent as early in the proceedings as possible, and notify the court of the noncustodial parent's address. A hearing shall not be delayed by reason of the inability of the department to locate or serve a noncustodial parent.

(c) The court may order a custodial parent to provide the department with information regarding the identity and location of a noncustodial parent.

(d) As soon as his or her address is known, a noncustodial parent shall be served with the petition and a copy of the summons. Thereafter, the court shall mail notices of the hearing to the noncustodial parent. The noncustodial parent shall be responsible for providing the court with information regarding any changes in address.

§ 5112. ATTORNEY AND GUARDIAN AD LITEM FOR CHILD

(a) The court shall appoint an attorney for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters.

(b) The court shall appoint a guardian ad litem for a child who is a party to a proceeding brought under the juvenile judicial proceedings chapters. In a delinquency proceeding, a parent, guardian, or custodian of the child may serve as a guardian ad litem for the child, providing his or her interests do not conflict with the interests of the child. The guardian ad litem appointed under this section shall not be a party to that proceeding or an employee or representative of such party.

§ 5113. MODIFICATION OR VACATION OF ORDERS

(a) An order of the court may be set aside in accordance with Rule 60 of the Vermont Rules of Civil Procedure.

(b) Upon motion of a party or the court's own motion, the court may amend, modify, set aside, or vacate an order on the grounds that a change in circumstances requires such action to serve the best interests of the child. The motion shall set forth in concise language the grounds upon which the relief is requested.

(c) Any order under this section shall be made after notice and hearing; however, the court may waive the hearing upon stipulation of the parties. All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value, even though not competent in a hearing on the petition.

§ 5114. BEST INTERESTS OF THE CHILD

(a) At the time of a permanency review under section 5321 of this title, a modification hearing under section 5113 of this title, or at any time a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall consider the best interests of the child in accordance with the following:

(1) The interaction and interrelationship of the child with his or her parents, siblings, foster parents, if any, and any other person who may significantly affect the child's best interests.

(2) The child's adjustment to his or her home, school, and community.

(3) The likelihood that the parent will be able to resume or assume parental duties within a reasonable period of time.

(4) Whether the parent has played and continues to play a constructive role, including personal contact and demonstrated love and affection, in the child's welfare.

(b) Except in cases where a petition or request to terminate all residual parental rights of a parent without limitation as to adoption is filed by the commissioner or the attorney for the child, the court shall also consider whether the parent is capable of playing a constructive role, including demonstrating love and affection, in the child's welfare.

§ 5115. PROTECTIVE ORDER

(a) On motion of a party or on the court's own motion, the court may make an order restraining or otherwise controlling the conduct of a person if the court finds that such conduct is or may be detrimental or harmful to a child.

(b) The person against whom the order is directed shall be served with notice of the motion and the grounds therefor and be given an opportunity to be heard.

(c) Upon a showing that there is a risk of immediate harm to a child, the court may issue a protective order ex parte. A hearing on the motion shall be held no more than 10 days after the issuance of the order.

(d) The court may review any protective order at a subsequent hearing to determine whether the order should remain in effect.

(e) A person who is the subject of an order issued pursuant to this section who violates a provision of the order that concerns contact between the child and that person shall be punished in accordance with 13 V.S.A. § 1030.

§ 5116. COSTS AND EXPENSES FOR CARE OF CHILD

(a) The commissioner may incur such expenses for the proper care, maintenance, and education of a child, including without limitation, the expenses of medical, surgical, or psychiatric examination or treatment, as the commissioner considers necessary in connection with proceedings under the juvenile judicial proceedings chapters.

(b) The costs of any proceeding under the juvenile judicial proceedings chapters incurred under the provisions of Title 33 shall be borne by the court.

(c) The court may, in any order of disposition under the juvenile judicial proceedings chapters, make and enforce by levy and execution an order of child support to be paid by the parent of the child.

(d) The court may delegate to the office of magistrate its authority to make and enforce an order of child support to be paid by the parent of a child.

(e) A child support order shall only remain in effect as long as the child who is the subject of the support order is in the legal custody of the commissioner and placed with someone other than the parent or parents responsible for support.

(f) Except as otherwise provided in section 5119 of this title, orders issued pursuant to this section shall not be confidential.

(g) Notwithstanding subsection 5103(b) of this title, an order terminating a parent's residual parental rights ends that parent's obligation to pay child support. However, in no event shall an order terminating residual parental rights terminate an obligation for child support arrearages accrued by the parent prior to the date of the termination of parental rights order.

§ 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

(a) Except as otherwise provided, court and law enforcement reports and files concerning a person subject to the jurisdiction of the court shall be maintained separate from the records and files of other persons. Unless a charge of delinquency is transferred for criminal prosecution under chapter 52 of this title or the court otherwise orders in the interests of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public by any person. However, upon a finding that a child is a delinquent child by reason of commission of a delinquent act which would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim of the delinquent act. If the victim is incompetent or deceased, the child's name shall be released, upon request, to the victim's guardian or next of kin.

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

(A) A court having the child before it in any juvenile judicial proceeding.

(B) The officers of public institutions or agencies to whom the child is committed as a delinquent child.

(C) A court in which a person is convicted of a criminal offense for the purpose of imposing sentence upon or supervising the person, or by officials of penal institutions and other penal facilities to which the person is committed, or by a parole board in considering the person's parole or discharge or in exercising supervision over the person.

(D) Court personnel, the state's attorney or other prosecutor authorized to prosecute criminal or juvenile cases under state law, the child's guardian ad litem, the attorneys for the parties, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child.

(E) The child who is the subject of the proceeding, the child's parents, guardian, custodian, and guardian ad litem may inspect such records and files upon approval of the family court judge.

(F) Any other person who has a need to know may be designated by order of the family court.

(2) Records and files inspected under this subsection shall be marked: UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00.

(c) Upon motion of a party in a divorce or parentage proceeding related to parental rights and responsibilities for a child or parent-child contact, the court may order that court records in a juvenile proceeding involving the same child or children be released to the parties in the divorce proceeding. The public shall not have access to records from a juvenile proceeding that are filed with the court or admitted into evidence in the divorce or parentage proceeding.

(d) Such records and files shall be available to state's attorneys and all other law enforcement officers in connection with record checks and other legal purposes.

(e) Any records or reports relating to a matter within the jurisdiction of the court prepared by or released by the court or the department for children and families, any portion of those records or reports, and information relating to the contents of those records or reports shall not be disseminated by the receiving persons or agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section.

(f) This section does not provide access to records sealed in accordance with section 5119 of this title unless otherwise provided in section 5119.

§ 5118. LIMITED EXCEPTION TO CONFIDENTIALITY OF RECORDS OF JUVENILES MAINTAINED BY THE FAMILY COURT

(a) For the purposes of this section:

(1) "Delinquent act requiring notice" means conduct resulting in a delinquency adjudication related to a listed crime as defined in 13 V.S.A.

§ 5301(7).

(2) "Independent school" means an approved or recognized independent school under 16 V.S.A. § 166.

(b) While records of juveniles maintained by the family court should be kept confidential, it is the policy of the general assembly to establish a limited exception for the overriding public purposes of rehabilitating juveniles and protecting students and staff within Vermont's public and independent schools.

(c) Notwithstanding any law to the contrary, a court finding that a child has committed a delinquent act requiring notice shall, within seven days of such finding, provide written notice to the superintendent of schools for the public school in which the child is enrolled or, in the event the child is enrolled in an independent school, the school's headmaster.

(d) The written notice shall contain only a description of the delinquent act found by the court to have been committed by the child and shall be marked: "UNLAWFUL DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE BY A FINE UP TO \$2,000.00." The envelope in which the notice is sent by the court shall be marked: "CONFIDENTIAL: TO BE OPENED BY THE SUPERINTENDENT OR HEADMASTER ONLY."

(e) The superintendent or headmaster, upon receipt of the notice, shall inform only those persons within the child's school with a legitimate need to know of the delinquent act, and only after first evaluating rehabilitation and protection measures that do not involve informing staff or students. Persons with a legitimate need to know are strictly limited to only those for whom the information is necessary for the rehabilitation program of the child or for the protection of staff or students. "Need to know" shall be narrowly and strictly interpreted. Persons receiving information from the superintendent or headmaster shall not, under any circumstances, discuss such information with any other person except the child, the child's parent, guardian, or custodian, others who have been similarly informed by the superintendent or headmaster, law enforcement personnel, or the juvenile's probation officer.

(f) The superintendent and headmaster annually shall provide training to school staff about the need for confidentiality of such information and the penalties for violation of this section.

(g) The written notice shall be maintained by the superintendent or headmaster in a file separate from the child's education record. If the child transfers to another public or independent school, the superintendent or headmaster shall forward the written notice in the original marked envelope to the superintendent or headmaster for the school to which the child transferred. If the child either graduates or turns 18 years of age, the superintendent or headmaster then possessing the written notice shall destroy such notice.

(h) If legal custody of the child is transferred to the commissioner, or if the commissioner is supervising the child's probation, upon the request by a superintendent or headmaster, the commissioner shall provide to the superintendent or headmaster information concerning the child which the commissioner determines is necessary for the child's rehabilitation or for the protection of the staff or students in the school in which the child is enrolled.

(i) A person who intentionally violates the confidentiality provisions of this section shall be fined not more than \$2,000.00.

(j) Except as provided in subsection (i) of this section, no liability shall attach to any person who transmits, or fails to transmit, the written notice required under this section.

§ 5119. SEALING OF RECORDS

(a)(1) In matters relating to a child who has been adjudicated delinquent on or after July 1, 1996, the court shall order the sealing of all files and records related to the proceeding if two years have elapsed since the final discharge of the person unless, on motion of the state's attorney, the court finds:

(A) the person has been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent of such an offense after such initial adjudication, or a proceeding is pending seeking such conviction or adjudication; or

(B) rehabilitation of the person has not been attained to the satisfaction of the court.

(2) At least 60 days prior to the date upon which a person is eligible to have his or her delinquency record automatically sealed pursuant to subdivision (1) of this subsection, the court shall provide such person's name and other identifying information to the state's attorney in the county in which

the person was adjudicated delinquent. The state's attorney may object, and a hearing may be held to address the state's attorney's objection.

(3) The order to seal shall include all the files and records relating to the matter in accordance with subsection (d) of this section; however, the court may limit the order to the court files and records only upon good cause shown by the state's attorney.

(4) The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 1996, but before July 1, 2001 shall be completed by January 1, 2010. The process of sealing files and records under this subsection for a child who was adjudicated delinquent on or after July 1, 2001 but before July 1, 2004 shall be completed by January 1, 2008.

(b) In matters relating to a child who has been adjudicated delinquent prior to July 1, 1996, on application of the child or on the court's own motion and after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after such initial adjudication, and no new proceeding is pending seeking such conviction or adjudication; and

(2) the person's rehabilitation has been attained to the satisfaction of the court.

(c) On application of a person who, while a child, was found to be in need of care or supervision or, on the court's own motion, after notice to all parties of record and hearing, the court may order the sealing of all files and records related to the proceeding if it finds:

(1) the person has reached the age of majority; and

(2) sealing the person's record is in the interest of justice.

(d) Except as provided in subdivision (a)(3) and subsection (h) of this section or otherwise provided, orders issued in accordance with this section shall include the files and records of the court, law enforcement, prosecution, and the department for children and families related to the specific court proceeding that is the subject of the sealing.

(e)(1) Except as provided in subdivision (2) of this subsection, upon the entry of an order sealing such files and records under this section, the proceedings in the matter under this act shall be considered never to have occurred, all general index references thereto shall be deleted, and the person,

the court, and law enforcement officers and departments shall reply to any request for information that no record exists with respect to such person upon inquiry in any matter. Copies of the order shall be sent to each agency or official named in the order.

(2)(A) Any court, agency, or department that seals a record pursuant to an order under this section may keep a special index of files and records that have been sealed. This index shall only list the name and date of birth of the subject of the sealed files and records and the docket number of the proceeding which was the subject of the sealing. The special index shall be confidential and may be accessed only for purposes for which a department or agency may request to unseal a file or record pursuant to subsection (f) of this section.

(B) Access to the special index shall be restricted to the following persons:

(i) the commissioner and general counsel of any administrative department;

(ii) the secretary and general counsel of any administrative agency;

(iii) a sheriff;

(iv) a police chief;

(v) a state's attorney;

(vi) the attorney general;

(vii) the director of the Vermont crime information center; and

(viii) a designated clerical staff person in each office identified in subdivisions (i)–(viii) of this subdivision (B) who is necessary for establishing and maintaining the indices for persons who are permitted access.

(C) Persons authorized to access an index pursuant to subdivision (B) of this subdivision (2) may access only the index of their own department or agency.

(f)(1) Except as provided in subdivisions (2), (3), and (4) of this subsection, inspection of the files and records included in the order may thereafter be permitted by the court only upon petition by the person who is the subject of such records, and only to those persons named in the record.

(2) Upon a confidential motion of any department or agency that was required to seal files and records pursuant to subsection (d) of this section, the court may permit the department or agency to inspect its own files and records if it finds circumstances in which the department or agency requires access to

such files and records to respond to a legal action, a legal claim, or an administrative action filed against the department or agency in relation to incidents or persons that are the subject of such files and records. The files and records shall be unsealed only for the minimum time necessary to address the circumstances enumerated in this subdivision, at which time the records and files shall be resealed.

(3) Upon a confidential motion of the department for children and families, the court may permit the department to inspect its own files and records if the court finds extraordinary circumstances in which the state's interest in the protection of a child clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the state's interest. The motion may be heard ex parte if the court, based upon an affidavit, finds a compelling purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the court shall send notice of the unsealing to the subject of the files and records within 20 days unless the department provides a compelling reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(4) Upon a confidential motion of a law enforcement officer or prosecuting attorney, the court may permit the department or agency to inspect its own files and records if the court finds extraordinary circumstances in which the state's interest in public safety clearly outweighs the purposes of the juvenile sealing law and the privacy rights of the person or persons who are the subjects of the record, and the sealed record is necessary to accomplish the state's interest. The motion may be heard ex parte if the court, based upon an affidavit, finds a compelling public safety purpose exists to deny notice to the subject of the files and records when considering whether to grant the order. If the order to unseal is issued ex parte, the court shall send notice of the unsealing to the subject of the files and records within 20 days unless the law enforcement officer or prosecuting attorney provides a compelling public safety reason why the subject of the files and records should not receive notice. The files and records shall be unsealed only for the minimum time necessary to address the extraordinary circumstances, at which time the files and records shall be resealed.

(5) The order unsealing a record must state whether the record is unsealed entirely or in part and the duration of the unsealing. If the court's order unseals only part of the record or unseals the record only as to certain

persons, the order must specify the particular records that are unsealed or the particular persons who may have access to the record, or both.

(g) On application of a person who has pleaded guilty to or has been convicted of the commission of a crime committed under the laws of this state prior to attaining the age of majority, or on the motion of the court having jurisdiction over such a person, after notice to all parties of record and hearing, the court shall order the sealing of all files and records related to the proceeding if it finds:

(1) two years have elapsed since the final discharge of the person;

(2) the person has not been convicted of a listed crime as defined in 13 V.S.A. § 5301 or adjudicated delinquent for such an offense after the initial conviction, and no new proceeding is pending seeking such conviction or adjudication; and

(3) the person's rehabilitation has been attained to the satisfaction of the court.

(h)(1) In matters relating to a person who was charged with a criminal offense on or after July 1, 2006 and prior to the person attaining the age of majority, the files and records of the court applicable to the proceeding shall be sealed immediately if the case is dismissed.

(2) In matters relating to a person who was charged with a criminal offense prior to July 1, 2006 and prior to the person attaining the age of majority, the person may apply to seal the files and records of the court applicable to the proceeding. The court shall order the sealing, provided that two years have elapsed since the dismissal of the charge.

(i) Upon receipt of a court order to seal a record relating to an offense for which there is an identifiable victim, a state's attorney shall record the name and date of birth of the victim, the offense, and the date of the offense. The name and any identifying information regarding the defendant shall not be recorded. Victim information retained by a state's attorney pursuant to this subsection shall be available only to victims' advocates, the victims' compensation program, and the victim and shall otherwise be confidential.

(j) For purposes of this section, to "seal" a file or record means to physically and electronically segregate the record in a manner that ensures confidentiality of the record and limits access only to those persons who are authorized by law or court order to view the record. A "sealed" file or record is retained and shall not be destroyed unless a court issues an order to expunge the record.

(k) The court shall provide assistance to persons who seek to file an application for sealing under this section.

(l) Any entities subject to sealing orders pursuant to this section shall establish policies for implementing this section and shall provide a copy of such policies to the house and senate committees on judiciary no later than January 15, 2007. State's attorneys, sheriffs, municipal police, and the judiciary are encouraged to adopt a consistent policy that may apply to each of their independent offices and may submit one policy to the general assembly.

§ 5120. INDIAN CHILD WELFARE ACT

The federal Indian Child Welfare Act, 25 U.S.C. Section 1901 et seq., governs any proceeding under this title that pertains to an Indian child, as defined by the Indian Child Welfare Act, and prevails over any inconsistent provision of this title.

Sec. 2. 33 V.S.A. chapter 53 is added to read:

CHAPTER 53. CHILDREN IN NEED OF CARE OR SUPERVISION

§ 5301. TAKING INTO CUSTODY

A child may be taken into custody:

(1) Pursuant to an order of the family court under the provisions of this chapter.

(2) By an officer when the officer has reasonable grounds to believe that the child is in immediate danger from his or her surroundings and that removal is necessary for the child's protection.

(3) By an officer when the officer has reasonable grounds to believe that the child has run away from a custodial parent, a foster parent, a guardian, a custodian, a noncustodial parent lawfully exercising parent-child contact, or care provider.

§ 5302. Request for Emergency Care Order

(a) If an officer takes a child into custody pursuant to subdivisions 5301(1) and (2) of this title, the officer shall immediately notify the child's custodial parent, guardian, or custodian and release the child to the care of the child's custodial parent, guardian, or custodian unless the officer determines that the child's immediate welfare requires the child's continued absence from the home.

(b) If the officer determines that the child's immediate welfare requires the child's continued absence from the home, the officer shall:

(1) Remove the child from the child's surroundings, contact the department, and deliver the child to a location designated by the department. The department shall have the authority to make reasonable decisions concerning the child's immediate placement, safety and welfare pending the issuance of an emergency care order.

(2) Prepare an affidavit in support of a request for an emergency care order and provide the affidavit to the state's attorney. The affidavit shall include: the reasons for taking the child into custody; and to the degree known, placements with which the child is familiar; the names, addresses, and telephone number of the child's parents, guardian, custodian, or care provider; the name, address, and telephone number of any relative who has indicated an interest in taking temporary custody of the child. The department may prepare an affidavit as a supplement to the affidavit of the law enforcement officer if the department has additional information with respect to the child or the family.

(c) If the child is taken into custody during regular court hours, the state's attorney shall immediately file a request for an emergency care order accompanied by the supporting affidavit or direct the immediate return of the child to the child's custodial parent, guardian, or custodian. If the child is taken into custody after regular court hours or on a weekend or holiday, the state's attorney or officer shall contact a judge to request an emergency care order or return the child to the child's custodial parent, guardian, or custodian. If an order is granted, the state's attorney shall file the supporting affidavit with the court on the next day that the court is open.

(d) If the judge denies a request for an emergency care order, the state's attorney shall direct immediate return of the child to the child's custodial parent, guardian, or custodian.

§ 5303. Procedure for runaway children

(a) If an officer takes a child into custody pursuant to subdivision 5301(3) of this title, the officer shall deliver the child to:

(1) the child's custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) a shelter designated by the department pursuant to section 5304 of this title as qualified to assist children who have run away for the purpose of reuniting them with their parents, guardian, or legal custodian.

(b) Upon delivery of a child to a shelter, the shelter program director or his or her designee, shall notify the child's parents, guardian, or custodian that

the child has been taken into custody and make reasonable efforts to mediate the differences between the parties.

(c) A child may remain at a designated shelter for a period not to exceed seven days.

(d) Upon expiration of the seven-day period or sooner at the request of the child or the custodial parent:

(1) the child shall be released to his or her custodial parent, foster parent, guardian, custodian, or noncustodial parent lawfully exercising parent-child contact; or

(2) an officer shall seek an emergency care order pursuant to section 5302 of this title.

(e) Unless otherwise ordered by the court, the custody status of the child shall remain the same during the period of time the child is at the shelter.

§ 5304. DESIGNATED SHELTERS FOR RUNAWAY CHILDREN

The commissioner shall designate shelters throughout the state where a child taken into custody pursuant to subdivision 5301(3) of this title may be housed for a period not to exceed seven days.

§ 5305. EMERGENCY CARE ORDER; CONDITIONAL CUSTODY ORDER

(a) Transfer of temporary custody. If the court determines that the child's continued residence in the home is contrary to the child's welfare, the court may issue an emergency care order transferring temporary custody of the child to the department pending a temporary care hearing. The determination may be made ex parte, provided that it is reasonably supported by the affidavit prepared in accordance with section 5302 of this title.

(b) Contents of emergency care order. The emergency care order shall contain:

(1) a written finding that the child's continued residence in the home is contrary to the child's welfare and the factual allegations that support that finding;

(2) the date, hour, and place of the temporary care hearing to be held pursuant to section 5307 of this title; and

(3) notice of a parent's right to counsel at the temporary care hearing.

(c) Conditional custody order. If the court determines that the child may safely remain in the custody of the custodial parent, guardian, or custodian

subject to such conditions and limitations necessary and sufficient to protect the child pending a temporary care hearing, the court may deny the request for an emergency care order and issue an emergency conditional custody order. An emergency conditional custody order shall contain the date, hour, and place of the temporary care hearing and notice of a parent's right to counsel at the hearing.

§ 5306. NOTICE OF EMERGENCY CARE ORDER AND TEMPORARY CARE HEARING

(a) Notice to custodial parent. An officer shall deliver a copy of the emergency care order or conditional custody order to the parent, guardian, or custodian of the child. If delivery cannot be made in a timely manner, the officer shall otherwise notify the custodial parent or cause them to be notified of the order, the date, the time and place of the temporary care hearing, and the parent's right to counsel. If the custodial parent, guardian, or custodian cannot be located, the officer shall so certify to the court in an affidavit describing the efforts made to locate the parents.

(b) Notice to noncustodial parent. The department shall make reasonable efforts to locate any noncustodial parent and provide the noncustodial parent with the emergency care order or conditional care order, notice of the date, hour, and place of the temporary care hearing, and right to counsel. If the noncustodial parent cannot be located, the department shall provide to the court, in writing, a summary of the efforts made to locate the parent.

(c) Failure to locate. The hearing shall not be delayed by reason of not being able to locate either the custodial or noncustodial parent.

(d) Notice to other parties. The court shall notify the following persons of the date and time of the temporary care hearing:

(1) The state's attorney.

(2) A representative of the department.

(3) An attorney to represent the child.

(4) A guardian ad litem for the child.

(5) An attorney to represent each parent. The attorney may be court-appointed in the event the parent is eligible, or may be an attorney who has entered an appearance on behalf of a parent.

§ 5307. TEMPORARY CARE HEARING

(a) A temporary care hearing shall be held within 72 hours of the issuance of an emergency care order or conditional custody order under section 5305 of

this title. State holidays shall be excluded from the computation of 72 hours. If the custodial parent, guardian, or custodian has not been notified in accordance with section 5306 of this title and does not appear or waive appearance at the temporary care hearing and files thereafter with the court an affidavit so showing, the court shall hold another temporary care hearing within one business day of the filing of the affidavit as if no temporary care hearing had theretofore been held.

(b) If the state's attorney is seeking a temporary care order, he or she shall file a petition in accordance with section 5308 of this title prior to the temporary care hearing. If the state's attorney elects not to file a petition, he or she shall so notify the court and the court shall vacate the emergency care order and order the return of the child to the custodial parent, guardian, or custodian.

(c) The following persons shall be present at the temporary care hearing:

(1) The child, unless the presence of the child is waived by the child's attorney.

(2) The child's custodial parent, guardian, or custodian, unless the parent, guardian, or custodian cannot be located or fails to appear in response to notice.

(3) The child's guardian ad litem.

(4) An attorney for the child.

(5) An attorney for the custodial parent, if requested.

(6) The department.

(7) The state's attorney.

(d) A noncustodial parent and his or her attorney shall have the right to be present at the hearing; however, the hearing shall not be delayed by reason of the inability of the department to locate the noncustodial parent.

(e) The department shall provide the following information to the court at the hearing:

(1) Any reasons for the child's removal which are not set forth in the affidavit required pursuant to subsection 5302(b) of this title.

(2) Services, if any, provided to the child and the family in an effort to prevent removal.

(3) The need, if any, for continued custody of the child with the department pending a hearing to adjudicate the merits of the petition.

(4) Services which could facilitate the return of the child to the custodial parent, guardian, or custodian.

(5) The identity and location of a noncustodial parent, a relative, or person with a significant relationship with the child known to the department who may be appropriate, capable, willing, and available to assume temporary legal custody of the child. If the noncustodial parent cannot be located, the department shall provide to the court, in writing, a summary of the efforts made to locate the parent.

(6) Additional information as required by the Uniform Child Custody Jurisdiction Act pursuant to 15 V.S.A. § 1037 and the Indian Child Welfare Act pursuant to 25 U.S.C. Section 1901 et seq.

(f) All parties shall have the right to present evidence on their own behalf and examine witnesses. Hearsay, to the extent it is deemed relevant and reliable by the court, shall be admissible. The court may, in its discretion, limit testimony and evidence to only that which goes to the issues of removal of the child from the home and the child's temporary legal custody.

(g) The temporary care hearing shall also be a preliminary hearing on the petition.

§ 5308. TEMPORARY CARE ORDER

(a) The court shall order that legal custody be returned to the child's custodial parent, guardian, or custodian unless the court finds by a preponderance of the evidence that return home would be contrary to the child's welfare because any one of the following exists:

(1) A return of legal custody could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(2) The child or another child residing in the same household has been physically or sexually abused by a parent, guardian, or custodian, or by a member of the child's household, or another person known to the parent, guardian, or custodian.

(3) The child or another child residing in the same household is at substantial risk of physical or sexual abuse by a parent, guardian, or custodian, or by a member of the child's household, or another person known to the parent, guardian, or custodian. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(A) a parent, guardian, or custodian receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(B) the parent, guardian, or custodian knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(4) The custodial parent, guardian, or guardian has abandoned the child. A person is considered to have abandoned a child under any of the following circumstances:

(A) The person is unwilling to have physical custody of the child.

(B) The person is unable, is unwilling, or has failed to make appropriate arrangements for the child's care.

(C) The person is unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child.

(D) The person has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

(5) The child or another child in the same household has been neglected and there is substantial risk of harm to the child who is the subject of the petition.

(b) Upon a finding that any of the conditions set forth in subsection (a) of this section exists, the court may issue such temporary orders related to the legal custody of the child as it deems necessary and sufficient to protect the welfare and safety of the child including, in order of preference:

(1) A conditional custody order returning legal custody of the child to the custodial parent, guardian, or custodian, subject to such conditions and limitations as the court may deem necessary and sufficient to protect the child.

(2)(A) Upon a personal appearance and a request by a noncustodial parent for temporary legal custody and upon a determination that parentage is not contested, the noncustodial parent shall present to the court a care plan that describes the history of the noncustodial parent's contact with the child, including any reasons why contact did not occur, and that addresses:

(i) the child's need for a safe, secure, and stable home;

(ii) the child's need for proper and effective care and control; and

(iii) the child's need for a continuing relationship with the custodial parent, if appropriate.

(B) The court shall consider court orders and findings from other proceedings related to the custody of the child.

(C) The court shall transfer legal custody to the noncustodial parent unless the court finds by a preponderance of the evidence that the transfer would be contrary to the child's welfare because any of the following exists:

(i) The care plan fails to meet the criteria set forth in subdivision (2)(A) of this subsection.

(ii) Transferring temporary legal custody of the child to the noncustodial parent could result in substantial danger to the physical health, mental health, welfare, or safety of the child.

(iii) The child or another child residing in the same household as the noncustodial parent has been physically or sexually abused by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent.

(iv) The child or another child residing in the same household as the noncustodial parent is at substantial risk of physical or sexual abuse by the noncustodial parent or a member of the noncustodial parent's household, or another person known to the noncustodial parent. It shall constitute prima facie evidence that a child is at substantial risk of being physically or sexually abused if:

(I) a noncustodial parent receives actual notice that a person has committed or is alleged to have committed physical or sexual abuse against a child; and

(II) the noncustodial parent knowingly or recklessly allows the child to be in the physical presence of the alleged abuser after receiving such notice.

(v) The child or another child in the noncustodial parent's household has been neglected, and there is substantial risk of harm to the child who is the subject of the petition.

(D) If temporary custody by the noncustodial parent is contested, the court may continue the hearing and place the child in the temporary custody of the department pending further hearing and resolution of the custody issue. Absent good cause shown, the court shall hold a further hearing on the issue within 30 days.

(3) An order transferring temporary legal custody of the child to a relative, provided:

(A) The relative seeking legal custody is a grandparent,

great-grandparent, aunt, great-aunt, uncle, great-uncle, stepparent, sibling, or step-sibling of the child.

(B) The relative is suitable to care for the child. In determining suitability, the court shall consider the relationship of the child and the relative and the relative's ability to:

(i) Provide a safe, secure, and stable environment.

(ii) Exercise proper and effective care and control of the child.

(iii) Protect the child from the custodial parent to the degree the court deems such protection necessary.

(iv) Support reunification efforts, if any, with the custodial parent.

(v) Consider providing legal permanence if reunification fails.

(C) In considering the suitability of a relative who is entitled to preferential consideration, the court may order the department to conduct an investigation and file a written report of its findings with the court. The court may place the child in the temporary custody of the department pending such investigation.

(4) A temporary care order transferring temporary legal custody of the child to a relative who is not listed in subdivision (3)(A) of this subsection or a person with a significant relationship with the child, provided that the criteria in subdivision (3)(B) of this subsection are met. The court may make such orders as provided in subdivision (3)(C) of this subsection to determine suitability under this subdivision.

(5) A temporary care order transferring temporary legal custody of the child to the commissioner.

(c) If the court transfers legal custody of the child to the commissioner, the court shall issue a written temporary care order.

(1) The order shall include:

(A) a finding that remaining in the home is contrary to the child's welfare and the facts upon which that finding is based; and

(B) a finding as to whether reasonable efforts were made to prevent unnecessary removal of the child from the home. If the court lacks sufficient evidence to make findings on whether reasonable efforts were made to prevent the removal of the child from the home, that determination shall be made at the next scheduled hearing in the case but, in any event, no later than 60 days after the issuance of the initial order removing a child from the home.

(2) The order may include other provisions as may be necessary for the protection and welfare of the child, such as:

(A) Establishing parent-child contact under such terms and conditions as are necessary for the protection of the child.

(B) Requiring the department to provide the child with services.

(C) Requiring the department to refer a parent to services.

(D) Requiring genetic testing if parentage of the child is at issue.

(E) Requiring the department to make diligent efforts to locate the noncustodial parent.

(F) Requiring the custodial parent to provide the department with names of all potential noncustodial parents and relatives of the child.

(d) If a party seeks to modify a temporary care order in order to transfer legal custody of a child from the commissioner to a relative or a person with a significant relationship with the child, the relative shall be entitled to preferential consideration under subdivision (b)(3) of this section, provided that a disposition order has not been issued and the motion is filed within 90 days of the date that legal custody was initially transferred to the commissioner.

§ 5309. FILING OF A PETITION

(a) The state's attorney having jurisdiction shall prepare and file a petition alleging that a child is in need of care or supervision upon the request of the commissioner or, in the event the child is truant from school, upon the request of the superintendent of the school district in which the child is enrolled or resides. If the state's attorney fails to file a petition within a reasonable amount of time, the department or the superintendent of the school district may request that the attorney general file a petition on behalf of the department.

(b) If the court has issued an emergency care order placing the child who is the subject of the petition in the temporary legal custody of the department or has issued a conditional custody order, the state's attorney shall file the petition on or before the date of the temporary care hearing.

(c) A petition may be withdrawn by the state's attorney at any time prior to the hearing thereon, in which event the child shall be returned to the custodial parent, guardian, or custodian, the proceedings under this chapter terminated, and all files and documents relating thereto sealed under section 5119 of this title.

(d) Upon the request of the agency of human services, the state's attorney may file a petition pursuant to subsection (a) of this section alleging that a 16- to 17.5-year-old youth who is not in the custody of the state is a child in need of care or supervision under subdivision 5102(1)(B)(ii) of this title when the child meets the criteria set forth in subdivision 5102(1)(B)(ii) of this title. The petition shall be accompanied by a report from the department which sets forth facts supporting the specific requirements of subdivision 5102(2)(C) of this title and that it is in the best interests of the child to be considered as a child in need of care or supervision.

§ 5310. PETITION, CONTENTS

(a) The petition shall be supported by an affidavit of an officer or the department.

(b) The petition shall contain the following:

(1) A concise statement of the facts which support the conclusion that the child is a child in need of care or supervision together with a statement that it is in the best interests of the child that the proceedings be brought.

(2) The name, date of birth, telephone number, and residence address, if known, of the child, the custodial and noncustodial parents, the guardian or custodian of the child if other than parent. If a parent is a participant in the Safe At Home Program pursuant to 15 V.S.A. § 1152, the petition shall so specify.

(3) Jurisdictional information required pursuant to the Uniform Child Custody Jurisdiction Act, 15 V.S.A. § 1032 et seq.

§ 5311. SERVICE OF SUMMONS AND PETITION; NO REQUEST FOR TEMPORARY CARE ORDER

(a) When the state's attorney files a petition but does not request a temporary care order, the court shall set a date for a preliminary hearing on the petition no later than 15 days from the date the petition is filed and issue a judicial summons addressed to the custodial parent, guardian, custodian, or care provider. A copy of the petition shall be attached to the summons. The court shall make reasonably diligent efforts to serve a noncustodial parent with a copy of the summons and petition.

(b) The summons shall contain:

(1) The name and address of the person to whom the notice is directed.

(2) The date, time, and place for the preliminary hearing on the petition.

(3) The name of the minor on whose behalf the petition has been brought.

(4) Notice of a parent's right to counsel.

(5) A statement that the parent, guardian or custodian may be liable for the cost of the support of a child if the child is placed in the legal custody of the department.

(6) An order directing the parent, guardian, custodian, or care provider to appear at the hearing with the child.

(c) The summons and petition may be served by mailing a copy by certified mail return receipt requested to the child and to the child's parent, guardian, custodian, or care provider. Service of the summons and petition may also be made by any sheriff, deputy, or constable. The court shall provide a copy of the summons to the state's attorney and a copy of the summons and petition to the department and the attorney for the child.

(d) Notice and a copy of the petition shall be served on all persons required to receive notice as soon as possible after the petition is filed and at least five days prior to the date set for the preliminary hearing.

(e) A party may waive service of the petition and notice by written stipulation or by voluntary appearance at the hearing.

(f) Once a parent, guardian, or custodian has been served, the court shall provide notice of hearing either directly or by mail. The parent shall be responsible for providing the court with information regarding any changes in address.

§ 5312. FAILURE TO APPEAR AT PRELIMINARY HEARING

(a) If a parent, guardian, or custodian has been served by certified mail with the petition and notice of hearing and fails to appear at the preliminary hearing, the court may order that the parent, guardian, or custodian be served with a judicial summons ordering the person to appear in court with the child at a specified date and time.

(b) If, after being summoned to appear, the parent, guardian, or custodian fails to appear or fails to bring the child to court as ordered, the court may issue a pick-up order or warrant pursuant to section 5108 of this title.

§ 5313. TIMELINES FOR PRETRIAL AND MERITS HEARING

(a) Pretrial hearing. At the time of the temporary care hearing or at the preliminary hearing on the petition if there is no request for temporary legal custody, the court shall set a pretrial hearing on the petition. The hearing shall

be held within 15 days of the temporary care hearing or the preliminary hearing. In the event that there is no admission or dismissal at or before the pretrial hearing, the court shall set the matter for a hearing to adjudicate the merits of the petition.

(b) Merits hearing. If the child who is the subject of the petition has been removed from the legal custody of the custodial parent, guardian, or custodian pursuant to a temporary care order, a merits hearing shall be held and merits adjudicated no later than 60 days from the date the temporary care order is issued. In all other cases, merits shall be adjudicated in a timely manner in the best interests of the child.

§ 5314. FILING OF INITIAL CASE PLAN

(a) If a temporary care order is issued transferring legal custody of the child to the commissioner, the department shall prepare and file with the court an initial case plan for the child and the family within 60 days of removal of a child from home. The department shall provide a copy of the case plan to the parties, their attorneys, and the guardian ad litem.

(b) The initial case plan shall not be used or referred to as evidence prior to a finding that a child is in need of care or supervision.

§ 5315. MERITS ADJUDICATION

(a) At a hearing on the merits of a petition, the state shall have the burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the court may make findings by clear and convincing evidence.

(b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.

(c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.

(d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the court as a finding of fact at a contested merits hearing provided that a witness who testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.

(e) If the merits are contested, the court after hearing the evidence shall make its findings on the record.

(f) If the court finds that the allegations made in the petition have not been established, the court shall dismiss the petition and vacate any temporary orders in connecting with this proceeding.

(g) If the court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the court shall order the department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing.

(h) The court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the court pursuant to section 5314 of this title.

§ 5316. DISPOSITION CASE PLAN

(a) The department shall file a disposition case plan ordered pursuant to subsection 5315(g) of this title no later than 28 days from the date of the finding by the court that a child is in need of care or supervision.

(b) A disposition case plan shall include, as appropriate:

(1) A permanency goal. The long-term goal for a child found to be in need of care and supervision is a safe and permanent home. A disposition case plan shall include a permanency goal and an estimated date for achieving the permanency goal. The plan shall specify whether permanency will be achieved through reunification with a custodial parent, guardian, or custodian; adoption; permanent guardianship; or other permanent placement. In addition to a primary permanency goal, the plan may identify a concurrent permanency goal.

(2) An assessment of the child's medical, psychological, social, educational, and vocational needs.

(3) A description of the child's home, school, community, and current living situation.

(4) An assessment of the family's strengths and risk factors.

(5) A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing the changes.

(6) A recommendation with respect to legal custody for the child and a recommendation for parent-child contact, if appropriate.

(7) A plan of services that shall describe the responsibilities of the child, the parents, guardian, or custodian, the department, other family members, and

treatment providers including a description of the services required to achieve the permanency goal.

(8) A request for child support.

§ 5317. DISPOSITION HEARING

(a) Timeline. A disposition hearing shall be held no later than 35 days after a finding that a child is in need of care and supervision.

(b) Hearing procedure. If disposition is contested, all parties shall have the right to present evidence and examine witnesses. Hearsay may be admitted and may be relied on to the extent of its probative value. If reports are admitted, the parties shall be afforded an opportunity to examine those making the reports, but sources of confidential information need not be disclosed.

(c) Standard of proof. If the court terminates the parental rights of one or both parents, the standard of proof on the issue of termination shall be clear and convincing evidence. On all other issues, the standard of proof shall be a preponderance of the evidence.

(d) Termination of parental rights. If the commissioner or the attorney for the child seeks an order at disposition terminating the parental rights of one or both parents and transfer of legal custody to the commissioner without limitation as to adoption, the court shall consider the best interests of the child in accordance with section 5114 of this title.

(e) Further hearing. On its own motion or on the motion of a party, the court may schedule a further hearing to obtain reports or other information necessary for the appropriate disposition of the case. The court shall make an appropriate order for the temporary care of the child pending a final disposition order. The court shall give scheduling priority to cases in which the child has been removed from home.

§ 5318. DISPOSITION ORDER

(a) Custody. At disposition, the court shall make such orders related to legal custody for a child who has been found to be in need of care and supervision as the court determines are in the best interest of the child, including:

(1) An order continuing or returning legal custody to the custodial parent, guardian, or custodian. For a fixed period of time following disposition, the court may issue a conditional custody order for a fixed period of time. The court shall schedule regular review hearings to determine whether the conditions continue to be necessary.

(2) When the goal is reunification with a custodial parent, guardian, or custodian an order transferring temporary custody to a noncustodial parent, a relative, or a person with a significant relationship with the child. The order may provide for parent-child contact. For a fixed period of time following disposition, the court may issue a conditional custody order for a fixed period of time. The court shall schedule regular review hearings to evaluate progress toward reunification and determine whether the conditions and continuing jurisdiction of the juvenile court are necessary.

(3) An order transferring legal custody to a noncustodial parent and terminating the juvenile proceeding. The order may provide for parent-child contact with the other parent. Any orders transferring legal custody to a noncustodial parent issued under this section shall not be confidential and shall be made a part of the record in any existing parentage or divorce proceeding involving the child. On the motion of a party or on the court's own motion, the court may order that a sealed copy of the disposition case plan be made part of the record in a divorce or parentage proceeding involving the child.

(4) An order transferring legal custody to the commissioner.

(5) An order terminating all rights and responsibilities of a parent by transferring legal custody and all residual parental rights to the commissioner without limitation as to adoption.

(6) An order of permanent guardianship pursuant to 14 V.S.A. § 2664.

(7) An order transferring legal custody to a relative or another person with a significant relationship with the child. The order may be subject to conditions and limitations and may provide for parent-child contact with one or both parents. The order shall be subject to periodic review as determined by the court.

(b) Case plan. If the court orders the transfer of custody pursuant to subdivision (a)(2), (4), or (5) of this section, the court shall establish a permanency goal for the minor child and adopt a case plan prepared by the department which is designed to achieve the permanency goal. If the court determines that the plan proposed by the department does not adequately support the permanency goal for the child, the court may reject the plan proposed by the department and order the department to prepare and submit a revised plan for court approval.

(c) Sixteen- to 17.5-year olds. In the event that custody of a 16- to 17.5-year old is transferred to the department pursuant to a petition filed under subsection 5309(d) of this title services to the child and to his or her family shall be provided through a coordinated effort by the agency of human

services, the department of education, and community-based interagency teams.

(d) Modification. A disposition order is a final order which may only be modified based on the stipulation of the parties or pursuant to a motion to modify brought under section 5113 of this title.

(e) Findings. Whenever the court orders the transfer of legal custody to a noncustodial parent, a relative, or a person with a significant relationship with the child, such orders shall be supported by findings regarding the suitability of that person to assume legal custody of the child and the safety and appropriateness of the placement.

§ 5319. PARENT-CHILD CONTACT AND CONTACT WITH SIBLINGS AND RELATIVES

(a) The court shall order parent-child contact unless the court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The court may determine the reasonable frequency and duration of parent-child contact and may set such conditions for parent-child contact as are in the child's best interests including whether parent-child contact should be unsupervised or supervised.

(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the court's own motion pursuant to section 5113 of this title.

(d) The court may terminate a parent-child contact order in a juvenile proceeding upon a finding that:

(1) a parent has without good cause failed to maintain a regular schedule of contact with the child and that the parent's failure to exercise regular contact has had a detrimental impact on the emotional well-being of the child; or

(2) continued parent-child contact in accordance with the terms of the prior order will have a detrimental impact on the physical or emotional well-being of the child.

(e) Upon motion of the child's attorney, the court may also order contact between the child and the child's siblings, an adult relative with whom the child has a significant relationship, or an adult friend with whom the child has a significant relationship.

(f) Failure to provide parent-child contact due to the child's illness or other good cause shall not constitute grounds for a contempt or enforcement proceeding against the department.

§ 5320. POST-DISPOSITION REVIEW HEARING

If the permanency goal of the disposition case plan is reunification with a parent, guardian, or custodian, the court shall hold a review hearing within 60 days of the date of the disposition order for the purpose of monitoring progress under the disposition case plan and reviewing parent-child contact. Notice of the review shall be provided to all parties. A foster parent, preadoptive parent, or relative caregiver shall be provided with notice of any post disposition review hearings and an opportunity to be heard at the hearings. Nothing in this section shall be construed as affording such person party status in the proceeding.

§ 5321. PERMANENCY HEARING

(a) Purpose. Unless otherwise specified therein, an order under the authority of this chapter transferring legal custody or residual parental rights and responsibilities of a child to the department pursuant to subdivision 5318(a)(4) or (5) of this title shall be for an indeterminate period and shall be subject to periodic review at a permanency hearing. At the permanency hearing, the court shall determine the permanency goal for the child and an estimated time for achieving that goal. The goal shall specify when:

(1) legal custody of the child will be transferred to the parent, guardian, or custodian;

(2) the child will be released for adoption;

(3) a permanent guardianship will be established for the child;

(4) a legal guardianship will be established for the child pursuant to an order under chapter 111 of Title 14; or

(5) the child will remain in the same living arrangement or be placed in another planned permanent living arrangement because the commissioner has demonstrated to the satisfaction of the court a compelling reason that it is not in the child's best interests to:

(A) return home;

(B) have residual parental rights terminated and be released for adoption; or

(C) be placed with a fit and willing relative or legal guardian.

(b) The court shall adopt a case plan designed to achieve the permanency goal.

(c) A permanency review hearing shall be held no less than every 12 months with the first hearing to be held 12 months after the date the legal custody of the child was transferred, subject to the following exceptions:

(1) If the child was three years of age or younger at the time of the initial transfer of legal custody, the court may order that permanency review hearings be held as frequently as every three months.

(2) If the child is between the ages of three and six at the time of the initial transfer of legal custody, the court may order that permanency review hearings be held as frequently as every six months.

(d) If the court shortens the time for the permanency review hearing for a younger sibling, that shortened review interval shall be applied to all siblings in the family who are in the legal custody of the department.

(e)(1) The department shall file with the court a notice of permanency review together with a case plan and recommendation for a permanency goal. The department shall provide notice to the state's attorney having jurisdiction and to all parties to the proceeding in accordance with the rules for family proceedings. The court shall hold a permanency review hearing within 30 days of the filing of notice by the department. Failure to give such notice or to review an order shall not terminate the original order or limit the court's jurisdiction.

(2) A foster parent, preadoptive parent, or relative caregiver for the child shall be provided notice of and an opportunity to be heard at any permanency hearing held with respect to the child. Nothing in this subsection shall be construed as affording such person party status in the proceeding.

(f) All evidence helpful in determining the questions presented, including hearsay, may be admitted and relied upon to the extent of its probative value even though not competent at an adjudication hearing.

(g) The permanency hearing may be held by an administrative body appointed or approved by the court. The administrative body may consist of one but not more than three persons. No person employed by the department shall be a member of the administrative body. In the event that the administrative body determines that the existing order should be altered, it shall submit its recommendation to the court for its consideration. In the event that the administrative body determines that the existing order should not be altered, its determination shall be binding unless any party requests review by the court within ten days of receipt of the determination. A copy of the

determination shall be sent to each party and to the court. The court, on its own motion or on the request of any party, shall conduct a review de novo within 30 days of receipt of such request.

(h) Upon the filing of a petition for a finding of reasonable efforts and a report or affidavit by the department for children and families with notice to all parties, the court shall hold a hearing within 30 days of the filing of the petition to determine, by a preponderance of the evidence, whether the department for children and families has made reasonable efforts to finalize the permanency plan for the child that is in effect at the time of the hearing. The hearing may be consolidated with or separate from a permanency hearing. Reasonable efforts to finalize a permanency plan may consist of:

(1) reasonable efforts to reunify the child and family following the child's removal from the home, where the permanency plan for the child is reunification; or

(2) reasonable efforts to arrange and finalize an alternate permanent living arrangement for the child, in cases where the permanency plan for the child does not include reunification.

§ 5322. PLACEMENT OF A CHILD IN A FACILITY USED FOR TREATMENT OF DELINQUENT CHILDREN

A child found by the court to be a child in need of care and supervision shall not be placed in or transferred to an institution used solely for the treatment or rehabilitation of delinquent children unless the child has been charged with or adjudicated as having committed a delinquent act.

Sec. 3. 13 V.S.A. § 1030 is amended to read:

§ 1030. VIOLATION OF ABUSE PREVENTION ORDER OR AN ORDER AGAINST STALKING OR SEXUAL ASSAULT

(a) A person who commits an act prohibited by a court or who fails to perform an act ordered by a court in violation of an abuse prevention order issued under chapter 21 of Title 15 or chapter 69 of Title 33, a protective order that concerns contact with a child and is issued under chapter 51 of Title 33, or an order against stalking or sexual assault issued under chapter 178 of Title 12, after the person has been served notice of the contents of the order as provided in those chapters; or a foreign abuse prevention order issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who is convicted of a second or subsequent offense under this section shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.

* * *

(e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.

* * *

Sec. 4. Section 6(b) of the Rules of Public Access to Court Records is amended to read:

(b) Exceptions. The public shall not have access to the following judicial branch records:

* * *

(34) Records from a juvenile proceeding that are filed with the court or admitted into evidence in a divorce or parentage proceeding.

(35) Any other record to which public access is prohibited by statute.

Sec. 5. REPEAL

The following are repealed:

(1) 33 V.S.A. chapter 55 (judicial proceedings).

(2) 13 V.S.A. § 5320 (notification of conditions of release to victim in delinquency proceedings).

Sec. 6. EFFECTIVE DATE

This act shall take effect January 1, 2009.

Rep. Haas of Rochester, for the committee on Human Services, recommended the bill ought to pass when amended as recommended by the committee on Judiciary and when further amended as follows:

First: In Sec. 1., 33 V.S.A. § 5102(2)(B), in subdivision (i) by striking “(unmanageable)” and inserting in lieu thereof “(beyond parental control)” and in subdivision (ii) by striking “(unmanageable)” and inserting in lieu thereof “(beyond parental control)” and striking “, and whose needs transcend any one department of the agency of human services and require complicated clinical interventions from multiple organization”

Second: In Sec. 1., 33 V.S.A § 5102(3)(A), after the word “custodian” by inserting “. A person is considered to have abandoned a child if the person is:

unwilling to have physical custody of the child; unable, unwilling, or has failed to make appropriate arrangements for the child's care; unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child; or has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful.

Third: In Sec. 1., 33 V.S.A. § 5102(22)(C) after the word "issues" by striking the word "for" and after the word "determine" by striking the word "they"

Fourth: In Sec. 1, 33 V.S.A. § 5106(4) after the last sentence by adding the following: "To the extent that it is appropriate and possible siblings in the commissioner's custody shall be placed together."

Fifth: In Sec. 1, by adding a new 33 V.S.A. § 5121 to read as follows:

§ 5121. CASE PLANNING PROCESS

The department shall actively engage families, and solicit and integrate into the case plan the input of the child, the child's family, relatives and other persons with a significant relationship to the child. Whenever possible, parents, guardians and custodians shall participate in the development of the case plan.

Sixth: In Sec. 2., 33 V.S.A. § 5307(c)(1) after the word "unless" by inserting "the child is under 10 years of age and" and adding a second sentence to read: "For good cause shown, the court may waive the presence of a child who is 10 years of age or older."

Seventh: In Sec. 2., 33 V.S.A. § 5308(a)(4), by striking "A person is considered to have abandoned a child under any of the following circumstances:

(A) The person is unwilling to have physical custody of the child.

(B) The person is unable, is unwilling, or has failed to make appropriate arrangements for the child's care.

(C) The person is unable to have physical custody of the child and has not arranged or cannot arrange for the safe and appropriate care of the child.

(D) The person has left the child with a care provider and the care provider is unwilling or unable to provide care or support for the child, the

whereabouts of the person are unknown, and reasonable efforts to locate the person have been unsuccessful."

Eighth: In Sec. 2., 33 V.S.A. § 5308(b)(2)(D) after the word "If" by striking "temporary custody by the noncustodial parent" and inserting in lieu thereof "the noncustodial parent's request for temporary custody"

Ninth: In Sec. 2., 33 V.S.A. § 5308(c), in the first sentence, by striking the words "to the commissioner"

Tenth: In Sec. 2., 33 V.S.A. § 5308(c)(2)(C) after the word "parent" by striking the word "to" and inserting in lieu thereof "for appropriate assessments and" and after the word "services" by adding the words ", including a consideration of the needs of children and parents with disabilities"

Eleventh: In Sec. 2., 33 V.S.A. § 5309(d) by striking "5102(1)(B)(ii)" wherever it appears and inserting in lieu thereof "5102(2)(B)(ii)"

Twelfth: In Sec. 2., 33 V.S.A. § 5311 in the title, after the words "TEMPORARY CARE ORDER" by adding "; PRELIMINARY HEARING"

Thirteenth: In Sec. 2., 33 V.S.A. § 5316(b)(4) after the word "factors" by adding ", including a consideration of the needs of children and parents with disabilities"

Fourteenth: In Sec. 2., 33 V.S.A. § 5316(b)(6) after the words "parent-child contact" by adding "and sibling contact"

Fifteenth: In Sec. 2., 33 V.S.A. § 5316(b)(7) by adding a second sentence after the first to read as follows: "The plan shall also address the minimum frequency of contact between the social worker assigned to the case and the family."

Sixteenth: In Sec. 2., 33 V.S.A. § 5316(b) by adding a new subdivision (9) to read as follows:

(9) Notice to the parents that failure to substantially accomplish the objectives stated in the plan within the time frames established may result in termination of parental rights.

Seventeenth: In Sec. 2., 33 V.S.A. § 5318(a)(1) in the second sentence by striking "For a fixed period of time following" and inserting in lieu thereof "Following" and after the words "period of time" by adding "not to exceed two years"

Eighteenth: In Sec. 2., 33 V.S.A. § 5318(a)(2) in the second sentence by striking "For a fixed period of time following" and inserting in lieu thereof

“Following” and after the words “period of time” by adding “not to exceed two years”

Nineteenth: In Sec. 2., 33 V.S.A. § 5318(a) in subdivision (3) in the first sentence by striking the word “terminating” and inserting in lieu thereof “closing”

Twentieth: By adding a new Sec. 2a. to the bill to read as follows:

Sec. 2a. REPORT FROM THE DEPARTMENT FOR CHILDREN AND FAMILIES

(a) No later than December 1, 2008, the department for children and families shall report to the general assembly on the following:

(1) Procedures used to identify parents with disabilities.

(2) Procedures for modifying case plans, disposition case plans, service plans and permanency plans to include the use of adaptive equipment and parental supports for parents with disabilities.

(3) Procedures used to assess family strengths and weaknesses as they relate to children and parents with disabilities.

(4) The state’s ability to accommodate the court-related needs of children and parents with disabilities as they relate to juvenile judicial proceedings.

(b) In preparation of the report, the department for children and families shall consult with:

(1) The family support project at the University of Vermont.

(2) The Vermont judiciary.

(3) The office of the defender general.

(4) The department of aging and independent living.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committees on Human Services and Judiciary agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 812

Rep. Mook of Bennington, for the committee on Education, to which had been referred House bill, entitled

An act relating to ensuring educational continuity for pregnant and parenting students;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Definitions * * *

Sec. 1. 16 V.S.A. § 11(a) is amended to read:

§ 11. CLASSIFICATIONS AND DEFINITIONS

(a) For the purposes of this title, unless the context otherwise clearly requires:

* * *

(28) "State-placed student" means:

* * *

(B) a Vermont pupil who:

* * *

(iii) resides in a school district other than the district of the pupil's parent or parents; ~~or but~~

~~(C) a pregnant or postpartum pupil attending school at an approved education program in a residential facility or outside the school district of residence pursuant to subsection 1073(b) of this title.~~

~~"State-placed student" does not include pupils~~

(iv) is not a pupil placed within a correctional facility or in the Woodside Juvenile Rehabilitation Center or The Eldred School operated by the Vermont State Hospital.

* * *

(33)(A) "Pregnant or parenting pupil" means a legal pupil of any age who is not a high school graduate and who:

(i) is pregnant; or

(ii) has given birth, has placed a child for adoption, or has experienced a premature end to pregnancy, if any of these has occurred within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance; or

(iii) is the parent of a child.

(B) "Pregnant or parenting pupil" does not include a person whose parental rights have been terminated, except if the pupil has placed the child for adoption within one year before the public or approved independent school or the approved education program receives a request for enrollment or attendance.

(34) "Approved education program" means a program that is evaluated and approved by the state board pursuant to written standards, that is neither an approved independent school nor a public school, and that provides educational services to one or more pupils in collaboration with the pupil's or pupils' school district of residence. An "approved education program" includes an "approved teen parent education program."

(35) "Teen parent education program" means a program designed to provide educational and other services to pregnant pupils, parenting pupils, or both.

* * * Authority to Pay Tuition * * *

Sec. 2. 16 V.S.A. § 828 is amended to read:

§ 828. TUITION TO APPROVED SCHOOLS, AGE, APPEAL

A school district shall not pay the tuition of a pupil except to a public ~~or~~ school, an approved independent school or, an approved tutorial program approved by the state board, nor shall payment, or an approved education program. Payment of tuition on behalf of a person shall not be denied on account of age. Unless otherwise provided, a person who is aggrieved by a decision of a school's board relating to eligibility for tuition payments, the amount of tuition payable, or the school he or she may attend, may appeal to the state board and its decision shall be final.

* * * Attendance at a Teen Parent Education Program * * *

Sec. 3. 16 V.S.A. § 1073 is amended to read:

§ 1073. "LEGAL PUPIL" DEFINED; ACCESS TO SCHOOL

* * *

(b) Access to school.

(1) Right to a public education. No legal pupil attending school at public expense, including a married, pregnant, or postpartum parenting pupil, shall be deprived of or denied the opportunity to participate in or complete an elementary and secondary a public school education. ~~Notwithstanding the provisions of sections 822 and 1075 of this title, for reasons related to the pregnancy or birth, a~~

(2) Right to enroll in a public or independent school. A pregnant or postpartum parenting pupil may ~~attend any approved public school in Vermont or an adjacent state,~~ enroll in any public school or approved independent school in Vermont, or other educational program approved by the state board in which any other legal pupil in the pregnant or parenting pupil's district of residence may enroll.

(3) Teen parent education program.

(A) Residential teen parent education programs. The commissioner shall pay the educational costs for a pregnant or ~~postpartum~~ parenting pupil attending a state board approved ~~educational~~ teen parent education program in a 24-hour residential facility for up to eight months after the birth of the child. The commissioner may approve extension of payment of educational costs based on a plan for reintegration of the student into the community or for exceptional circumstances as determined by the commissioner. The district of residence of a pupil in a 24-hour residential facility shall remain responsible for coordination of the pupil's educational program and for planning and facilitating her subsequent educational program.

(B) Nonresidential teen parent education programs.

(i) The pregnant or parenting pupil's district of residence, or the approved independent or public school to which that district pays tuition for its students, shall be responsible for planning and coordinating the pupil's educational plan while attending a teen parent education program and for planning and facilitating the pupil's subsequent educational plan, including the pupil's transition back to the public or approved independent school.

(ii) A pregnant or parenting pupil may attend a nonresidential teen parent education program for a length of time to be determined by agreement of the pupil's district of residence, the school in which the pupil is enrolled, the teen parent education program, and the pupil. If these parties cannot reach agreement as to the duration of attendance, one or more of the parties may petition the commissioner for a review and determination of duration. The commissioner's decision shall be final.

Sec. 4. 16 V.S.A. § 1121 is amended to read:

§ 1121. ATTENDANCE BY CHILDREN OF SCHOOL AGE REQUIRED

A person having the control of a child between the ages of six and 16 years shall cause the child to attend a public school, an approved or recognized independent school, ~~an approved education program~~, or a home study program for the full number of days for which that school is held, unless the child:

* * *

* * * Funding; Grants * * *

Sec. 5. 16 V.S.A. § 4011a is added to read:

**§ 4011a APPROVED TEEN PARENT EDUCATION PROGRAM;
PAYMENTS BY DISTRICT OF RESIDENCE**

(a) Subject to the provisions of subsection (b) of this section, for each pregnant or parenting pupil who is attending an approved teen parent education program and is enrolled in an approved independent school or a public school at public expense, the commissioner shall reimburse the pupil's district of residence for amounts paid to an approved teen parent education program for educational services. Reimbursement shall be in an amount equal to the prior year's net cost per pupil, as calculated under section 825 of this title minus debt service, prorated by the pupil's full-time equivalent enrollment in academic courses at the teen parent education program in the year services are provided. For those programs operating during 12 months of the year, the full-time equivalent enrollment will be prorated based on 18.5 hours for 52 weeks rather than 27.5 hours for a 35-week school year. This subsection applies without regard to whether the pupil is enrolled in a public school within the district of residence or in an approved independent or public school to which the district pays tuition.

(b)(1) The pregnant or parenting pupil must be enrolled in a school maintained by the school district of residence or, if the district does not maintain a school, in a public school or an approved independent school at the expense of the district of residence.

(2) As determined by the district of residence or by the enrolling school if the district does not maintain a school, the pupil must be taking academic courses at the approved teen parent education program that are the substantial equivalent of the courses required by the district of residence or enrolling school, as applicable, leading to a high school diploma. The sending district or enrolling school, as applicable, will collaborate with the approved teen parent education program regarding the pupil's programs and progress.

(c) An approved independent or public school to which the district of residence pays tuition shall receive and retain tuition for a pregnant or parenting pupil for the full academic year in which the pupil is enrolled, regardless of whether the pupil attends a teen parent education program for all or part of the academic year in lieu of attending the school.

Sec. 6. TRANSITIONAL PROVISIONS

During the 2008–2009 academic year only, the provisions of Sec. 5 of this act shall apply both to approved teen parent education programs and to teen parent education programs that have been recognized by the department for children and families.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2008.

Rep. Heath of Westford, for the committee on Appropriations, recommended the bill ought to pass when amended as recommended by the committee on Education.

Speaker Symington back in Chair.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committees on Education and Appropriations? **Rep. Nease of Johnson** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by the committees on Education and Appropriations? was decided in the affirmative. Yeas, 128. Nays, none.

Those who voted in the affirmative are:

Acinapura of Brandon	Donaghy of Poultney	Kitzmiller of Montpelier
Adams of Hartland	Donahue of Northfield	Koch of Barre Town
Ainsworth of Royalton	Donovan of Burlington	Komline of Dorset
Ancel of Calais	Dostis of Waterbury	Krawczyk of Bennington
Andrews of Rutland City	Edwards of Brattleboro	Larocque of Barnet
Atkins of Winooski	Emmons of Springfield	Larson of Burlington
Audette of S. Burlington	Errecart of Shelburne	LaVoie of Swanton
Baker of West Rutland	Evans of Essex	Lawrence of Lyndon
Barnard of Richmond	Fisher of Lincoln	Lenes of Shelburne
Bissonnette of Winooski	Flory of Pittsford	Leriche of Hardwick
Bostic of St. Johnsbury	Frank of Underhill	Lewis of Derby
Botzow of Pownal	French of Randolph	Lippert of Hinesburg
Branagan of Georgia	Gervais of Enosburg	Livingston of Manchester
Bray of New Haven	Gilbert of Fairfax	Lorber of Burlington
Browning of Arlington	Godin of Milton	Maier of Middlebury
Canfield of Fair Haven	Grenier of St. Johnsbury	Malcolm of Pawlet
Chen of Mendon	Haas of Rochester	Manwaring of Wilmington
Cheney of Norwich	Head of S. Burlington	Marcotte of Coventry
Clark of Vergennes	Heath of Westford	Marek of Newfane
Clarkson of Woodstock	Helm of Castleton	Martin, C. of Springfield
Clerkin of Hartford	Hosford of Waitsfield	Masland of Thetford
Condon of Colchester	Howrigan of Fairfield	McAllister of Highgate
Consejo of Sheldon	Hube of Londonderry	McCormack of Rutland City
Copeland-Hanzas of	Hunt of Essex	McCullough of Williston
Bradford	Hutchinson of Randolph	McDonald of Berlin
Corcoran of Bennington	Jerman of Essex	McFaun of Barre Town
Courcelle of Rutland City	Jewett of Ripton	Milkey of Brattleboro
Crawford of Burke	Johnson of South Hero	Minter of Waterbury
Davis of Washington	Keenan of St. Albans City	Mitchell of Barnard
Deen of Westminster	Keogh of Burlington	Mook of Bennington
Devereux of Mount Holly	Kilmartin of Newport City	Moran of Wardsboro

Morley of Barton	Partridge of Windham	Smith of Morristown
Morrissey of Bennington	Pearson of Burlington	Spengler of Colchester
Mrowicki of Putney	Peaslee of Guildhall	Stevens of Shoreham
Myers of Essex	Pellett of Chester	Sweaney of Windsor
Nease of Johnson	Peltz of Woodbury	Turner of Milton
Nuovo of Middlebury	Perry of Richford	Valliere of Barre City
Obuchowski of Rockingham	Pillsbury of Brattleboro	Westman of Cambridge
O'Donnell of Vernon	Potter of Clarendon	Weston of Burlington
Ojibway of Hartford	Pugh of S. Burlington	Wheeler of Derby
Orr of Charlotte	Scheuermann of Stowe	Winters of Williamstown
Otterman of Topsham	Shand of Weathersfield	Zenie of Colchester
Oxholm of Vergennes	Sharpe of Bristol	Zuckerman of Burlington

Those who voted in the negative are:

Those members absent with leave of the House and not voting are:

Allard of St. Albans Town	Howard of Rutland City	Miller of Shaftsbury
Anderson of Montpelier	Johnson of Canaan	Monti of Barre City
Aswad of Burlington	Klein of East Montpelier	Peterson of Williston
Brennan of Colchester	Kupersmith of S. Burlington	Randall of Troy
Fallar of Tinmouth	Larrabee of Danville	Rodgers of Glover
Fitzgerald of St. Albans City	Martin of Wolcott	Trombley of Grand Isle
Grad of Moretown	McNeil of Rutland Town	Wright of Burlington

Thereupon, third reading was ordered.

Joint Resolution Adopted

J.R.H. 56

Joint resolution, entitled

Joint resolution honoring municipal public works employees and designating May 18-24 as Public Works Week in Vermont;

Was taken up and adopted on the part of the House.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the twenty-first day of March, 2008, he approved and signed a bill originating in the House of the following title:

H. 875 An act relating to the sale of real property or transmissions facilities by certain regulated generators of electricity

Adjournment

At twelve o'clock and ten minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until Monday, March 24, 2008, at ten o'clock in the forenoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 236

House concurrent resolution honoring the outstanding work of child care providers in Vermont

H.C.R. 237

House concurrent resolution honoring the half-century active Bennington firefighters

H.C.R. 238

House concurrent resolution congratulating the Missisquoi Valley Union High School Thunderbirds 2008 Division II girls' ice hockey championship team

H.C.R. 239

House concurrent resolution congratulating the 2008 Enosburg Falls High School Hornets Division III girls' basketball championship team

H.C.R. 240

House concurrent resolution congratulating the 2008 Essex High School Hornets Division I cheerleading team

H.C.R. 241

House concurrent resolution congratulating the 2008 Essex High School Hornets' Division I championship boys' ice hockey team

H.C.R. 242

House concurrent resolution congratulating the Vermont Ice Storm on winning the 2007 Empire Football League championship and being named the 2007 American Football Association Triple-A national champions

H.C.R. 243

House concurrent resolution honoring the outstanding winter road clearance performance of the agency of transportation highway crews

H.C.R. 244

House concurrent resolution in memory of John D. Picard

H.C.R. 245

House concurrent resolution congratulating the 2008 Vergennes Union High School Commodores Division II cheerleading champions

H.C.R. 246

House concurrent resolution in memory of Charlie Bristow

H.C.R. 247

House concurrent resolution congratulating the 2008 Milton High School Yellowjackets Division II girls' basketball championship team

S.C.R. 37

Senate concurrent resolution recognizing the outstanding role of Vermont Transit and its employees in the state's transportation history.

S.C.R. 38

Senate concurrent resolution congratulating the Burlington Seahorses' 2008 Division I championship and undefeated boys' basketball team

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the volume of the Public Acts and Resolves of the 2008, sixty-ninth Adjourned session]

MONDAY, MARCH 24, 2008

Token

At eleven o'clock and fifty-two minutes in the forenoon the Speaker called the House to order.

Adjournment

At eleven o'clock and fifty-three minutes in the forenoon, the Speaker adjourned the House until tomorrow at ten o'clock in the forenoon pursuant to Rule 9.

TUESDAY, MARCH 25, 2008

At ten o'clock in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Representative William Aswad of Burlington, VT.

Pledge of Allegiance

Page Sam Hensel-Hunter of Cavendish led the House in the Pledge of Allegiance.

Message from the Senate No. 41

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 117. An act relating to school calendars.

S. 270. An act relating to the agreement among the states to elect the president national popular vote

S. 354. An act relating to public agency deferred compensation plans.

S. 373. An act relating to full funding of decommissioning costs of a nuclear plant.

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

The Senate has on its part adopted a joint resolution of the following title:

J.R.S. 57. Joint resolution requesting the Agency of Administration to post all state contracts and granted in full text on the internet.

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

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

J.R.H. 54. Joint resolution urging Congress to eliminate the Enron Loophole regulatory exemption for energy and metal commodities traded on electronic commodities markets.

And has adopted the same in concurrence.

The Senate has on its part adopted Senate concurrent resolutions of the following titles:

S.C.R. 37. Senate concurrent resolution recognizing the outstanding role of Vermont Transit and its employees in the state's transportation history.

S.C.R. 38. Senate concurrent resolution congratulating the Burlington Seahorses' 2008 Division I championship and undefeated boys' basketball team.

The Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 236. House concurrent resolution honoring the outstanding work of child care providers in Vermont.

H.C.R. 237. House concurrent resolution honoring the half-century active Bennington firefighters.

H.C.R. 238. House concurrent resolution congratulating the Missisquoi Valley Union High School thunderbirds 2008 Division II girls' ice hockey championship team.

H.C.R. 239. House concurrent resolution congratulating the 2008 Enosburg Falls High School Hornets Division III girls' basketball championship team.

H.C.R. 240. House concurrent resolution congratulating the 2008 Essex High School Hornets Division I cheerleading team.

H.C.R. 241. House concurrent resolution congratulating the 2008 Essex High School Hornets' Division I championship boys' ice hockey team.

H.C.R. 242. House concurrent resolution congratulating the Vermont Ice Storm on winning the 2007 Empire Football League championship and being named the 2007 American Football Association Triple-A national champions.

H.C.R. 243. House concurrent resolution honoring the outstanding winter road clearance performance of the agency of transportation highway crews.

H.C.R. 244. House concurrent resolution in memory of John D. Picard.

H.C.R. 245. House concurrent resolution congratulating the 2008 Vergennes Union High School Commodores Division II cheerleading champions.

H.C.R. 246. House concurrent resolution in memory of Charlie Bristow.

H.C.R. 247. House concurrent resolution congratulating the 2008 Milton High School Yellowjackets Division II girls' basketball championship team.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 117

Senate bill, entitled

An act relating to a statewide school year calendar;

To the committee on Education.

S. 270

Senate bill, entitled

An act relating to the agreement among the states to elect the president national popular vote;

To the committee on Government Operations.

S. 354

Senate bill, entitled

An act relating to public agency deferred compensation plans;

To the committee on Government Operations.

S. 373

Senate bill, entitled

An act relating to full funding of decommissioning costs of a nuclear plant;

To the committee on Natural Resources and Energy.

Joint Resolution Placed on Calendar

The Speaker placed before the House the following resolutions which was read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

J.R.S. 57

By Senators Condos, Ayer, Bartlett, Campbell, Carris, Collins, Cummings, Flanagan, Giard, Hartwell, Illuzzi, Kittell, MacDonald, McCormack, Nitka, Racine, Shumlin and White,

Joint resolution requesting the Agency of Administration to post all state contracts and grants in full text on the internet.

Whereas, in July 2007, two of the least likely political allies in the United States, conservative Grover Norquist, President of Americans for Tax Reform,

and the consumer advocate Ralph Nader drafted a letter to the nations' governors urging far greater transparency in state government financial operations, and

Whereas, the letter's authors cited a 2005 executive order that Indiana Governor Mitch Daniels issued, expanding the scope of that state government's financial transactions that is posted on the Internet, and

Whereas, the fiscal data now posted on an Indiana state government web site include for each year: the total number of state contracts, their monetary value, and the number and percentage of Indiana businesses and out-of-state businesses awarded state contracts, and

Whereas, pursuant to the Federal Funding Accountability and Transparency Act of 2006 (the act), a new searchable website was established, enabling the public to identify all federal grants and contracts, and

Whereas, although the act does not provide for the posting of the full text of grants and contracts, it represents an important first step toward greater public disclosure, and

Whereas, during his tenure as director of the Office of Federal Management and Budget, Mitch Daniels advocated the posting of the full text of contracts with appropriate redaction of national security-related details, and

Whereas, Vermonters have a right to know how Vermont's government spends their dollars, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly urges the Agency of Administration, in an effort to achieve the greatest possible transparency in the state's fiscal transactions, to post the full text of its contracts and grants, in all fields of endeavor, in a searchable format on the Internet, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Governor, to the Secretary of the Agency of Administration, and to the Vermont League of Cities and Towns.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 170

House bill, entitled

An act relating to retirees of the University of Vermont;

H. 615

House bill, entitled

An act relating to juvenile judicial proceedings.

Bill Amended, Read Third Time and Passed**H. 635**

House bill, entitled

An act relating to reports of child abuse or neglect;

Was taken up and pending third reading of the bill, **Rep. Pugh of South Burlington** moved to amend the bill as follows:

In Sec. 1, in 33 V.S.A. § 4915, by adding a new subsection (g) to read:

(g) The department's average caseloads shall not exceed 10 investigations or assessments per worker at any time.

Which was agreed to. Thereupon, the bill was read the third time and passed.

Action on Bill Postponed**H. 812**

House bill, entitled

An act relating to ensuring educational continuity for pregnant and parenting students;

Was taken up and pending third reading of the bill, on motion of **Rep. Mook of Bennington**, action on the bill was postponed until the next legislative day.

Action on Bill Postponed**H. 661**

House bill, entitled

An act relating to ensuring health and safety on public construction projects by requiring OSHA safety training;

Was taken up and pending the reading of the report of the committee on General, Housing and Military Affairs, on motion of **Rep. Moran of Wardsboro**, action on the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered**H. 574**

Rep. Cheney of Norwich, for the committee on Natural Resources and Energy, to which had been referred House bill, entitled

An act relating to requiring beverage container manufacturers to pay an additional one-half cent per container to retailers who do not commingle containers;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 1522a is added to read:

§ 1522a. RULES

The secretary may adopt rules, in accordance with chapter 25 of Title 3, necessary for the administration of this chapter. These rules may include the following:

(1) provisions to ensure that beverage containers not labeled in accordance with section 1524 of this title are not redeemed;

(2) provisions to ensure that beverage containers are commingled;

(3) administrative penalties for the failure by a redemption center or retailer to remove beverage containers that are not labeled prior to pickup by a distributor or manufacturer. Penalties may include nonpayment of the deposit and handling fee established under section 1522 of this title for a reasonable period of time and for the number of beverage containers that were not labeled;

(4) any other provision that may be necessary for the implementation of this chapter.

Sec. 2. 10 V.S.A. § 1522(b) and (c) are amended to read:

(b) A retailer or a person operating a redemption center who redeems beverage containers shall be reimbursed by the manufacturer or distributor of such beverage containers in an amount which is at least three and one-half cents per container for containers of beverage brands that are part of a commingling program and four cents per container for containers of beverage brands that are not part of a commingling program.

~~(c) The secretary may adopt rules and regulations necessary to implement this chapter.~~

Sec. 3. 10 V.S.A. § 1523 is amended to read:

§ 1523. ACCEPTANCE OF BEVERAGE CONTAINERS

(a) Except as provided in section 1522 of this title:

(1) A retailer shall not refuse to accept from any person any empty beverage containers, labeled in accordance with section 1524 of this title, of the kind, size, and brand sold by the retailer, or refuse to pay to that person the refund value of a beverage container as established by section 1522 of this title, except as provided in subsection (b) of this section.

(2) A manufacturer or distributor may not refuse to ~~accept~~ pick up from a retailer that sells its product or a person operating a certified redemption center any empty beverage containers, labeled in accordance with section 1524 of this title, of the kind, size, and brand sold by the manufacturer or distributor, or refuse to pay the retailer or a person operating a redemption center the refund value of a beverage container as established by section 1522 of this title.

(b) A retailer, with the prior approval of the secretary, may refuse to redeem beverage containers if a redemption center or centers are established which serve the public need.

(c) A retailer or a person operating a redemption center may refuse to redeem beverage containers that are not clean, or are broken, ~~or were not purchased in Vermont and shall not redeem beverage containers that are not labeled in accordance with section 1524 of this title.~~

~~(d) A retailer or group of retailers may petition the secretary for the establishment of a redemption center.~~

~~(e) The secretary shall notify the public regarding the petition. The secretary, after determination of need and service to be provided by the proposed redemption center, shall issue a certification authorizing the distributors or retailers affected and servicing the community or area involved to establish a redemption center or alternate method of redemption, or shall deny the petition if found adverse to the public need.~~

~~(f) The secretary shall not certify a new redemption center from July 1, 2006 through July 1, 2007 unless the area is currently underserved.~~

Sec. 4. 10 V.S.A. §§ 1528 and 1529 are added to read:

§ 1528. BEVERAGE REGISTRATION

No distributor or manufacturer shall sell a beverage container in the state of Vermont without the manufacturer registering the beverage container with the agency of natural resources prior to sale, unless distributed by the department

of liquor control. This registration shall take place on a form provided by the secretary and include the following:

- (1) The name and principal business address of the manufacturer;
- (2) The name of the beverage and the container size;
- (3) Whether the beverage is a part of an approved commingling agreement; and
- (4) The name of the person picking up the empty beverage container, if that person is different from the manufacturer.

§ 1529. REDEMPTION CENTER CERTIFICATION

A person operating a redemption center may obtain a certification from the secretary. A redemption center certification shall include the following:

- (1) Specification of the name and location of the facility;
- (2) If the certified redemption center redeems more than 250,000 containers per year, a requirement that the certified redemption center shall participate in an approved commingling agreement; and
- (3) Additional conditions, requirements, and restrictions as the secretary may deem necessary to implement the requirements of this chapter. This may include requirements concerning reporting, recording, and inspections of the operation of the site.

Sec. 5. COMMINGLING AND AUDIT PILOT PROGRAM

(a) The secretary of natural resources may implement, by procedure, requirements for the commingling of beverage containers from differing manufacturers and auditing for compliance with these requirements. This commingling program may include provisions establishing administrative penalties for the failure by a redemption center or retailer to remove containers that are not labeled prior to their pickup by a distributor or manufacturer. Penalties may include nonpayment of the deposit and handling fee established under section 1522 of Title 10 for a reasonable period of time and for the number of containers that were not labeled.

(b) The pilot program established by this section shall expire on July 1, 2010.

Sec. 6. REPORT ON COMMINGLING PROGRAM

By no later than January 15, 2010, the secretary of natural resources shall report to the committees on natural resources and energy with regard to:

(1) the implementation of the commingling program established by this act;

(2) the implementation of the auditing program established by this act; and

(3) the results of a redemption center survey regarding whether the commingling program has achieved cost efficiencies.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Natural Resources and Energy agreed to and third reading ordered.

Action on Bill Postponed

H. 888

House bill, entitled

An act relating to miscellaneous tax amendments;

Was taken up and pending second reading of the bill on motion of **Rep. Otterman of Topsham**, action on the bill was postponed until the next legislative day.

Action on Bill Postponed

H. 549

House bill, entitled

An act relating to buffer zones along waterways of the state;

Was taken up and pending the reading of the report of the committee on Fish, Wildlife and Water Resources, on motion of **Rep. Deen of Westminster**, action on the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered

H. 558

Rep. Winters of Williamstown, for the committee on Ways and Means, to which had been referred House bill, entitled

An act relating to waste facility franchise tax exemption for mining waste;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 2822(j)(6) is amended to read:

(6) For solid waste treatment, storage, transfer, or disposal facility certifications issued under 10 V.S.A. chapter 159:

* * *

(E) original and renewal	\$200.00 plus \$0.41
applications for facilities, certified	per cubic yard of certified
pursuant to 10 V.S.A §§ 6605 and 6605b,	<u>for facilities with an operational</u>
that treat, store, or dispose of waste	<u>capacity less than 25,000 cubic</u>
generated solely from mining, extraction,	<u>yards; for facilities with</u>
or mineral processing	<u>operational capacity above 15,000</u>
	<u>25,000 cubic yards \$0.95 per</u>
	<u>cubic yard of operational capacity</u>
	prorated and paid on an
	annual basis over the term
	of the certification.
	Maximum annual
	payment, \$35,000.00
	<u>\$75,000.00.</u>

* * *

Sec. 2. REPEAL

Sec. 6 of No. 65 of the Acts of 2005 (sunset of tax exemption for solid waste from mining, extraction, or mineral processing) is repealed effective June 1, 2008.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage, except:

(1) Sec. (1) of this act (solid waste certification fee increase in 3 V.S.A. § 2822(j)(6)(E)) shall take effect July 1, 2008.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Ways and Means agreed to and third reading ordered.

Bill Referred to Committee on Appropriations

H. 878

House bill, entitled

An act relating to elevator safety;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Message from the Senate No. 42

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

S. 233. An act relating to temporary officiants for marriages and civil unions.

S. 261. An act relating to phthalates in products for young children.

S. 271. An act relating to child support for children with disabilities.

S. 294. An act relating to the optimal siting of a dry cask storage facility for spent nuclear fuel rods.

S. 301. An act relating to enhancing the penalties for assaulting a law enforcement officer and to the crime of assault with bodily fluids.

S. 322. An act relating to dairy promotion council.

S. 366. An act relating to the administration of the voter's oath or affirmation.

S. 368. An act relating to the addition of new types of disinfectants to public water systems

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

The Senate has considered House proposal of amendment to Senate bill of the following title:

S. 108. An act relating to the election of U.S. Representative and U.S. Senator by the instant runoff voting method.

And has concurred therein.

Adjournment

At eleven o'clock and fifteen minutes in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

WEDNESDAY, MARCH 26, 2008

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rabbi Tobie Weisman of the Jewish Learning Center, Montpelier, VT.

Message from Governor

A message was received from His Excellency, the Governor, by Ms. Dennise Casey, Secretary of Civil and Military Affairs, as follows:

Madam Speaker:

I am directed by the Governor to inform the House that on the twenty-fourth day of March, 2008, he approved and signed bills originating in the House of the following titles:

H. 93 An act relating to beer producers' interest in retail liquor licenses;

H. 575 An act relating to small eligible telecommunications carriers.

Committee Bill Introduced**H. 889**

Rep. Westman of Cambridge, for the committee on Transportation, introduced a bill, entitled

An act relating to the state's transportation program;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 233

Senate bill, entitled

An act relating to temporary officiants for marriages and civil unions;

To the committee on Judiciary.

S. 261

Senate bill, entitled

An act relating to phthalates in products for young children;
To the committee on Human Services.

S. 271

Senate bill, entitled

An act relating to child support for children with disabilities;
To the committee on Judiciary.

S. 294

Senate bill, entitled

An act relating to the optimal siting of a dry cask storage facility for spent nuclear fuel rods;

To the committee on Natural Resources and Energy.

S. 301

Senate bill, entitled

An act relating to enhancing the penalties for assaulting a law enforcement officer and to the crime of assault with bodily fluids;

To the committee on Judiciary.

S. 322

Senate bill, entitled

An act relating to dairy promotion council;
To the committee on Agriculture.

S. 366

Senate bill, entitled

An act relating to the administration of the voter's oath or affirmation;
To the committee on Government Operations.

S. 368

Senate bill, entitled

An act relating to the addition of new types of disinfectants to public water systems;

To the committee on Fish, Wildlife and Water Resources.

Joint Resolutions Placed on Calendar

The Speaker placed before the House the following resolutions which were read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

J.R.H. 57

Joint resolution relating to U.S. military veterans and traumatic brain injury

Offered by: Representatives Krawczyk of Bennington, Morrissey of Bennington, Acinapura of Brandon, Adams of Hartland, Ainsworth of Royalton, Ancel of Calais, Andrews of Rutland City, Baker of West Rutland, Barnard of Richmond, Bissonnette of Winooski, Bostic of St. Johnsbury, Botzow of Pownal, Branagan of Georgia, Brennan of Colchester, Browning of Arlington, Canfield of Fair Haven, Chen of Mendon, Cheney of Norwich, Clark of Vergennes, Crawford of Burke, Davis of Washington, Deen of Westminster, Devereux of Mount Holly, Donaghy of Poultney, Donahue of Northfield, Donovan of Burlington, Edwards of Brattleboro, Errecart of Shelburne, Evans of Essex, Fitzgerald of St. Albans City, Flory of Pittsford, Gervais of Enosburg, Grenier of St. Johnsbury, Head of S. Burlington, Hosford of Waitsfield, Howrigan of Fairfield, Hube of Londonderry, Jerman of Essex, Kitzmiller of Montpelier, Koch of Barre Town, Komline of Dorset, Larocque of Barnet, Marcotte of Coventry, Marek of Newfane, McCormack of Rutland City, McCullough of Williston, McDonald of Berlin, McFaun of Barre Town, McNeil of Rutland Town, Milkey of Brattleboro, Mitchell of Barnard, Mook of Bennington, Moran of Wardsboro, Mrowicki of Putney, Myers of Essex, Nuovo of Middlebury, O'Donnell of Vernon, Oxholm of Vergennes, Partridge of Windham, Peltz of Woodbury, Pillsbury of Brattleboro, Pugh of S. Burlington, Randall of Troy, Shand of Weathersfield, Sweaney of Windsor, Symington of Jericho, Valliere of Barre City, Westman of Cambridge, Weston of Burlington, Wheeler of Derby, Zenie of Colchester and Zuckerman of Burlington

Whereas, members of the United States Armed Forces, serving in combat, are exposed to adverse conditions, such as explosions, blows to the head, falls, and vehicle accidents, that cause traumatic brain injury and

Whereas, the level of traumatic brain injuries varies considerably with many of these injuries not readily apparent immediately after the injury, and

Whereas, traumatic brain injury can include symptoms that are similar to post traumatic stress disorder, including difficulty sleeping, memory loss, and confusion, and

Whereas, even mild traumatic brain injury can result in severe headaches,

dizziness, nausea, and sensitivity to light, and

Whereas, the United States Army Surgeon General estimates that between 10 and 20 percent of military members leaving service in Iraq and Afghanistan may have some level of traumatic brain injury, and that more than one-half of combat-wounded military members have an associated traumatic brain injury, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges the United States Department of Defense and the United States Department of Veterans Affairs to continue research on ways to prevent and treat traumatic brain injury, especially if related to service in combat theaters, and be it further

Resolved: That the General Assembly urges the Department of Defense to screen all military personnel leaving a combat theater for traumatic brain injury, and be it further

Resolved: That the General Assembly urges the United States Department of Veterans Affairs to: create a traumatic brain injury registry; a comprehensive program to provide long-term traumatic brain injury rehabilitation; and a pilot program in Vermont to deliver traumatic brain injury screening, readjustment counseling, mental health services, and benefits outreach to rural veterans through mobile Vet Centers, and be it further

Resolved: That the General Assembly urges Congress to authorize funds for the establishment of centers for traumatic brain injury research, education, and clinical activities, and be it further

Resolved: That the secretary of state be directed to send a copy of this resolution to Secretary of Defense Robert Gates, to Secretary of Veteran Affairs Dr. James Peake, to Representative Ike Skelton, Chair of the U.S. House Armed Services Committee, to Representative Bob Filner, Chair of the U.S. House Committee on Veterans' Affairs, to Senator Carl Levin, Chair of the U.S. Senate Committee on Armed Services, to Senator Daniel Akaka, Chair of the U.S. Senate Committee on Veterans Affairs, and to the Vermont Congressional Delegation.

J.R.H. 58

Joint resolution authorizing the 2008 Green Mountain Boys' State program to use the state house

Offered by: Representatives Lawrence of Lyndon, Koch of Barre Town, Ainsworth of Royalton, Bray of New Haven, Browning of Arlington,

Crawford of Burke, Godin of Milton, Lewis of Derby, Potter of Clarendon, Stevens of Shoreham, Turner of Milton and Zuckerman of Burlington

Whereas, the American Legion in Vermont sponsors the Green Mountain Boys' State program, which provides an opportunity for high school students to study the workings of state government in Montpelier, and

Whereas, as part of their visit to the state's capital city, the boys conduct a mock legislative session in the state house, and

Whereas, this is an invaluable educational experience that provides firsthand knowledge about the legislative process, now therefore be it

Resolved by the Senate and House of Representatives:

That the sergeant at arms shall make available the chambers and committee rooms of the state house for the Green Mountain Boys' State program on Thursday, June 19, 2008.

Bill Referred to Committee on Appropriations

H. 661

House bill, entitled

An act relating to ensuring health and safety on public construction projects by requiring OSHA safety training;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Third Reading; Bills Passed

House bills of the following titles were severally taken up, read the third time and passed:

H. 558

House bill, entitled

An act relating to waste facility franchise tax exemption for mining waste;

H. 574

House bill, entitled

An act relating to requiring beverage container manufacturers to pay an additional one-half cent per container to retailers.

Bill Read Second Time; Ordered to Lie**H. 549**

Rep. Deen of Westminster, for the committee on Fish, Wildlife and Water Resources, to which had been referred House bill, entitled

An act relating to establishing buffer zones along waterways of the state;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) The surface waters of Vermont are an invaluable resource to the state and its citizens.

(2) The navigable surface waters of the state are held in trust by the state for its citizens, and, thus, the state is bound to protect and conserve these waters.

(3) The shorelands adjacent to the waters of the state harbor some of the most valuable natural resources in the state and serve important functions related to the health and quality of the state's surface waters.

(4) The shorelands adjacent to the state's surface waters are often fragile natural resources, and their protection in the face of increasing development pressure is necessary to maintain the vitality and health of the state's surface waters.

(5) Under current law, the potential exists for uncoordinated, unplanned, and piecemeal development along the state's surface waters, which could result in significant negative impacts on the waters of Vermont.

(6) The agency of natural resources' river management corridor program has worked successfully with municipalities to identify and map flood hazard zones, and the agency's river management corridor program should continue and be supported. However, additional protection of the state's shorelands is necessary.

(7) Buffer zones consisting of trees and other vegetation adjacent to the lakes of the states and within the state's river corridors function to control water pollution; control building within the state's shorelands; preserve and protect wetlands; help maintain and protect, channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space; and achieve additional environmental protection for the surface waters of Vermont.

Sec. 2. 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, require buffer zones along the lakes and streams of the state, promote the protection and management of the river corridors of the state, and authorize municipal shoreland zoning bylaws, all 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; preserve shore cover and natural beauty; and provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 3. 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;
- (2) "Board" means water resources panel of the natural resources board;
- (3) "Department" means department of environmental conservation;
- (4) "Navigable water" or "navigable waters" means Lake Champlain, Lake Memphremagog, the Connecticut River, all natural inland lakes within Vermont, and all streams, ponds, flowages, and other waters within the territorial limits of Vermont, including the Vermont portion of boundary waters, which are boatable under the laws of this state;
- (5) "Public shorelands" means state-owned lands adjacent to navigable waters;
- (6) "Public waters" means navigable waters excepting those waters in private ponds and private preserves as set forth in sections 5204, 5205, 5206, and 5210 of this title;
- (7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative;
- (8) "Shorelands" means the lands being between the normal mean water ~~mark~~ level of a lake, pond, or impoundment exceeding twenty 20 acres and a

line not less than ~~five hundred~~ 500 feet nor more than ~~one thousand~~ 1,000 feet from such mean water-mark level.

(9) “Outstanding resource waters” mean waters of the state designated by the board as having exceptional natural, recreational, cultural, or scenic values.

(10) “Existing use” means the established use, activity, or development occurring within a buffer zone on July 1, 2010, including:

(A) repair, renovation, or maintenance, provided that the result of any repair, renovation, or maintenance is a functionally equivalent use; and

(B) maintenance of a cleared area, including lawns and beaches, within the buffer, provided that the cleared area is not enlarged and no change in use occurs.

(11) “Lake” means a body of standing water, including ponds and reservoirs that may have natural or artificial water level control. Off-stream reservoirs specifically constructed for the following purposes shall not be considered lakes: snowmaking storage, golf course irrigation, stormwater management, and fire suppression.

(12) “Riparian buffer” means an undisturbed area adjacent to a lake or stream in the state consisting of trees, shrubs, groundcover plants, duff layer, and naturally vegetated, uneven ground surface that extends horizontally across the surface of the land from the mean water level of a lake or from the top of bank or top of slope of a stream.

(13) “River corridor” means an area adjacent to streams, as defined by the agency of natural resources, necessary to accommodate the slope and platform of the stream’s naturally stable channel wherein encroachment and channel management activities that constrain the stream channel from achieving natural stability may increase risks to public safety, fluvial erosion hazards, property loss, and water quality and habitat degradation.

(14) “Stream” means the full length and width, including the bed and banks, of any watercourse, including rivers, creeks, brooks, and branches. “Stream” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(15) “Top of bank” means the point along the bank of a stream where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

(16) "Top of slope" means a break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut, channel meet floodplains that have been abandoned or are undergoing abandonment.

(17) "Trail" means a recognized part of the Vermont trail system under section 443 of this section or land used for hiking, walking, bicycling,

cross-country skiing, snowmobiling, all-terrain vehicle riding, horseback riding, and other similar activities that is regularly maintained by a state or federal agency, a municipality, person, or incorporated group or association.

Sec. 4. 10 V.S.A. § 1427 is added to read:

§ 1427. MINIMUM RIPARIAN BUFFER

(a) The agency of natural resources shall continue to develop flood hazard area maps that delineate the river corridors of the streams of the state. In addition, the agency of natural resources shall include on a flood hazard area map a riparian buffer zone along the streams of the state. The size of the buffer zone included on a flood hazard area map shall be determined by site specific conditions.

(b) Beginning July 1, 2010, a riparian buffer of at least 50 feet shall be established along the lakes and the streams of the state unless:

(1) The municipality in which a stream is located has adopted a flood hazard area map developed by the agency of natural resources under subsection (a) of this section, provided that:

(A) the flood hazard area map adopted by the municipality includes a riparian buffer zone; and

(B) the exemption from the requirements of this section shall only apply to those streams included within the flood hazard area map and shall not apply to lakes located within the municipality; or

(2) The municipality in which a lake or a stream is located has adopted riparian buffer zoning under section 4425 of Title 24; or

(3) The municipality in which a lake or a stream is located adopted a riparian buffer bylaw prior to July 1, 2010 and that bylaw, as determined by the agency of natural resources:

(A) Is consistent with the purposes and the requirements of 24 V.S.A. § 4425;

(B)(i) Requires the establishment of a riparian buffer of at least 50 feet; or

(ii) Establishes a riparian buffer of less than 50 feet that is based on site specific conditions; and

(C) The municipality updates its riparian buffer bylaw to be consistent with the requirements of section 4425 of Title 24 subsequent to the next revision of its town plan.

(4) Use of the land is authorized under this section or the rules adopted under subsection (d) of this section.

(c) The following are allowed in the riparian buffer zone or are subject to environmental review under other provisions of law and are not subject to the requirements of subsection (b) of this section:

(1) Activities by persons subject to the regulatory requirements of chapter 215 of Title 6.

(2) Forestry conducted in compliance with accepted silvicultural practices as defined by the commissioner of forests, parks and recreation under section 2622 of this section.

(3) Existing uses.

(4) Reconstruction, repair, or maintenance of linear public transportation facilities; improvements directly related to providing transportation enhancements; and safety features on or adjacent to linear public transportation facilities.

(5) The control of non-native, invasive species of plants where such control is authorized by law or approved by the agency of natural resources.

(6) Maintenance or repair of pollution abatement facilities permitted under section 1263 of this title.

(7) Railroad activities and facilities within the jurisdiction of federal law.

(8) Stormwater treatment facilities or practices existing within a riparian buffer as of July 1, 2010, including repair or maintenance under a permit issued under section 1264 of this title.

(9) Construction of electric transmission projects that are subject to 30 V.S.A. § 248.

(10) Development or a subdivision permitted under or subject to chapter 151 of this title.

(11) The routine repair and maintenance of utility lines and poles, including vegetation maintenance in utility line corridors, in a manner that

minimizes adverse impacts and is in accordance with a plan approved by the agency of natural resources.

(12) The emergency repair of utility lines and poles in a manner that minimizes adverse impacts to the riparian buffer.

(13) Trail construction and maintenance conducted in conformance with applicable management standards recommended by the commissioner of forests, parks and recreation.

(14) Stairways or paths of not more than six feet in width that lead to a lake or a stream.

(15) Additional exemptions adopted by the agency of natural resources under subsection (d) of this section

(d) The agency of natural resources shall adopt substantive and technical rules to implement this section, including rules for uses that:

(1) Regulate the development and use of riparian buffers in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for riparian buffers. These rules may:

(A) Regulate the planting and maintenance of vegetation.

(B) Regulate maintenance of existing access to public waters.

(C) Set standards or criteria that regulate development or change of use of buildings or structures within riparian buffers.

(D) Regulate the use and storage of hazardous materials, as that term is defined in section 6602 of this title, provided that any requirements adopted under this section are consistent with and at least as stringent as state and federal law.

(E) Regulate practices or the use or storage of other materials that could impair water quality, provided that any requirements adopted under this section are consistent with and at least as stringent as state and federal law.

(F) Establish requirements for the mitigation of the impact of a use allowed under subdivision (d)(3) of this subsection, including mitigation offsets, mitigation banking, and impact fees.

(G) Establish other requirements to promote the sound management and use of riparian buffers.

(2) Authorize uses that may be conducted in a riparian buffer, including standards for:

(A) The development of buildings within the riparian buffer

(B) Allowing encroachment on a riparian buffer by an existing or new use.

(C) Change in use of existing nonconforming uses.

(D) Recreational uses within the buffer, including docks, decks, piers, access areas, landing areas, and beaches.

(E) Except as otherwise provided in this section, utility lines.

(F) New stormwater treatment facilities or practices permitted by the agency of natural resources.

(G) Lake or stream conservation or restoration projects approved by the agency of natural resources.

(H) Construction of new alignment linear public transportation facilities.

(I) Private crossings of riparian buffers, including driveways and other access roads.

(3) Allow a use not set forth under subdivision (c)(2) of this section within a riparian buffer when:

(A) The proposed use must impact the buffer in order to fulfill the purpose of the use and the use will, insofar as possible and reasonable in light of its purpose:

(i) Retain in its natural condition the portion of the buffer that is not impacted by the use out of necessity;

(ii) Retain or provide vegetation which, when relevant to the allowed use, screens the use from the surface of a lake or stream;

(iii) Stabilize the bank of the stream or lake from erosion when necessary with vegetative cover.

(B) The applicant takes reasonable measures to minimize impact on the riparian buffer; and

(C) Suitable mitigation will be provided for any impact to the riparian buffer so that no net loss of acreage to the riparian buffer occurs. The agency of natural resources may approve off-site mitigation or some combination of on-site and offsite mitigation of the impact to the riparian buffer when on-site mitigation alone is not reasonable or appropriate.

(4) Exempt certain uses or activities from the requirements of subsection (b) of this section.

(e) In order to implement the rules issued by the agency of natural resources under subsection (d) of this section, the secretary of natural resources may, after notice and opportunity for a public hearing, issue and enforce a general permit for any category of uses or activities within the riparian buffer provided, that the uses or activities in such category are similar in nature.

Sec. 5. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

* * *

(17) 10 V.S.A. § 2625, relating to heavy cutting of timber; and

(18) 10 V.S.A. chapter 164, relating to comprehensive mercury management; and

(19) 10 V.S.A. § 1427, relating to minimum riparian buffers.

Sec. 6. 10 V.S.A. § 8503(a)(1) 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:

* * *

(O) section 1427 (relating to minimum riparian buffers).

Sec. 7. 24 V.S.A. § 4303(10) is amended to read:

(10) "Land development" means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, alteration or removal of vegetation or trees within riparian buffers, and any change in the use of any building or other structure, or land, or extension of use of land.

Sec. 8. 24 V.S.A. § 4411 is amended to read:

§ 4411. ZONING BYLAWS

(a) A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures

and other factors specified in the bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development, including the following:

- (1) Specific uses of land and shoreland facilities;
- (2) Dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures;
- (3) Areas and dimensions of land to be occupied by uses and structures, as well as areas, courts, yards, and other open spaces and distances to be left unoccupied by uses and structures;
- (4) Timing or sequence of growth, density of population, and intensity of use;
- (5) Uses within a riparian buffer, as that term is defined in section 1422 of Title 10.

(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:
 - (A) Major thoroughfares, their intersections and interchanges, and transportation arteries.
 - (B) Natural or artificial bodies of water.
 - (C) Places of relatively steep slope or grade.

(D) Public buildings and public grounds.

(E) Aircraft and helicopter facilities.

(F) Places having unique patriotic, ecological, historical, archaeological, or community interest or value, or located within scenic or design control districts.

(G) Flood or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) Riparian buffers, as that term is defined in section 1422 of title 10.

(4) To regulate, restrict, or prohibit uses or structures in overlay districts, as set forth in subdivision 4414(2) of this title.

Sec. 9. 24 V.S.A. § 4414 is amended to read:

§ 4414. ZONING; PERMISSIBLE TYPES OF REGULATION

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking state designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

* * *

(G) Riparian buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to regulate riparian buffers, as that term is defined in section 1422 of Title 10, in order to prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands; maintain and protect channel, streambank, and floodplain stability;

preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and aesthetics; and achieve other municipal, regional, or state conservation and development objectives for riparian buffers. Riparian buffer bylaws may regulate the design and location of development, control building location, require the provision and maintenance of vegetation, require provisions for access to public waters for all residents and owners of the development, and impose other requirements authorized by this chapter.

* * *

Sec. 10. 24 V.S.A. § 4425 is added to read:

§ 4425. RIPARIAN BUFFER BYLAWS

(a) A municipality may adopt freestanding bylaws or amend zoning or unified development bylaws to regulate development and use of riparian buffers, as that term is defined in section 1422 of Title 10.

(b) Bylaws adopted under this section shall include:

(1) Provisions to promote the sound management and use of riparian buffers.

(2) A provision barring use or development within a riparian buffer zone unless such use or development is authorized by the bylaws or the appropriate municipal panel.

(3) Provisions to ensure the timely and appropriate enforcement of the bylaws.

(c) Except as otherwise prohibited under section 4413 of this title, riparian buffer bylaws adopted under this section may:

(1) Set a buffer width of greater than 50 feet within the municipality or portions of the municipality.

(2) Set a buffer width of fewer than 50 feet within the municipality or portions of the municipality, provided that the reduced buffer width:

(A) Is necessary to address existing development or existing uses within the municipality, including the repair, maintenance, or renovation of such development or uses;

(B) Applies to property located within a designated downtown development district or designated village center, as these terms are defined in section 2791 of this title; or

(C) Applies to property located within an area that the municipality has designated by bylaw:

(i) for development according to historic development patterns; or
(ii) for redevelopment of land that has been disturbed prior to July 1, 2010, by industrial or urban development.

(3) Contain standards or criteria that regulate the development or change of use of buildings or structures within riparian buffers.

(4) Authorize allowed or conditional uses within the buffer. In adopting allowed uses or conditional uses under this subsection, a municipality may regulate a use allowed under 10 V.S.A. § 1427, provided that the municipality is not prohibited from regulating such a use under section 4413 of this title or other provisions of state or federal law.

(5) Prohibit the use and storage of hazardous materials, as that term is defined in section 6602 of Title 10, provided that any bylaw adopted under this subdivision shall be consistent with and at least as stringent as state and federal law.

(6) Prohibit practices or the use and storage of other materials that could impair water quality, provided that any bylaw adopted under this subdivision shall be consistent with and at least as stringent as state and federal law.

(7) Establish other restrictions to promote the sound management and use of riparian buffers.

Sec. 11. AGENCY OF NATURAL RESOURCES OUTREACH AND EDUCATION ON RIPARIAN BUFFERS

Prior to January 15, 2009, the agency of natural resources, in consultation with the Vermont League of Cities and Towns, regional planning commissions, the Vermont planners association, and the Vermont land education and training collaborative, shall develop educational and training programs and conduct public hearings to inform municipalities and municipal planners of the environmental and planning benefits of riparian buffers and the requirements of this act. In developing the education programs required by this section, the agency may utilize various types of media.

Sec. 12. REPORT OF AGENCY OF NATURAL RESOURCES; RIPARIAN BUFFER RULES

On or before December 15, 2009, and on or before December 15, 2010, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with a status report on the rules required by 10 V.S.A. § 1427 regarding the development and use of riparian buffers along lakes and streams of the state.

Sec. 13. AGENCY OF NATURAL RESOURCES REPORT

Beginning January 15, 2009, and biennially thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of riparian buffer zoning with Vermont. The report shall include:

(1) A summary of the municipalities that have adopted riparian buffer zoning or a riparian buffer bylaws;

(2) a summary of municipalities that have adopted flood hazard area zoning as part of riparian buffer zoning or bylaw;

(3) an analysis, based on information available to the agency, of the impact of riparian buffer zoning on the waters of the state; and

(4) any recommendations that the state or municipalities make regarding the regulation of the use of land within riparian buffers.

Sec. 14. EFFECTIVE DATE

This act shall take effect July 1, 2008.

Rep. Heath of Westford, for the committee on Appropriations, recommended the bill ought to pass when amended as recommended by the committee on Fish, Wildlife and Water Resources.

The bill, having appeared on the Calendar one day for notice, was taken up and read the second time.

Pending the question, Shall the House amend the bill as recommended by the committee on Fish, Wildlife and Water Resources? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number.

Pending the call of the roll, on motion of **Rep. Deen of Westminster** the bill was ordered to lie.

Message from the Senate No. 43

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bill of the following title:

S. 152. An act relating to prevention of lead poisoning by exposure to lead in consumer products.

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

The Governor has informed the Senate that on the twenty-fifth day of March, 2008, he approved and signed a bill originating in the Senate of the following title:

S. 351. An act relating to consolidating management of public records.

Bill Read Second Time; Third Reading Ordered

H. 888

Rep. Otterman of Topsham spoke for the committee on Ways and Means.

House bill entitled

An act relating to miscellaneous tax amendments;

Having appeared on the Calendar one day for notice, was taken up and read the second time and third reading ordered.

Bill Amended, Read Third Time and Passed

H. 812

House bill, entitled

An act relating to ensuring educational continuity for pregnant and parenting students;

Was taken up and pending third reading of the bill, **Rep. Errecart of Shelburne** moved to amend the bill as follows:

In Sec. 5 by adding a new subsection to be subsection (d) to read:

(d) In addition to the provisions of this section and any other alternatives offered by the school in which a pregnant or parenting teen is enrolled, a pregnant or parenting teen may choose to transfer to any public or approved independent school in the state. When a pupil exercises this option, the pupil's district of residence shall pay to the school an amount agreed upon by the district and school; if the parties cannot reach agreement, then the district shall pay an amount equal to the prior year's net cost per pupil, as calculated under section 825 of this title minus debt service, prorated to reflect the duration of the pupil's enrollment.

Pending the question, Shall the House amend the bill as recommended by **Rep. Errecart of Shelburne**? **Rep. Errecart of Shelburne** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the

bill as recommended by Rep. Errecart of Shelburne? was decided in the negative. Yeas, 40. Nays, 91.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Baker of West Rutland
Branagan of Georgia
Brennan of Colchester
Canfield of Fair Haven
Clark of Vergennes
Clerkin of Hartford
Devereux of Mount Holly
Donaghy of Poultney
Errecart of Shelburne
Flory of Pittsford
Grenier of St. Johnsbury
Helm of Castleton

Hube of Londonderry
Kilmartin of Newport City
Koch of Barre Town
Komline of Dorset
Krawczyk of Bennington
Larocque of Barnet
Larrabee of Danville
LaVoie of Swanton
Lawrence of Lyndon
Lewis of Derby
Livingston of Manchester
McDonald of Berlin
McFaun of Barre Town
McNeil of Rutland Town

Morley of Barton
Morrissey of Bennington
Myers of Essex
O'Donnell of Vernon
Oxholm of Vergennes
Peaslee of Guildhall
Scheuermann of Stowe
Turner of Milton
Valliere of Barre City
Wheeler of Derby
Winters of Williamstown
Wright of Burlington

Those who voted in the negative are:

Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City
Atkins of Winooski
Audette of S. Burlington
Barnard of Richmond
Bissonnette of Winooski
Botzow of Pownal
Bray of New Haven
Browning of Arlington
Chen of Mendon
Cheney of Norwich
Clarkson of Woodstock
Condon of Colchester
Consejo of Sheldon
Copeland-Hanzas of
Bradford
Corcoran of Bennington
Courcelle of Rutland City
Davis of Washington
Deen of Westminster
Donahue of Northfield
Donovan of Burlington
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinmouth
Fisher of Lincoln
Frank of Underhill

French of Randolph
Gervais of Enosburg
Gilbert of Fairfax
Godin of Milton
Haas of Rochester
Head of S. Burlington
Heath of Westford
Hosford of Waitsfield
Howard of Rutland City
Howrigan of Fairfield
Hunt of Essex
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Kitzmiller of Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick
Lippert of Hinesburg
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Manwaring of Wilmington
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford

McAllister of Highgate
McCormack of Rutland City
McCullough of Williston
Milkey of Brattleboro
Miller of Shaftsbury
Minter of Waterbury
Mitchell of Barnard
Mook of Bennington
Moran of Wardsboro
Mrowicki of Putney
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
Ojibway of Hartford
Orr of Charlotte
Partridge of Windham
Pearson of Burlington
Pellett of Chester
Perry of Richford
Peterson of Williston
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Shand of Weathersfield
Sharpe of Bristol
Smith of Morristown
Spengler of Colchester
Stevens of Shoreham

Sweaney of Windsor
Trombley of Grand Isle

Weston of Burlington
Zenie of Colchester

Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Ainsworth of Royalton
Allard of St. Albans Town
Aswad of Burlington
Bostic of St. Johnsbury
Crawford of Burke
Dostis of Waterbury

Fitzgerald of St. Albans City
Grad of Moretown
Johnson of Canaan
Keenan of St. Albans City
Keogh of Burlington
Klein of East Montpelier

Marcotte of Coventry
Monti of Barre City
Otterman of Topsham
Peltz of Woodbury
Pillsbury of Brattleboro
Westman of Cambridge

Rep. LaVoie of Swanton explained her vote as follows:

"Madam Speaker:

Our concerns for our pregnant teens should not depend on where they live or where they go to school."

Pending third reading of the bill, **Rep. Mook of Bennington** moved to amend the bill as follows:

First: in Sec. 1, §11(a)(33)(A)(ii), by striking the words: "premature end to pregnancy" and inserting in lieu thereof the word "miscarriage"

Second: in Sec. 1, §11(a)(33)(B), after the word "adoption" by adding the words: "or has voluntarily relinquished parental rights"

Which was agreed to. Thereupon, the bill was read the third time and passed.

Joint Resolution Adopted

J.R.S. 57

Joint resolution, entitled

Joint resolution requesting the Agency of Administration to post all state contracts and grants in full text on the internet;

Was taken up and adopted on the part of the House.

Adjournment

At six o'clock and fifteen minutes in the evening, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at one o'clock in the afternoon.

THURSDAY, MARCH 27, 2008

Rep. Partridge of Windham in Chair.

At one o'clock in the afternoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Michael Fonner of Shepherd of the Hills Lutheran Church, Montpelier, VT.

Committee Bill Introduced

H. 890

Rep. Sweaney of Windsor, for the committee on Government Operations, introduced a bill, entitled

An act relating to compensation for certain state employees;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bill Referred

S. 152

Senate bill, entitled

An act relating to prevention of lead poisoning by exposure to lead in consumer products;

Was taken up, read the first time and referred to the committee on Human Services.

Bill Referred to Committee on Ways and Means

H. 876

House bill, entitled

An act relating to approval of amendment to the charter of the town of Middlebury;

Appearing on the Calendar, affecting the revenue of the state, under the rule, was referred to the committee on Ways and Means.

Bill Referred to Committee on Appropriations

H. 889

House bill, entitled

An act relating to the state's transportation program;

Appearing on the Calendar, carrying an appropriation, under rule 35a, was referred to the committee on Appropriations.

Rules Suspended; Bill Committed**H. 890**

Pending entrance of the bill on the Calendar for notice, on motion of **Rep. Sweaney of Windsor**, the rules were suspended and House bill, entitled

An act relating to compensation for certain state employees;

Was taken up for immediate consideration.

Pending second reading of the bill, on motion of **Rep. Sweaney of Windsor**, the bill was committed to the committee on Appropriations.

House Resolution Placed on Calendar

The Speaker placed before the House the following resolution which was read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

H.R. 31

House resolution urging the department of buildings and general services to switch off the state house illumination lighting during the worldwide Earth Hour on Saturday, March 29, 2008

Offered by: Representatives Anderson of Montpelier, Courcelle of Rutland City, Deen of Westminster, Kitzmiller of Montpelier, Klein of East Montpelier, Masland of Thetford, McCullough of Williston, McFaun of Barre Town, Nease of Johnson, O'Donnell of Vernon, Smith of Morristown and Zuckerman of Burlington

Whereas, the world's nighttime lighting requires massive amounts of electrical generation, and electrical generation in many of its forms is dependent on the burning of fossil fuels, and

Whereas, in 2007, the World Wildlife Fund organized an unusual one-hour global warming awareness event in Sydney Australia during which, from 8 to 9 p.m., 2,000 businesses turned off their lights, making an extremely visible statement on energy conservation, and

Whereas, the success in alerting the residents of Sydney to the importance of conserving electricity as a way to have a positive impact on global warming has prompted the World Wildlife Fund to expand Earth Hour into an international event, and

Whereas, on Saturday evening, March 29, 2008, between the hours of 8 and 9 p.m. local time, significant segments of the center city lighting systems in communities throughout the world, including the U.S. municipalities of

Atlanta, Chicago, Phoenix, and San Francisco, and the Canadian cities of Ottawa, Montreal, and Toronto will turn off, and

Whereas, a primary objective of Earth Hour is to suspend the illumination of highly visible landmarks and among these will be the roofs of the Sears Tower in Chicago and the Bank of America Tower in Atlanta, and both the American and Canadian sides of Niagara Falls, and

Whereas, many smaller communities are also participating in this symbolically important environmental and energy awareness exercise, and

Whereas, in Montpelier, Vermont's capital, there is no question that the state house is by far the most symbolic structure located within the municipality's boundaries, and

Whereas, a powerful set of floodlights brightly illuminates the state house every night, and turning these lights off during Earth Hour would serve as a bold statement of support without impacting public safety or any essential public services, now therefore be it

Resolved by the House of Representatives:

That this legislative body requests the commissioner of buildings and general services to turn off the floodlight illumination of the state house between 8 and 9 p.m. on Saturday evening, March 29, 2008 in observance of Earth Hour, and be it further

Resolved: That the clerk of the house be directed to send a copy of this resolution to Commissioner of Buildings and General Services Gerry Myers in Montpelier.

Favorable Report; Third Reading Ordered

J.R.H. 52

Rep. O'Donnell of Vernon, for the committee on Health Care, to which had been referred Joint resolution, entitled

Joint resolution urging congress to enact legislation establishing an Office of the National Nurse;

Reported in favor of its passage. The resolution, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Joint Resolutions Adopted

The Speaker placed before the House the following Joint resolutions, which were read and adopted on the part of the House.

J.R.H. 57

Joint resolution, entitled

Joint resolution relating to U.S. military veterans and traumatic brain injury;

J.R.H. 58

Joint resolution, entitled

Joint resolution authorizing the 2008 Green Mountain Boys' State program use of the State House.

Consideration Interrupted by Recess**H. 888**

House bill, entitled

An act relating to miscellaneous tax amendments;

Was taken up and pending third reading of the bill, **Rep. Helm of Castleton** moved to amend the bill as follows:

By adding a new Sec. 41a. to read:

Sec. 41a. 32 V.S.A. § 3481 is amended to read:

(1) "Appraisal value" shall mean, with respect to property enrolled in a use value appraisal program, the use value appraisal as defined in subdivision 3752(12) of this title, multiplied by the common level of appraisal, and with respect to all other property, the estimated fair market value. The estimated fair market value of a property is the price which the property will bring in the market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements such as age and condition which combine to give property a market value. Those elements shall include a consideration of a decrease in value in ~~nonrental residential property~~ due to a housing subsidy covenant as defined in section 610 of Title 27, or the effect of any state or local law or regulation affecting the use of land, including but not limited to chapter 151 of Title 10 or any land capability plan established in furtherance or implementation thereof, rules adopted by the state board of health and any local or regional zoning ordinances or development plans. In determining estimated fair market value, the sale price of the property in question is one element to consider, but is not solely determinative.

~~For residential rental property that is subject to a housing subsidy covenant or other legal restriction, imposed by a governmental, quasi-~~

~~governmental, or public purpose entity, on rents that may be charged. Fair market value shall be determined by an income approach using the following elements:~~

~~(A) market rents with utility allowance adjustments for the geographic area in which the property is located as determined by the federal office of Housing and Urban Development or in the case of properties authorized under 42 U.S.C. § 1437, 12 U.S.C. § 1701q, 42 U.S.C. § 1485, 12 U.S.C. § 1715, 42 U.S.C. § 1437f, and 24 CFR Part 882 Subpart D and E, the higher of contract rents (meaning the amount of federal rental assistance plus any tenant contribution) and HUD market rents;~~

~~(B) actual expenses incurred with respect to the property which shall be provided by the property owner in a format acceptable to the commissioner and certified by an independent third party, such as a certified public accounting firm or public or quasi public funding agency;~~

~~(C) a vacancy rate that is 50 percent of the market vacancy rate as determined by the United States Census Bureau with local review by the Vermont housing finance agency; and~~

~~(D) a capitalization rate that is typical for the geographic area determined and published annually prior to April 1 by the division of property valuation and review after consultation with the Vermont housing finance agency.~~

Pending the question, Shall the House amend the bill as recommended by Rep. Helm of Castleton?

Recess

At one o'clock and forty minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At three o'clock and thirty-two minutes in the afternoon, the Speaker called the House to order.

Speaker Symington in Chair.

Consideration Resumed; Bill Amended;

Read the Third Time and Passed;

Rules Suspended and Bill Messaged to Senate Forthwith

H. 888

Consideration resumed on House bill, entitled

An act relating to miscellaneous tax amendments;

The recurring question, Shall the House amend the bill as recommended by Rep. Helm of Castleton? was disagreed to.

Pending third reading of the bill, Rep. Pearson of Burlington moved to amend the bill as follows:

By striking Sec. 21 of the bill and inserting new Secs. 21, 21a, 21b, 21c and 21d and subsection 42(12) to read:

Sec. 21. 32 V.S.A. § 5811(21)(B) is amended to read:

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; and

~~(ii) 40 percent of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code.~~

Sec. 21a. 32 V.S.A. § 435(b)(5) is amended to read:

(b) The general fund shall be composed of revenues from the following sources:

(5) Individual 98.4 percent of the income taxes levied pursuant to chapter 151 of this title;

Sec. 21b. 16 V.S.A. § 4025(a)(8) is added to read:

(a) An education fund is established to be comprised of the following:

(8) 0.8 percent of the revenues from income taxes levied pursuant to chapter 151 of this title.

Sec. 21c. 19 V.S.A. § 11(9) is added to read:

§ 11. TRANSPORTATION FUND

The transportation fund shall be comprised of the following:

(9) 0.8 percent of the revenues from income taxes levied pursuant to chapter 151 of this title.

Sec. 21d. APPROPRIATIONS

There is appropriated in fiscal year 2009 from the general fund the sum of: \$5.0 million to the department of education for state aid for school construction projects pursuant to section 3448 of Title 16; \$5.0 million to the education fund; \$5.0 million to the transportation fund; and \$5.0 million to the agency of transportation for state aid to town highways, which amount shall be in

~~to the appropriations required by 19 V.S.A. § 306, and which shall be distributed to towns in accordance with 19 V.S.A. § 306(a).~~

Sec. 42. EFFECTIVE DATES

~~ss. 21a, 21b and 21c (allocation of income tax revenue to general education fund and transportation fund) shall apply to fiscal years 2010 and after.~~

and renumbering the remaining sections of the bill and internal references to be numerically correct.

Pending the question, Shall the House amend the bill as recommended by Rep. Pearson of Burlington? **Rep. Fisher of Lincoln** moved to amend the recommendation of amendment offered by Rep. Pearson as follows:

By striking Sec. 21 and inserting in lieu thereof the following:

Sec. 21. 32 V.S.A. § 5811(21)(B) is amended to read:

(B) Decreased by the following items of income (to the extent such income is included in federal adjusted gross income):

(i) income from United States government obligations; and

(ii) 40-percent Up to \$10,000.00 of adjusted net capital gain income as defined in Section 1(h) of the Internal Revenue Code.

Which was agreed to on a Division vote. Yeas, 47. Nays, 37.

Pending the question, Shall the House amend the bill as recommended by Rep. Pearson of Burlington, as amended? **Rep. Komline of Dorset** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by Rep. Pearson of Burlington, as amended? was decided in the negative. Yeas, 37. Nays, 97.

Those who voted in the affirmative are:

Ancl of Calais
Anderson of Montpelier
Atkins of Winooski
Audette of S. Burlington
Copeland-Hanzas of
Bradford
Davis of Washington
Deen of Westminster
Donovan of Burlington
Edwards of Brattleboro
Fisher of Lincoln
Flory of Pittsford

French of Randolph
Gervais of Enosburg
Haas of Rochester
Hutchinson of Randolph
Jerman of Essex
Leriche of Hardwick
Lorber of Burlington
Manwaring of Wilmington
Marek of Newfane
McCormack of Rutland City
McCullough of Williston
McFaun of Barre Town

Milkey of Brattleboro
Minter of Waterbury
Moran of Wardsboro
Mrowicki of Putney
Nuovo of Middlebury
Orr of Charlotte
Pearson of Burlington
Pellett of Chester
Pillsbury of Brattleboro
Randall of Troy
Sharpe of Bristol
Spengler of Colchester

Zenie of Colchester

Zuckerman of Burlington

Those who voted in the negative are:

Acinapura of Brandon
 Adams of Hartland
 Ainsworth of Royalton
 Allard of St. Albans Town
 Andrews of Rutland City
 Baker of West Rutland
 Bissonnette of Winooski
 Bostic of St. Johnsbury
 Botzow of Pownal
 Branagan of Georgia
 Bray of New Haven
 Brennan of Colchester
 Browning of Arlington
 Canfield of Fair Haven
 Chen of Mendon
 Cheney of Norwich
 Clark of Vergennes
 Clarkson of Woodstock
 Clerkin of Hartford
 Condon of Colchester
 Consejo of Sheldon
 Corcoran of Bennington
 Devereux of Mount Holly
 Donaghy of Poultney
 Donahue of Northfield
 Emmons of Springfield
 Errecart of Shelburne
 Evans of Essex
 Fallar of Tinmouth
 Fitzgerald of St. Albans City
 Frank of Underhill
 Gilbert of Fairfax
 Godin of Milton

Grad of Moretown
 Grenier of St. Johnsbury
 Head of S. Burlington
 Heath of Westford
 Helm of Castleton
 Hosford of Waitsfield
 Howard of Rutland City
 Hube of Londonderry
 Hunt of Essex
 Jewett of Ripton
 Johnson of South Hero
 Johnson of Canaan
 Keenan of St. Albans City
 Keogh of Burlington
 Kilmartin of Newport City
 Kitzmiller of Montpelier
 Koch of Barre Town
 Komline of Dorset
 Kupersmith of S. Burlington
 Larocque of Barnet
 Larrabee of Danville
 Larson of Burlington
 Lawrence of Lyndon
 Lenes of Shelburne
 Lewis of Derby
 Lippert of Hinesburg
 Livingston of Manchester
 Maier of Middlebury
 Malcolm of Pawlet
 Martin, C. of Springfield
 Martin of Wolcott
 Masland of Thetford
 McAllister of Highgate

Miller of Shaftsbury
 Mitchell of Barnard
 Monti of Barre City
 Mook of Bennington
 Morley of Barton
 Morrissey of Bennington
 Myers of Essex
 Nease of Johnson
 Obuchowski of Rockingham
 O'Donnell of Vernon
 Ojibway of Hartford
 Otterman of Topsham
 Oxholm of Vergennes
 Partridge of Windham
 Peaslee of Guildhall
 Peltz of Woodbury
 Perry of Richford
 Peterson of Williston
 Potter of Clarendon
 Pugh of S. Burlington
 Rodgers of Glover
 Scheuermann of Stowe
 Smith of Morristown
 Stevens of Shoreham
 Sweaney of Windsor
 Turner of Milton
 Valliere of Barre City
 Westman of Cambridge
 Wheeler of Derby
 Winters of Williamstown
 Wright of Burlington

Those members absent with leave of the House and not voting are:

Aswad of Burlington
 Barnard of Richmond
 Courcelle of Rutland City
 Crawford of Burke
 Dostis of Waterbury

Howrigan of Fairfield
 Klein of East Montpelier
 Krawczyk of Bennington
 LaVoie of Swanton
 Marcotte of Coventry

McDonald of Berlin
 McNeil of Rutland Town
 Shand of Weathersfield
 Trombley of Grand Isle
 Weston of Burlington

Pending third reading of the bill, Rep. Errecart of Shelburne moved to amend the bill as follows:

By renumbering Sec. 42 of the bill as Sec. 43, and adding a new Sec. 42 and subsection 43(12) to read:

Sec. 42. 32 V.S.A. § 6067 is amended to read:

§ 6067. CREDIT PROPERTY TAX ADJUSTMENT LIMITATIONS

(a) Only one individual per household per taxable year shall be ~~entitled to a~~ benefit eligible for an adjustment under this chapter.

(b) An individual who received a homestead exemption or ~~adjustment~~ with respect to property taxes assessed by another state for the taxable year shall ~~not be entitled~~ be eligible to receive an adjustment under this chapter.

(c) No taxpayer shall receive total adjustments under this chapter in excess of \$8,000.00 related to any one property tax year.

(d) A claimant shall not be eligible for a property tax adjustment under this chapter if, during the taxable year, all persons of the household while members of that household, other than persons who are age 62 or older or who are mentally or physically disabled, receive more than \$50,000.00 of investment income. "Investment income" in this subsection means income which is not earned income as defined in section 911(d)(2) of the Internal Revenue Code, including any of the following which are not pension income, qualified retirement plan income, or income received solely for the care of a mentally or physically disabled person or persons:

(1) interest and dividends, including interest from, and dividends attributable to, Vermont state and local obligations and United States government obligations;

(2) capital gain subject to Vermont personal income tax, without regard to any reduction under subdivision 5811(21)(B) of this title;

(3) distributions from any entity other than a trust, to the extent that the distribution is attributable to interest, dividends, or capital gain income described in subdivisions (1) and (2) of this subsection;

(4) distributions from any trust; and

(5) gifts.

Sec. 43. EFFECTIVE DATES

(12) Sec. 42 of this act (investment income cap for property tax adjustment eligibility) shall apply to claims filed in 2009 and after.

and renumbering the sections of the bill and internal references to be numerically correct.

Pending the question, Shall the House amend the bill as recommended by Rep. Errecart of Shelburne? Rep. Errecart of Shelburne demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The

Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by Rep. Errecart of Shelburne? was decided in the negative. Yeas, 42. Nays, 89.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Baker of West Rutland
Bostic of St. Johnsbury
Branagan of Georgia
Brennan of Colchester
Canfield of Fair Haven
Chen of Mendon
Clark of Vergennes
Clerkin of Hartford
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield

Errecart of Shelburne
Flory of Pittsford
Grenier of St. Johnsbury
Helm of Castleton
Hube of Londonderry
Johnson of Canaan
Kilmartin of Newport City
Koch of Barre Town
Komline of Dorset
Larocque of Barnet
Larrabee of Danville
Lawrence of Lyndon
Lewis of Derby
Livingston of Manchester

McAllister of Highgate
McFaun of Barre Town
Morrissey of Bennington
Myers of Essex
O'Donnell of Vernon
Oxholm of Vergennes
Peaslee of Guildhall
Scheuermann of Stowe
Turner of Milton
Valliere of Barre City
Westman of Cambridge
Wheeler of Derby
Winters of Williamstown
Wright of Burlington

Those who voted in the negative are:

Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City
Atkins of Winooski
Audette of S. Burlington
Bissonnette of Winooski
Botzow of Pownal
Bray of New Haven
Browning of Arlington
Cheney of Norwich
Clarkson of Woodstock
Condon of Colchester
Consejo of Sheldon
Copeland-Hanzas of
Bradford
Corcoran of Bennington
Davis of Washington
Deen of Westminster
Donovan of Burlington
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinmouth
Fisher of Lincoln
Fitzgerald of St. Albans City
Frank of Underhill
French of Randolph
Gervais of Enosburg

Gilbert of Fairfax
Godin of Milton
Grad of Moretown
Haas of Rochester
Head of S. Burlington
Heath of Westford
Howard of Rutland City
Hunt of Essex
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Keenan of St. Albans City
Keogh of Burlington
Kitzmiller of Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick
Lippert of Hinesburg
Lorber of Burlington
Maier of Middlebury
Malcolm of Pawlet
Manwaring of Wilmington
Marek of Newfane
Martin, C. of Springfield
Martin of Wolcott
Masland of Thetford

McCormack of Rutland City
McCullough of Williston
Milkey of Brattleboro
Miller of Shaftsbury
Minter of Waterbury
Mitchell of Barnard
Mook of Bennington
Moran of Wardsboro
Morley of Barton
Mrowicki of Putney
Nease of Johnson
Nuovo of Middlebury
Obuchowski of Rockingham
Ojibway of Hartford
Orr of Charlotte
Otterman of Topsham
Partridge of Windham
Pearson of Burlington
Pellett of Chester
Peltz of Woodbury
Perry of Richford
Peterson of Williston
Pillsbury of Brattleboro
Potter of Clarendon
Pugh of S. Burlington
Randall of Troy
Rodgers of Glover
Sharpe of Bristol

Smith of Morristown
Spengler of Colchester

Stevens of Shoreham
Sweeney of Windsor

Zenie of Colchester
Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Allard of St. Albans Town
Aswad of Burlington
Barnard of Richmond
Courcelle of Rutland City
Crawford of Burke
Dostis of Waterbury

Hosford of Waitsfield
Howrigan of Fairfield
Klein of East Montpelier
Krawczyk of Bennington
LaVoie of Swanton
Marcotte of Coventry

McDonald of Berlin
McNeil of Rutland Town
Monti of Barre City
Shand of Weatherfield
Trombley of Grand Isle
Weston of Burlington

Rep. Andrews of Rutland City explained her vote as follows:

"Madam Speaker:

I agree with the concept of this amendment. Income sensitivity in property taxes is not intended to underwrite the wealthy. But I agree with the committee that the details need much more work to avoid unintended consequences that could be just as inequitable."

Pending third reading of the bill, **Rep. Flory of Pittsford** moved to amend the bill as follows:

by renumbering Sec. 42 of the bill as Sec. 43, and adding a new Sec. 42 and subsection 43(12) to read:

Sec. 42. 32 V.S.A. § 6066a is amended to read:

§ 6066a. Determination Payment of property tax adjustments

(a) Annually, the commissioner shall determine pay to each claimant the property tax adjustment amount under section 6066 of this title, related to a homestead owned by the claimant. ~~The commissioner shall notify the municipality in which the house site is located of the amount of the property tax adjustment for the claimant for homestead property tax liabilities, on July 1 for timely filed claims and on September 15 for late claims filed by September 1.~~ The commissioner shall mail the payment to the claimant on the day that the municipality in which the claimant resides mails its property tax bills or, for any claim properly filed less than thirty days before the municipality mails its property tax bills, the commissioner shall mail the payment to the claimant within forty-five days after the claim is filed; but no payment shall be mailed before July 1. The tax adjustment of a claimant who was assessed property tax by a town which revised the dates of its fiscal year, however, is the excess of the property tax which was assessed in the last 12 months of the revised fiscal year, over the adjusted property tax of the claimant for the revised fiscal year as determined under section 6066 of this title, related to a homestead owned by the claimant.

~~(b) The commissioner shall include in the total property tax adjustment amount determined under subsection (a) of this section, for credit to the taxpayer for homestead property tax liabilities, any income tax overpayment remaining after allocation under section 3112 of this title and setoff under section 5934 of this title, which the taxpayer has directed to be used for payment of property taxes.~~

~~(c) The commissioner shall notify the municipality of any claim and refund amounts unresolved by September 15 at the time of final resolution, including adjudication if any.~~

~~(d) For late claims, filed after April 15, the property tax adjustment amount shall be reduced by \$15.00, which shall be paid by the commissioner to the municipality for the cost of issuing a new property tax bill to the claimant.~~

~~(e) At the time of notice to the municipality, the commissioner shall notify the taxpayer of the property tax adjustment amount determined under subdivision 6066(a)(1) of this title; the amount determined under subdivision 6066(a)(3) of this title; any additional adjustment amounts due the homestead owner under section 6066 of this title; the amount of income tax refund, if any, allocated to payment of homestead property tax liabilities; and any late claim reduction amount.~~

~~(f) Property tax bills.~~

~~(1) For amounts stated in the notice to towns on July 1, municipalities shall include on the homestead property tax bill notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due. By a majority of those voting at an annual or special meeting called for that purpose, the voters of a municipality may elect to apply the amount allocated under this chapter to current year property taxes to the taxpayers' property tax installments in order or pro rata.~~

~~(2) For property tax adjustment amounts for which municipalities receive notice on or after September 15, municipalities shall issue a new homestead property tax bill with notice to the taxpayer of the total amount allocated to payment of homestead property tax liabilities and notice of the balance due.~~

~~(3) The property tax adjustment amount determined for the taxpayer shall be allocated first to current year property tax on the homestead parcel, next to current year homestead parcel penalties and interest, next to any prior year homestead parcel penalties and interest, and last to any prior year property tax on the homestead parcel. No adjustment shall be allocated to a property tax liability for any year after the year for which the claim or refund allocation was filed. If the property tax adjustment amount exceeds the amount allocated~~

~~under this subsection, the municipality shall refund the excess to the taxpayer, without interest, within 20 days of the first date upon which taxes become due and payable or 20 days after notification by the commissioner of education, whichever is later. No municipal tax reduction incentive for early payment of taxes shall apply to any amount allocated to the property tax bill under this chapter.~~

~~(c) Annually, on August 1 and on September 15, the commissioner of taxes shall pay to each municipality the amount of property tax adjustment of which the municipality was notified on July 1 for the August 1 transfer, or September 15 for the September 15 transfer, related to municipal property tax on homesteads within that municipality, as determined by the commissioner of taxes.~~

Sec. 43. EFFECTIVE DATES

(12) Sec. 42 (cash payment of property tax adjustments) shall apply to claims filed in 2009 and after.

Pending the question, Shall the House amend the bill as recommended by Rep. Flory of Pittsford? **Rep. Komline of Dorset** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by Rep. Flory of Pittsford? was decided in the negative. Yeas, 43. Nays, 84.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Baker of West Rutland
Bostic of St. Johnsbury
Brennan of Colchester
Canfield of Fair Haven
Clark of Vergennes
Clerkin of Hartford
Corcoran of Bennington
Davis of Washington
Devereux of Mount Holly
Donaghy of Poultney
Errecart of Shelburne
Fitzgerald of St. Albans City

Flory of Pittsford
Grenier of St. Johnsbury
Helm of Castleton
Hube of Londonderry
Johnson of Canaan
Kilmartin of Newport City
Koch of Barre Town
Komline of Dorset
Larocque of Barnet
Larrabee of Danville
Lawrence of Lyndon
Lewis of Derby
Livingston of Manchester
McAllister of Highgate
McFaun of Barre Town

Morrissey of Bennington
O'Donnell of Vernon
Pearson of Burlington
Peaslee of Guildhall
Pillsbury of Brattleboro
Randall of Troy
Scheuermann of Stowe
Turner of Milton
Valliere of Barre City
Westman of Cambridge
Wheeler of Derby
Wright of Burlington
Zuckerman of Burlington

Those who voted in the negative are:

Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City

Atkins of Winooski
Audette of S. Burlington
Bissonnette of Winooski

Botzow of Pownal
Branagan of Georgia
Bray of New Haven

Browning of Arlington	Jerman of Essex	Moran of Wardsboro
Chen of Mendon	Jewett of Ripton	Mrowicki of Putney
Cheney of Norwich	Johnson of South Hero	Myers of Essex
Clarkson of Woodstock	Keenan of St. Albans City	Nease of Johnson
Condon of Colchester	Keogh of Burlington	Nuovo of Middlebury
Consejo of Sheldon	Kitzmiller of Montpelier	Obuchowski of Rockingham
Deen of Westminster	Kupersmith of S. Burlington	Ojibway of Hartford
Donahue of Northfield	Larson of Burlington	Orr of Charlotte
Donovan of Burlington	Lenes of Shelburne	Otterman of Topsham
Edwards of Brattleboro	Lippert of Hinesburg	Oxholm of Vergennes
Emmons of Springfield	Lorber of Burlington	Partridge of Windham
Evans of Essex	Maier of Middlebury	Pellett of Chester
Fallar of Tinmouth	Malcolm of Pawlet	Peltz of Woodbury
Fisher of Lincoln	Manwaring of Wilmington	Perry of Richford
Frank of Underhill	Marek of Newfane	Peterson of Williston
French of Randolph	Martin, C. of Springfield	Potter of Clarendon
Gervais of Enosburg	Martin of Wolcott	Pugh of S. Burlington
Gilbert of Fairfax	Masland of Thetford	Rodgers of Glover
Godin of Milton	McCormack of Rutland City	Sharpe of Bristol
Haas of Rochester	McCullough of Williston	Smith of Morristown
Head of S. Burlington	Milkey of Brattleboro	Spengler of Colchester
Heath of Westford	Miller of Shaftsbury	Stevens of Shoreham
Howard of Rutland City	Minter of Waterbury	Sweaney of Windsor
Hunt of Essex	Mitchell of Barnard	Winters of Williamstown
Hutchinson of Randolph	Mook of Bennington	Zenie of Colchester

Those members absent with leave of the House and not voting are:

Allard of St. Albans Town	Grad of Moretown	McDonald of Berlin
Aswad of Burlington	Hosford of Waitsfield	McNeil of Rutland Town
Barnard of Richmond	Howrigan of Fairfield	Monti of Barre City
Copeland-Hanzas of Bradford	Klein of East Montpelier	Morley of Barton
Courcelle of Rutland City	Krawczyk of Bennington	Shand of Weathersfield
Crawford of Burke	LaVoie of Swanton	Trombley of Grand Isle
Dostis of Waterbury	Leriche of Hardwick	Weston of Burlington
	Marcotte of Coventry	

Rep. Donahue of Northfield explained her vote as follows:

"Madam Speaker:

I voted against the statutory change two years ago, because beyond privacy, it was a hidden theft of taxpayer money in the year it was applied. The privacy issue is a concern to many of my constituents, and I regret that we have not resolved it. Unfortunately, I do not think reversing the statute this way is the solution"

Rep. Komline of Dorset explained her vote as follows:

"Madam Speaker:

I vote yes because this amendment would protect Vermonters' personal income information. On 8/9/07, the Secretary of State issued a formal opinion which stated "We believe a town could reasonably take the position that the prebate information is not public since, by a simple calculation, this information can be used to determine an individual's income level." On 9/10/07, the Vermont ACLU and the Vermont Association of CPA's testified that property tax adjustment information can be used to easily determine a person's household income. I'm disappointed that the Ways and Means committee determined that the Secretary of State, the ACLU and the CPA Association are wrong."

Rep. Marek of Newfane explained his vote as follows:

"Madam Speaker:

My constituents are happy that they are receiving honest property tax bills that finally show what they actually are paying. I voted to keep it that way."

Pending third reading of the bill, **Rep. Clark of Vergennes** moved to amend the bill as follows:

First: By adding new Secs. 42 through 46 to read:

Sec. 42. REDESIGNATION OF CHAPTER

Chapter 154 of Title 32 (Homestead property tax income sensitivity adjustment) is redesignated "Renter rebate program," effective January 1, 2009.

Sec. 43. 32 V.S.A. § 6066 is amended to read:

§ 6066. COMPUTATION OF ADJUSTMENT

(a) ~~An eligible claimant who owned the homestead on April 1 of the year in which the claim is filed shall be entitled to an adjustment amount determined as follows:~~

~~(1)(A) For a claimant with household income of \$90,000.00 or more:~~

~~(i) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year;~~

~~(ii) minus (if less) the sum of:~~

~~(I) the applicable percentage of household income for the taxable year; plus~~

~~(II) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year in excess of \$200,000.00.~~

~~(B) For a claimant with household income of less than \$90,000.00 but more than \$47,000.00, the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year, minus the applicable percentage of household income for the taxable year.~~

~~(C) For a claimant whose household income does not exceed \$47,000.00, the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year, minus the lesser of:~~

~~(i) the applicable percentage of household income for the taxable year; or~~

~~(ii) the statewide education tax rate, multiplied by the equalized value of the housesite in the taxable year reduced by \$15,000.00.~~

~~(D) A claimant whose household income does not exceed \$90,000.00 shall also be entitled to an additional adjustment amount under this section of \$10.00 per acre, up to a maximum of five acres, for each additional acre of homestead property in excess of the two acre housesite. The adjustment amount under this section shall be shown separately on the notice of property tax adjustment to the claimant.~~

~~(2) "Applicable percentage" in this section means two percent, multiplied by the district spending adjustment under subdivision 5401(13) of this title for the property tax year which begins in the claim year for the municipality in which the homestead residence is located; but in no event shall the applicable percentage be less than two percent.~~

~~(3) a claimant whose household income does not exceed \$47,000.00 shall also be entitled to an additional adjustment amount equal to the amount by which the property taxes for the municipal fiscal year which began in the taxable year upon the claimant's housesite, reduced by the adjustment amount determined under subdivisions (1) and (2) of this subsection, exceeds a percentage of the claimant's household income for the taxable year as follows:~~

~~If household income (rounded to the nearest dollar) is:~~

~~then the taxpayer is entitled to credit for the reduced property tax in excess of this percent of that income:~~

~~\$0—9,999.00
\$10,000.00—24,999.00
\$25,000.00—47,000.00~~

~~2.0
4.5
5.0~~

~~In no event shall the credit exceed the amount of the reduced property tax.~~

(b) An eligible claimant who rented the homestead on the last day of the taxable year, whose household income does not exceed \$47,000.00, and who submits a certificate of rent constituting property taxes shall be entitled to a credit against the claimant's tax liability under chapter 151 of this title equal to the amount by which the rent constituting property taxes upon the claimant's housesite exceeds a percentage of the claimant's household income for the taxable year as follows:

If household income (rounded to the nearest dollar) is:

then the taxpayer is entitled to credit for rent constituting property tax paid in excess of this percent of that income:

\$0.00 - 9,999.00	2.0
\$10,000.00 - 24,999.00	4.5
\$25,000.00 - 47,000.00	5.0

In no event shall the credit exceed the amount of the rent constituting property tax.

(e)(b) To be eligible for a property tax adjustment under this chapter the claimant:

(1) must have been domiciled in this state during the entire taxable year; and

(2) may not be a person claimed as a dependent by any taxpayer under the federal Internal Revenue Code during the taxable year.

(d)(c) The owner of a mobile home which is sited on a lot not owned by the homeowner may include an amount determined under subdivision 6061(7) of this title as rent constituting property taxes paid on the lot with the amount of property taxes paid by the homeowner on the home for the purpose of computation of adjustments under subdivision (a)(3) of this section, unless the homeowner has included in the claim an amount of property tax on common land under the provisions of subsection (e) of this section.

(e) Property taxes paid by a cooperative, not including a mobile home park cooperative, allocable to property used as a homestead, shall be attributable to the co-op member for the purpose of computation of adjustment of property tax liability of the co-op member under this section. Property owned by a cooperative declared as a homestead may only include the homestead and a pro rata share of any common land owned or leased by the cooperative, not to exceed the two-acre housesite limitation. The share of the cooperative's

~~assessed value attributable to the housesite shall be determined by the cooperative and specified annually in a notice to the co-op member. Property taxes paid by a mobile home park cooperative, allocable to property used as a housesite, shall be attributed to the owner of the housesite for the purpose of computation of adjustment of property tax liability of the housesite owner under this section. Property owned by the mobile home park cooperative and declared as a housesite may only include common property of the cooperative contiguous with at least one mobile home lot in the park, not to exceed the two-acre housesite limitation. The share attributable to any mobile home lot shall be determined by the cooperative and specified in the cooperative agreement.~~

~~(f) If a claimant takes title to the homestead during the calendar year preceding the claim, the parties' proration of taxes shall be based upon the unadjusted property tax to the time of sale, unless the parties otherwise agree.~~

~~(g) Notwithstanding subsection (d) of this section, if the land surrounding a homestead is owned by a nonprofit corporation or community land trust with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, the homeowner may include an allocated amount as property tax paid on the land with the amount of property taxes paid by the homeowner on the home for the purposes of computation of adjustment under this section. The allocated amount shall be determined by the nonprofit corporation or community land trust on a proportional basis. The nonprofit corporation or community land trust shall provide to that homeowner, by January 31, a certificate specifying the allocated amount. The certificate shall indicate the proportion of total property tax on that parcel which was assessed for municipal property tax, for local share property tax and for statewide property tax.~~

~~(h) State property tax reduction incentive. A homestead owner shall be entitled to an additional property tax adjustment amount equal to one percent of the amount of income tax refund which the claimant elects to allocate to payment of homestead property tax under section 6068 of this title.~~

Sec. 44. REPEAL AND STATUTORY REVISION

32 V.S.A. § 6066a (payment of property tax adjustments) is repealed, effective January 1, 2009. The office of legislative council shall revise the statutes in chapter 154 of Title 32 to eliminate all homestead-owner income sensitivity provisions.

Sec. 45. 32 V.S.A. § 3802(17) is added to read:

(17) The first \$50,000.00 of listed value of a homestead as defined under subdivision 5401(7) of this title and declared on or before September 1

in accordance with section 5410 of this title, multiplied by the municipality's most recent common level of appraisal. This exemption shall not affect the grand list value; and shall reduce municipal and education property tax liabilities, but not below \$0.00.

Sec. 46. 32 V.S.A. § 5402(a) and (b) are amended to read:

(a) A statewide education tax is imposed on all nonresidential and homestead property at the following rates:

(1) the tax rate for nonresidential property shall be \$1.59 per \$100.00; and

(2) the tax rate for homestead property shall be \$1.10 multiplied by the district spending adjustment for the municipality, per \$100.00, of equalized education property value as most recently determined under section 5405 of this title, minus any homestead exemption amount under subdivision 3802(17) of this title. The homestead property tax rate for each municipality which is a member of a union or unified union school district shall be calculated as required under subsection (e) of this section.

(b) Calculation of education tax.

(1) The commissioner of taxes shall determine for each municipality the education tax rates under subsection (a) of this section, divided by the municipality's most recent common level of appraisal. The legislative body in each municipality shall then bill each property taxpayer at the homestead or nonresidential rate determined by the commissioner under this subdivision, multiplied by the education property tax grand list value of the property, properly classified as homestead or nonresidential property and without regard to any other tax classification of the property, minus any homestead exemption amount under subdivision 3802(17) of this title. Each homestead property tax bill shall include notice of the education spending per equalized pupil in the taxpayer's district and its relation to the base education payment; and the effect of the education spending in the district upon the homestead tax rate ~~and the applicable percentage for income sensitivity;~~ and shall also include an insert supplied by the commissioner of taxes which explains the relationship of district education spending and the common level of appraisal to property tax rates. Tax bills shall show the tax due and the calculation of the rate determined under subsection (a) of this section, divided by the municipality's most recent common level of appraisal, multiplied by the current grand list value of the property to be taxed. Each homestead property tax bill shall include a copy of the two page document attached to the May 11, 2007 memorandum from the speaker of the house to the commissioner of taxes, which shall be updated annually for each town by the commissioner of taxes.

(2) Taxes assessed under this section shall be assessed and collected in the same manner as taxes assessed under chapter 133 of this title with no tax classification other than as homestead or nonresidential property.

(3) If a district has not voted a budget by June 30, an interim homestead education tax shall be imposed at the base rate determined under subdivision (a)(2) of this section, divided by the municipality's most recent common level of appraisal, but without regard to any district spending adjustment, and taking into account any homestead exemption amount under subdivision 3802(17) of this title. Within 30 days after a budget is adopted and the deadline for reconsideration has passed, the commissioner shall determine the municipality's homestead tax rate as required under subdivision (b)(1) of this subsection.

and by renumbering the existing Sec. 42 to be Sec. 47

Second: In the new Sec. 47, by adding subdivision (12) to read:

(12) Sec. 43 of this act (repeal of homeowner prebate and rebate calculation) shall apply to claims filed in 2009 and after, and Secs. 45 and 46 (replacing adjusted property tax bills with a \$50,000 homestead exemption) shall apply to property tax bills for fiscal years 2010 and after.

Thereupon, Rep. Clark of Vergennes asked and was granted leave of the House to withdraw his amendment.

Pending third reading of the bill Rep. Peterson of Williston moved to amend the bill as follows:

By renumbering Sec. 42 of the bill as Sec. 43, and adding a new Sec. 42 to read:

**Sec. 42. EXTENSION OF 2007 FILING DEADLINE FOR CERTAIN
PROPERTY TAX ADJUSTMENT CLAIMS**

(a) Any 2007 late-filed property tax adjustment claim which was denied before December 1, 2007, may be refiled before August 1, 2008, if all the following conditions are met:

(i) the claimant submits a written request for reconsideration of claim, including all information required by the commissioner, in the form prescribed by the commissioner, signed by the claimant under pains and penalties of perjury; and

(ii) the first 2007 property tax bill issued in the claimant's town was issued after September 4, 2007; and

(iii) the commissioner, in his judgment, finds that the claimant was unable to file the claim by September 4, 2007, as a result of sickness, absence, or other disability, or other good cause.

(b) The commissioner's determination to allow or deny a claim under this section shall be final, and the commissioner shall not notify the municipality of the claimant's property tax adjustment, but instead shall refund the property tax adjustment amount to the claimant, without interest and without penalty under 32 V.S.A. § 6066a(d).

and renumbering the sections of the bill and internal references to be numerically correct.

Which was agreed to.

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

On motion of Rep. Adams of Hartland, the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Message from the Senate No. 44

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part passed Senate bills of the following titles:

- S. 229. An act relating to access to public records.
 - S. 275. An act relating to motor vehicles passing bicyclists on highways.
 - S. 297. An act relating to clarifying the definition of "stiff hitch" in the motor vehicle statutes.
 - S. 304. An act relating to a groundwater withdrawal permit program.
 - S. 311. An act relating to the use value appraisal program.
 - S. 324. An act relating to beer and wine tastings.
 - S. 344. An act relating to internet and mail order sales of tobacco products.
 - S. 345. An act relating to lowering the cost of workers' compensation insurance.
 - S. 372. An act relating to evictions, unpaid rent, and abandoned property in rental property.
- In the passage of which the concurrence of the House is requested.

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

H. 557. An act relating to postponing the sunset of the Fish and Wildlife Board's authority to adopt rules regulating the deer herd.

H. 788. An act relating to awarding moose permits to Vermont veterans of Afghanistan and Iraq.

And has passed the same in concurrence.

The Senate has on its part adopted a joint resolution of the following title:

J.R.S. 59. Joint resolution relating to weekend adjournment.

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

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

J.R.H. 56. Joint resolution honoring municipal public works employees and designating May 18-24 as Public Works Week in Vermont.

And has adopted the same in concurrence.

Adjournment

At five o'clock and thirty-five minutes in the afternoon, on motion of **Rep. Komline of Dorset**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

FRIDAY, MARCH 28, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Paul Essoff of Lighthouse Christian Church, Montpelier, VT.

Committee Bill Introduced

H. 891

Rep. Heath of Westford, for the committee on Appropriations, introduced a bill, entitled

An act relating to making appropriation for the support of government;

Which was read the first time and, under the rule, placed on the Calendar for notice tomorrow.

Senate Bills Referred

Senate bills of the following titles were severally taken up, read the first time and referred as follows:

S. 229

Senate bill, entitled

An act relating to access to public records;

To the committee on Government Operations.

S. 275

Senate bill, entitled

An act relating to motor vehicle passing bicyclists on highways;

To the committee on Transportation.

S. 297

Senate bill, entitled

An act relating to clarifying the definition of "stiff hitch" in the motor vehicle statutes;

To the committee on Transportation.

S. 304

Senate bill, entitled

An act relating to a groundwater withdrawal permit program;

To the committee on Fish, Wildlife and Water Resources.

S. 311

Senate bill, entitled

An act relating to the use value appraisal program;

To the committee on Fish, Wildlife and Water Resources.

S. 324

Senate bill, entitled

An act relating to beer and wine tastings;

To the committee on General, Housing and Military Affairs.

S. 344

Senate bill, entitled

An act relating to internet and mail order sales of tobacco products;

To the committee on General, Housing and Military Affairs.

S. 345

Senate bill, entitled

An act relating to lowering the cost of workers' compensation;

To the committee on Commerce.

S. 372

Senate bill, entitled

An act relating to evictions, unpaid rent, and abandoned property in rental property;

To the committee on General, Housing and Military Affairs.

Joint Resolution Adopted in Concurrence**J.R.S. 59**

Joint resolution, entitled

Joint resolution relating to weekend adjournment;

By Senator Shumlin,

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Friday, March 28, 2008, it be to meet again no later than Tuesday, April 1, 2008.

Was taken up read and adopted in concurrence.

Favorable Report; Third Reading Ordered**H. 862**

Rep. Pearson of Burlington, for the committee on Government Operations, to which had been referred House bill, entitled

An act relating to approval of amendments to the charter of the village of Waterbury;

Reported in favor of its passage. The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and third reading ordered.

Third Reading; Joint Resolution Adopted**J.R.H. 52**

Joint resolution, entitled

Joint resolution urging Congress to enact legislation establishing an Office of the National Nurse;

Was taken up, read the third time and adopted on the part of the House.

Bill Amended; Third Reading Ordered; Rules Suspended;

Bill Read Third Time and Passed; Rules Suspended;

Bill Messaged to Senate Forthwith

H. 11

Rep. Donahue of Northfield, for the committee on Human Services, to which had been referred House bill, entitled

An act relating to the commissioner of health;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 104 is amended to read:

§ 104. COMMISSIONER OF HEALTH; DUTIES

(a) The secretary shall appoint a commissioner of health, as provided in 3 V.S.A. § 3051, who shall be either a physician licensed to practice medicine and surgery in this state or a health care professional who has at least a master's degree in public health or a related health care field and who, in addition, has had educational and practical experience in the field of public health.

(b) The commissioner may delegate such powers and assign such duties to members of the department as may be deemed appropriate and necessary for the proper execution of the provisions of this title. If the commissioner is not a physician licensed to practice medicine and surgery in this state, the commissioner shall fill an existing exempt position within the department by appointing a chief medical officer who shall be a physician licensed to practice medicine and surgery in this state and who shall report to the commissioner. The commissioner shall delegate authority for policies related to the practice of medicine to the chief medical officer. Such policy areas shall include those described in the following chapters of this title:

(1) chapter 3, as it pertains to circulars of information prepared by the state board of health, health orders, and emergency health orders;

(2) chapter 13, relating to chronic care infrastructure and prevention measures;

(3) chapter 43A, relating to the patient safety surveillance and improvement system;

(4) chapter 84A, relating to the Vermont prescription monitoring system;

(5) chapter 86, relating to the therapeutic use of cannabis;

(6) chapter 91, relating to prescription drug cost containment;

(7) chapter 92, relating to the treatment of opiate addiction; and

(8) chapter 231, relating to advance directives for health care and disposition of remains.

* * *

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Human Services agreed to and third reading ordered.

On motion of **Rep. Adams of Hartland**, the rules were suspended and the bill placed on all remaining stages of passage. The bill was read the third time and passed and, on motion of **Rep. Adams of Hartland** the rules were suspended and the bill was ordered messaged to the Senate forthwith.

Action on Bill Postponed

H. 545

House bill, entitled

An act relating to the agency of human services;

Was taken up and pending the reading of the report of the committee on Government Operations, on motion of **Rep. Evans of Essex**, action on the bill was postponed until Thursday, April 3, 2008.

Action on Bill Postponed

H. 887

House bill, entitled

An act relating to health care reform;

Was taken up and pending the reading of the report of the committee on Appropriations, on motion of **Rep. Leriche of Hardwick**, action on the bill was postponed until the next legislative day.

House Resolution Adopted**H.R. 31**

House resolution, entitled

House resolution urging the department of buildings and general services to switch off the state illumination lighting during the worldwide Earth Hour on Saturday, March 29, 2008;

Was taken up and adopted.

Message from the Senate No. 45

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has on its part adopted concurrent resolutions originating in the House of the following titles:

H.C.R. 248. House concurrent resolution congratulating the 2008 Woodstock Union High School Wasps boys' championship alpine ski team.

H.C.R. 249. House concurrent resolution congratulating the 2008 Lake Region Union High School Rangers Division III boys' basketball championship team.

H.C.R. 250. House concurrent resolution congratulating the 2008 Proctor High School Phantoms on winning their school's third consecutive Division IV boys' basketball championship.

H.C.R. 251. House concurrent resolution congratulating the 2008 Twinfield Trojans Division IV championship girls' basketball team.

H.C.R. 252. House concurrent resolution congratulating Kelley Tully, the 2008 Great Falls Regional Chamber of Commerce Person of the Year.

H.C.R. 253. House concurrent resolution congratulating the 2008 Mount St. Joseph Academy Mounties Division II championship ice hockey team.

H.C.R. 254. House concurrent resolution honoring Greg McClallen for his 36 year of extraordinary coaching and dedication to Rutland High School's athletic programs.

Adjournment

At ten o'clock and fifteen minutes in the forenoon, on motion of **Rep. Komline of Dorset**, the House adjourned until Monday, March 31, 2008, at ten o'clock in the forenoon.

Concurrent Resolutions Adopted

The following concurrent resolutions, having been placed on the Consent Calendar on the preceding legislative day, and no member having requested floor consideration as provided by the Joint Rules of the Senate and House of Representatives, are hereby adopted in concurrence.

H.C.R. 248

House concurrent resolution congratulating the 2008 Woodstock Union High School Wasps boys' championship alpine ski team

H.C.R. 249

House concurrent resolution congratulating the 2008 Lake Region Union High School Rangers Division III boys' basketball championship team

H.C.R. 250

House concurrent resolution congratulating the 2008 Proctor High School Phantoms on winning their school's third consecutive Division IV boys' basketball championship

H.C.R. 251

House concurrent resolution congratulating the 2008 Twinfield Trojans Division IV championship girls' basketball team

H.C.R. 252

House concurrent resolution congratulating Kelley Tully, the 2008 Great Falls Regional Chamber of Commerce Person of the Year

H.C.R. 253

House concurrent resolution congratulating the 2008 Mount St. Joseph Academy Mounties Division II championship ice hockey team

H.C.R. 254

House concurrent resolution honoring Greg McClallen for his 36 years of extraordinary coaching and dedication to Rutland High School's athletic programs

[The full text of the concurrent resolutions appeared in the Senate and House Calendar Addendum on the preceding legislative day and will appear in the volume of the Public Acts and Resolves of the 2008, sixty-ninth Adjourned session]

MONDAY, MARCH 31, 2008

At ten o'clock in the forenoon the Speaker Pro Tem, Rep. Tony Klein of East Montpelier, called the House to order.

Adjournment

At ten o'clock and three minutes in the forenoon, the Speaker adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon pursuant to House Rule 9.

TUESDAY, APRIL 1, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Reverend Terry Dorset of the Faith Community Church in Barre.

Pledge of Allegiance

Page Gabe Sheir of Montpelier led the House in the Pledge of Allegiance.

House Bill Introduced

H. 892

Rep. Gervais of Enosburg introduced a bill, entitled

An act relating to approval of amendments to the charter of the village of Enosburg Falls;

Which was read the first time and referred to the committee on Government Operations.

**Committee Relieved of Consideration
and Bill Committed to Other Committee**

S. 373

Rep. Dostis of Waterbury moved that the committee on Natural Resources and Energy be relieved of Senate bill, entitled

An act relating to full funding of decommissioning costs of a nuclear plant;

And that the bill be committed to the committee on Commerce, which was agreed to.

Third Reading; Bill Passed**H. 862**

House bill, entitled

An act relating to approval of amendments to the charter of the village of Waterbury;

Was taken up, read the third time and passed.

Message from the Senate No. 46

A message was received from the Senate by Mr. Marshall, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that the Senate has considered joint resolutions originating in the House of the following titles:

J.R.H. 57. Joint resolution relating to U.S. military veterans and traumatic brain injury.

J.R.H. 58. Joint resolution authorizing the 2008 Green Mountain Boys' State program use of the State House.

And has adopted the same in concurrence.

Bill Read Second Time; Consideration Interrupted by Recess**H. 887**

Rep. Leriche of Hardwick spoke for the committee on Health Care

Rep. Hunt of Essex, for the committee on Appropriations, to which had been referred House bill, entitled

An act relating to health care reform;

Reported in favor of its passage when amended as follows:

First: In Sec. 4, by striking subs (b) and inserting in lieu thereof a new subsection (b) as follows:

(b) The sum of \$50,000.00 is appropriated from the general fund to the commission on health care reform in fiscal year 2009 to conduct this study.

Second: In Sec. 14, subsection (e), by striking the words "up to the age of 24" and inserting in lieu thereof the words "up to the age of 23"

Third: In Sec. 33, by striking subsection (b) and inserting in lieu thereof a new subsection (b) as follows:

(b) The sum of \$140,000.00 is appropriated from the general fund to the department of health to be granted to AHEC in fiscal year 2009 to support the counter-detailing project.

Fourth: By striking Sec. 37 in its entirety and inserting in lieu thereof the following:

Sec. 37. HEALTH IMPROVEMENT APPROPRIATIONS

The following amounts are appropriated:

(1) The sum of \$150,000.00 is appropriated from the general fund to the department of health and shall be deposited into the Vermont educational loan repayment fund and used for the purposes of loan repayment for health care providers and health care educators pursuant to section 10a of Title 18. Such funds, in addition to other monies appropriated elsewhere for this program, shall be allocated in fiscal year 2009 as follows:

(A) \$745,000.00 to primary care practitioners;

(B) \$200,000.00 to dentists;

(C) \$425,000.00 to nurses;

(D) \$150,000.00 to nurse educators;

(E) \$50,000.00 to disciplines based on emerging health care needs and workforce shortages.

(2) The sum of \$50,000.00 is appropriated from the general fund to the department of health and shall be deposited in the loan forgiveness/incentive scholarship fund and used for the purposes of loan forgiveness programs for health care providers through the dental hygienist incentive loan program and nursing incentive loan program. Such funds, in addition to monies appropriated for this program elsewhere shall provide total funding of \$150,000 in fiscal year 2009.

(3) The amount of \$200,000.00 is appropriated from the general fund to the Vermont department of health for the child psychiatry division in the Vermont Center for Children, Youth, and Families (VCCYF) to support child tele-psychiatry pilots in community health centers that will:

(A) Pair Vermont health centers' medical, nursing, social work, and psychology staff with the UVM VCCYF child psychiatric consultative team;

(B) Provide monthly training and education resources for health center staff by UVM faculty;

(C) Help strengthen and expand the newly established UVM child psychiatry fellowship program; and

(D) Provide critical child psychiatry assessment and consulting services across the state that will establish relationships to help recruit and retain new child psychiatrists for Vermont.

(4) The amount of \$200,000.00 is appropriated from the general fund for the Vermont State College system to be used to increase base salaries and associated benefits for difficult-to-fill nurse educator positions, subject to existing collective bargaining agreements. In addition, the Vermont State Colleges system, the University of Vermont, and the Vermont Board of Nursing shall undertake a study to examine how to increase the state's capacity to educate nursing students and shall provide a report on the study by January 15, 2009 to the house committees on health care and on human services and the senate committee on health and welfare.

Fifth: In Sec. 38, by inserting "to be granted to the" before "College of Medicine"

Sixth: By inserting two new sections to read as follows:

Sec. 46. FUNDING COSTS TO THE STATE EMPLOYEES HEALTH CARE SYSTEM

(a) \$185,000 of general fund is reserved for transfer to the state employee's health care system for potential costs to the system in fiscal year 2009 as result of the provisions of Sec. 14 of this Act. The secretary of administration may transfer funds from this reserve as needed after submission of a report to the joint fiscal committee that provides the analysis of the need for the transfer.

Sec. 47. TRANSFER OF FUNDS TO THE CATAMOUNT PROGRAM

(a) \$500,000 of general funds are transferred from the general fund to the catamount fund in fiscal year 2009 for the costs associated with 8 V.S.A. § 4080f (e) (2), as amended in Sec. 20 of this act.

(b) \$275,000 of general funds are transferred from the general fund to the catamount fund in fiscal year 2009 for the costs associated with 8 V.S.A. § 4080f (e) (1), as amended in Sec. 20 of this act.

And renumbering the remaining sections to be numerically correct

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time. Pending the question shall the House amend the bill as recommended by the committee on Appropriations?

Recess

At ten o'clock and forty four minutes in the forenoon, the Speaker declared a recess until the fall of the gavel.

At eleven o'clock and forty minutes in the forenoon, the Speaker called the House to order.

Consideration Resumed; Bill Amended and Third Reading Ordered

H. 887

Consideration resumed on House bill, entitled

An act relating to health care reform;

The recurring question, Shall the House amend the bill as recommended by the committee on Appropriations? was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Chen of Mendon** moved to amend the bill as follows:

By striking Sec. 33(a) in its entirety and inserting in lieu thereof the following:

Sec. 33. VERMONT ACADEMIC DETAILING PROGRAM

(a) The University of Vermont College of Medicine office of primary care shall operate the Vermont academic detailing program, a university-based educational outreach for health care professionals. The goal of the Vermont academic detailing program is to promote high-quality, evidence-based, patient-centered, cost-effective medication treatment decisions. This program shall present an objective overview of what evidence from studies shows about various drugs used to treat a medical condition.

(1) The UVM office of primary care may collaborate with other states that are working on similar programs.

(2) The UVM office of primary care may request information and collaboration from prescribers, pharmacists, private insurers, hospitals, pharmacy benefit managers, drug utilization review boards, state agencies, and other programs in order to best utilize resources, prevent redundancies of effort, and facilitate appropriate linkages to complementary programs, such as the Vermont Blueprint for Health.

(3) The Vermont Department of Health and the office of Vermont health access shall collaborate with the UVM office of primary care Vermont academic detailing program to notify prescribers about commonly used brand-name drugs for which the patent has expired within the past 12 months or will expire in the coming 12 months and, to the extent permitted by funding, the program may include the distribution of vouchers for samples of generic medicines.

Which was agreed to.

Pending the question, Shall the bill be read a third time? **Rep. Donahue of Northfield** moved to amend the bill as follows:

First: In Sec. 1, by adding a new subdivision (a)(3) to read:

(3) Vermonters with a chronic mental illness are at a substantially greater risk for other illnesses and conditions than those without a chronic mental illness. For example, data from the department of mental health show that adults receiving community rehabilitation and treatment (CRT) services for serious mental illness have a risk of mortality due to lung cancer and heart disease that is five to six times greater than that of the general population. CRT clients are also almost eight times more likely to receive emergency room treatment for asthma. Persons who receive outpatient Medicaid-reimbursed services at a community mental health center require as much as twice the annual expenditure for other, nonmental health care as do their Medicaid peers without mental health needs, at approximately \$8,000.00 per year in nonmental health care services compared with \$4,000.00 per year for those not receiving mental health services. Identifying the mental health needs of Vermonters and integrating health care are an important response to a high risk factor for other illnesses and conditions and will pay dividends in the form of healthier citizens and reductions in costs to the health care system.

and by renumbering the remaining subdivisions accordingly

Second: In Sec. 7, subdivision (a)(12), by inserting "mental health services," after "acute episodic care

Third: In Sec. 7, subsection (b), by inserting "mental health services," after "acute episodic care," in the first sentence

Fourth: In Sec. 7, subdivision (c)(5), by inserting a new second sentence to read: "The plan shall encourage integration of care management for mental health and other health conditions."

Fifth: In Sec. 7, by inserting a new subdivision (c)(7) as follows:

(7) Carriers shall consider chronic mental health conditions as recognized risk factors for other health conditions and shall assure the provision of care management that integrates mental health care into any healthier lifestyle or care management program.

and by renumbering the remaining subdivisions of subsection (c) and internal references accordingly

Sixth: In Sec. 7, subdivision (g)(1), by striking "and" before "wellness" and inserting ", and the integration of mental health in care management" after "wellness"

Which was agreed to.

Pending the question shall the bill be read a third time? **Rep. Scheuermann of Stowe** moved to amend the bill as follows:

By striking Secs. 12, 13, and 14 in their entirety and by renumbering all subsequent sections to be numerically correct.

Pending the question, Shall the House amend the bill as recommended by Rep. Scheuermann of Stowe? **Rep. Adams of Hartland** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the House amend the bill as recommended by Rep. Scheuermann of Stowe? was decided in the negative, Yeas, 50. Nays, 91.

Those who voted in the affirmative are:

Acinapura of Brandon
Adams of Hartland
Ainsworth of Royalton
Baker of West Rutland
Branagan of Georgia
Brennan of Colchester
Browning of Arlington
Canfield of Fair Haven
Clark of Vergennes
Clerkin of Hartford
Corcoran of Bennington
Crawford of Burke
Devereux of Mount Holly
Donaghy of Poultney
Donahue of Northfield
Errecart of Shelburne
Flory of Pittsford

Grenier of St. Johnsbury
Helm of Castleton
Hube of Londonderry
Keogh of Burlington
Kilmartin of Newport City
Koch of Barre Town
Komline of Dorset
Krawczyk of Bennington
Larocque of Barnet
Larrabee of Danville
Lawrence of Lyndon
Lewis of Derby
Livingston of Manchester
Marcotte of Coventry
McAllister of Highgate
McDonald of Berlin
McNeil of Rutland Town

Morley of Barton
Morrissey of Bennington
Myers of Essex
O'Donnell of Vernon
Otterman of Topsham
Oxholm of Vergennes
Peaslee of Guildhall
Rodgers of Glover
Scheuermann of Stowe
Stevens of Shoreham
Turner of Milton
Valliere of Barre City
Westman of Cambridge
Winters of Williamstown
Wright of Burlington
Zenie of Colchester

Those who voted in the negative are:

Ancel of Calais
Anderson of Montpelier
Andrews of Rutland City
Aswad of Burlington
Atkins of Winoski
Barnard of Richmond
Bissonnette of Winoski
Botzow of Pownal
Bray of New Haven
Chen of Mendon
Cheney of Norwich
Clarkson of Woodstock
Condon of Colchester
Consejo of Sheldon
Copeland-Hanzas of
Bradford

Courcelle of Rutland City
Davis of Washington
Deen of Westminster
Dostis of Waterbury
Edwards of Brattleboro
Emmons of Springfield
Evans of Essex
Fallar of Tinmouth
Fisher of Lincoln
Fitzgerald of St. Albans City
Frank of Underhill
French of Randolph
Gervais of Enosburg
Gilbert of Fairfax
Godin of Milton
Grad of Moretown

Haas of Rochester
Head of S. Burlington
Heath of Westford
Howard of Rutland City
Howrigan of Fairfield
Hutchinson of Randolph
Jerman of Essex
Jewett of Ripton
Johnson of South Hero
Keenan of St. Albans City
Kitzmiller of Montpelier
Klein of East Montpelier
Kupersmith of S. Burlington
Larson of Burlington
Lenes of Shelburne
Leriche of Hardwick

Lippert of Hinesburg	Mitchell of Barnard	Peterson of Williston
Lorber of Burlington	Monti of Barre City	Pillsbury of Brattleboro
Maier of Middlebury	Mook of Bennington	Potter of Clarendon
Malcolm of Pawlet	Moran of Wardsboro	Pugh of S. Burlington
Manwaring of Wilmington	Mrowicki of Putney	Randall of Troy
Marek of Newfane	Nease of Johnson	Shand of Weathersfield
Martin, C. of Springfield	Nuovo of Middlebury	Sharpe of Bristol
Martin of Wolcott	Obuchowski of Rockingham	Smith of Morristown
Masland of Thetford	Ojibway of Hartford	Spengler of Colchester
McCormack of Rutland City	Orr of Charlotte	Sweaney of Windsor
McCullough of Williston	Partridge of Windham	Trombley of Grand Isle
McFaun of Barre Town	Pearson of Burlington	Weston of Burlington
Milkey of Brattleboro	Pellet of Chester	Wheeler of Derby
Miller of Shaftsbury	Peltz of Woodbury	Zuckerman of Burlington
Minter of Waterbury	Perry of Richford	

Those members absent with leave of the House and not voting are:

Allard of St. Albans Town	Donovan of Burlington	Johnson of Canaan
Audette of S. Burlington	Hosford of Waitsfield	LaVoie of Swanton
Bostic of St. Johnsbury	Hunt of Essex	

Rep. Errecart of Shelburne explained her vote as follows:

"Madam Speaker:

Mandates make health insurance premiums in Vermont even more expensive. I vote for the amendment, for reduced mandates and for more affordable insurance premiums."

Pending the question, Shall the bill be read a third time? **Rep. Partridge of Windham** demanded the Yeas and Nays, which demand was sustained by the Constitutional number. The Clerk proceeded to call the roll and the question, Shall the bill be read a third time? was decided in the affirmative. Yeas, 91. Nays, 54.

Those who voted in the affirmative are:

Acinapura of Brandon	Cheney of Norwich	Frank of Underhill
Ancel of Calais	Clarkson of Woodstock	French of Randolph
Anderson of Montpelier	Condon of Colchester	Gervais of Enosburg
Andrews of Rutland City	Consejo of Sheldon	Gilbert of Fairfax
Aswad of Burlington	Copeland-Hanzas	Godin of Milton
Atkins of Winooski	of Bradford	Grad of Moretown
Audette of S. Burlington	Courcelle of Rutland City	Head of S. Burlington
Barnard of Richmond	Deen of Westminster	Heath of Westford
Bissonnette of Winooski	Donovan of Burlington	Howard of Rutland City
Bostic of St. Johnsbury	Dostis of Waterbury	Howrigan of Fairfield
Botzow of Pownal	Emmons of Springfield	Hunt of Essex
Bray of New Haven	Evans of Essex	Hutchinson of Randolph
Browning of Arlington	Fallar of Tinmouth	Jerman of Essex
Chen of Mendon	Fitzgerald of St. Albans City	Jewett of Ripton

Johnson of South Hero
 Keenan of St. Albans City
 Keogh of Burlington
 Kitzmiller of Montpelier
 Klein of East Montpelier
 Kupersmith of S. Burlington
 Larson of Burlington
 Lenes of Shelburne
 Leriche of Hardwick
 Lippert of Hinesburg
 Lorber of Burlington
 Maier of Middlebury
 Malcolm of Pawlet
 Manwaring of Wilmington
 Marek of Newfane
 Martin, C. of Springfield
 Martin of Wolcott

Masland of Thetford
 McCormack of Rutland City
 McCullough of Williston
 McFaun of Barre Town
 Milkey of Brattleboro
 Miller of Shaftsbury
 Minter of Waterbury
 Mitchell of Barnard
 Mook of Bennington
 Moran of Wardsboro
 Mrowicki of Putney
 Nease of Johnson
 Nuovo of Middlebury
 Obuchowski of Rockingham
 Ojibway of Hartford
 Orr of Charlotte
 Partridge of Windham

Pellett of Chester
 Peltz of Woodbury
 Perry of Richford
 Peterson of Williston
 Potter of Clarendon
 Pugh of S. Burlington
 Rodgers of Glover
 Shand of Weathersfield
 Sharpe of Bristol
 Smith of Morristown
 Spengler of Colchester
 Sweaney of Windsor
 Trombley of Grand Isle
 Weston of Burlington
 Wheeler of Derby
 Zenie of Colchester

Those who voted in the negative are:

Adams of Hartland
 Ainsworth of Royalton
 Allard of St. Albans Town
 Baker of West Rutland
 Branagan of Georgia
 Brennan of Colchester
 Canfield of Fair Haven
 Clark of Vergennes
 Clerkin of Hartford
 Corcoran of Bennington
 Crawford of Burke
 Davis of Washington
 Devereux of Mount Holly
 Donaghy of Poultny
 Donahue of Northfield
 Edwards of Brattleboro
 Errecart of Shelburne
 Flory of Pittsford

Grenier of St. Johnsbury
 Haas of Rochester
 Helm of Castleton
 Hube of Londonderry
 Kilmartin of Newport City
 Koch of Barre Town
 Komline of Dorset
 Krawczyk of Bennington
 Larocque of Barnet
 Larrabee of Danville
 Lawrence of Lyndon
 Lewis of Derby
 Livingston of Manchester
 Marcotte of Coventry
 McAllister of Highgate
 McDonald of Berlin
 McNeil of Rutland Town
 Monti of Barre City

Morley of Barton
 Morrissey of Bennington
 Myers of Essex
 O'Donnell of Vernon
 Otterman of Topsham
 Oxholm of Vergennes
 Pearson of Burlington
 Peaslee of Guildhall
 Pillsbury of Brattleboro
 Randall of Troy
 Scheuermann of Stowe
 Stevens of Shoreham
 Turner of Milton
 Valliere of Barre City
 Westman of Cambridge
 Winters of Williamstown
 Wright of Burlington
 Zuckerman of Burlington

Those members absent with leave of the House and not voting are:

Fisher of Lincoln
 Hosford of Waitsfield

Johnson of Canaan
 LaVoie of Swanton

Rep. Leriche of Hardwick explained her vote as follows:

"Madam Speaker:

Health care costs are rising by \$1 million dollars per day in Vermont. I voted yes because this bill takes concrete steps to help bring down the rate of

increase in health care costs, helps more people get health coverage, and contains provisions that will improve health care quality.”

Rep. Wheeler of Derby explained his vote as follows:

“Madam Speaker:

Although I voted for this bill, I did so with great reservations. It is not the bill that I had hoped for. I do not feel we can continue to pay for health care on the backs of our employers. I can only hope that as we as a state and we as a nation can find a new way to fund health care so all Vermonters can receive all the health care they deserve.”

Recess

At two o'clock and thirty five minutes in the afternoon, the Speaker declared a recess until the fall of the gavel.

At three o'clock and five minutes in the afternoon, the Speaker called the House to order.

Bill Amended; Third Reading Ordered

H. 711

Rep. Godin of Milton, for the committee on Agriculture, to which had been referred House bill, entitled

An act relating to agricultural, forestry and horticultural education;

Reported in favor of its passage when amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTENT

The intent of this act is to enhance the ability of regional technical centers and secondary schools in Vermont to teach and prepare students for careers in agriculture, forestry, and horticulture and to determine what steps are necessary to prepare the next generation for involvement in these sectors of Vermont's economy.

Sec. 2. FINDINGS

The general assembly finds that:

(1) Education and training are essential to meeting the goals of No. 38 of the Acts of 2007, pertaining to the viability of Vermont agriculture.

(2) There is currently an absence of statewide oversight and coordination of agriculture, forestry, and horticulture (AF&H) education and training.

(3) There is a teacher crisis in secondary and postsecondary AF&H education because the pool of applicants is not adequate to replace retiring faculty, some of whom have more than 40 years of experience.

(4) Careers in the AF&H fields:

(A) provide business opportunities while taking advantage of Vermont's natural assets;

(B) benefit local economies due to the multiplier effect of local investment; and

(C) provide opportunities for young Vermonters to remain in the state.

(5) In order for Vermont to capitalize on opportunities in the AF&H fields, comprehensive and effective postsecondary education and training are needed.

(6) It is critical to understand the current system, methods, and curriculum of educating students in the AF&H fields before taking additional steps toward that end.

Sec. 3. AGRICULTURAL, FORESTRY, AND HORTICULTURAL EDUCATION

(a) The agency of agriculture, food and markets and the department of education shall jointly perform a needs assessment on AF&H education in secondary schools and regional technical centers and provide technical assistance for existing programs.

(b) A report of the needs assessment required in subsection (a) of this section shall be delivered to the house and senate committees on agriculture and on education by January 15, 2009. The report of the needs assessment shall include discussion and recommendations relating to the following:

(1) The ability of secondary schools and regional technical centers to prepare students for AF&H careers.

(2) The effectiveness of the organizational structures of secondary schools and regional technical centers in providing AF&H education.

(3) The reasons why some secondary schools and regional technical centers do not provide AF&H education.

(4) The opportunities for and barriers to AF&H career paths.

(5) The need for a statewide specialist to provide AF&H technical and curriculum support.

(6) An assessment of postsecondary teacher degree and certification programs or opportunities at Vermont institutions of higher learning.

(7) The role organizations such as FFA, the Vermont youth conservation corps, FEED (food education every day), Foodworks, NOFA (northeast organic farming association), and 4-H perform in support of AF&H education.

(8) The opportunities to enhance AF&H education through collaboration of secondary and postsecondary educational institutions.

(c) The secretary of the agency of agriculture, food and markets and the commissioner of education shall propose funding needed to support the intent of this act in their respective budgets for FY 2010.

(d) Resources utilized in preparing the report required in subsection (b) of this section shall include:

(1) current and retired instructors;

(2) regional technical center directors;

(3) secondary schools and regional technical centers with existing AF&H education programs;

(4) postsecondary school administrators;

(5) the workforce training council and the department of labor;

(6) other northeastern states where similar efforts are being made and models have been created.

(e) The report required in subsection (b) of this section shall also include a summary of the agency of agriculture, food and markets' and the department of education's efforts to implement the provisions of Sec. 4 of No. 201 of the 2005 Adj. Sess. (2006).

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Agriculture agreed to and third reading ordered.

Bill Referred to Committee

H. 891

House bill, entitled

An act relating to making appropriations for the support of government;

Appearing on the Calendar for action, was taken up, and pending second reading of the bill **Rep. Koch of Barre** Raised a Point of Order that Section 6.022 affects the revenue of the state and pursuant to Rule 35(a) should be referred to the committee on Ways and Means, which Point of Order the Speaker ruled well taken and the bill was referred to the committee on Ways and Means.

Bill Amended; Third Reading Ordered

H. 685

Rep. Courcelle of Rutland City, for the committee on Fish, Wildlife and Water Resources, to which had been referred House bill, entitled

An act relating to enforcement of environmental laws;

Reported in favor of its passage when amended as by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

(1) "Board" means the natural resources board defined by subdivision 6001(1) of this title.

(2) "Compliance" means compliance with the statutes specified in section 8003 of this title, and with any related rules, permits, assurances, or orders.

(3) "Investigator" means an investigator designated and duly authorized by the secretary or the board.

(4) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity.

(5) "Permit" means any permit, license, certification or transitional operational authority issued under any of the statutes specified in section 8003 of this title.

(6) "Respondent" means a person who has committed or is alleged to have committed a violation.

(7) "Secretary" means the secretary of the agency of natural resources, or the secretary's duly authorized representative.

(8) "Stop work order" means an order to cease construction or other activity.

(9) "Violation" means noncompliance with one or more of the statutes specified in section 8003 of this title, or any related rules, permits, assurances, or orders.

(10) "Land use panel" means the land use panel of the board, as established under chapter 151 of this title.

(11) "Economic benefit" means a reasonable approximation of any gain, advantage, wrongful profit, or delayed avoided cost, financial or otherwise, obtained as a result of a violation. Economic benefit shall not be limited to only competitive advantage obtained.

Sec. 2. 10 V.S.A. § 8006 is amended to read:

§ 8006. WARNING; NOTICE OF ALLEGED VIOLATION

(a) When the secretary determines that a violation will or is likely to occur, the secretary may issue a written warning which shall be served on the respondent in person or by certified mail, return receipt requested. The warning shall include a brief description of the prospective violation, identification of the statute, rule, permit, assurance, or order that is the subject of the prospective violation and a brief description of the potential enforcement actions which may be taken if the violation occurs.

(b) When the secretary determines that a violation exists, the secretary may issue a written notice of the alleged violation. The notice shall be served on the respondent in person or by certified mail, return receipt requested. The notice shall include a brief description of the alleged violation, identification of the statute, rule, permit, assurance, or order that is the subject of the violation ~~and~~, a brief description of the secretary's intended course of action to address the alleged violation, and, if appropriate, specific time lines and directives to achieve compliance.

Sec. 3. 10 V.S.A. § 8007 is amended to read:

§ 8007. ASSURANCES OF DISCONTINUANCE

(a) As an alternative to administrative or judicial proceedings, the secretary, or the land use panel, may accept from a respondent an assurance of discontinuance of a violation. An assurance of discontinuance shall include:

(1) a statement of the facts which provide the basis for claiming the violation exists and a description of the alleged violation determined by the secretary or the land use panel; and

(2) an agreement by the respondent to perform specific actions to prevent, abate or alleviate environmental problems caused by the violation, or to restore the environment to its condition before the violation, including financial responsibility for such actions.

(b) An assurance of discontinuance may include:

(1) prevention, abatement, alleviation, or restoration schedules;

(2) contribution toward other projects related to the violation, which the respondent and the secretary or the land use panel agree will enhance the natural resources of the area affected by the violation, or their use and enjoyment. A contribution under this subdivision shall be subject to the following:

(A) the respondent shall disburse all required contributions to the project or shall be in full and continuing compliance with a payment schedule established by the assurance of discontinuance no later than 180 days after the effective date of the assurance discontinuance requiring the funding of such project;

(B) in the event that a respondent fails to comply with subdivision (A) of this subdivision (2), the respondent shall place the funds into either an attorneys' interest on lawyers' trust account (IOLTA) or an escrow account; and

(C) unless otherwise contrary to requirements of federal law, a contribution is not permissible where the project primarily benefits the respondent, including activities:

(i) that are required by law, likely to be required by law, or reasonably associated with the respondent's usual course of business; or

(ii) which the respondent has planned, budgeted for, initiated, or completed prior to or during the current enforcement action.

(3) payment of monetary penalties, including stipulated penalties for violation of the assurance.

(c) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. The assurance of discontinuance shall be simultaneously filed with the attorney general and the environmental court. The secretary or the land use panel shall post a final draft assurance of discontinuance to its website and shall provide a final draft assurance of discontinuance to a person upon request. When signed by the environmental court, the assurance shall become a judicial order. Upon motion by the attorney general made within 10 days of

the date the assurance is signed by the court and upon a finding that the order is insufficient to carry out the purposes of this chapter, the court shall vacate the order.

* * *

Sec. 4. 10 V.S.A. § 8008 is amended to read:

§ 8008. ADMINISTRATIVE ORDERS

(a) The secretary may issue an administrative order when the secretary determines that a violation exists. The order shall be served on the respondent in person or by ~~certified mail, return receipt requested~~ acceptance of service, in accordance with court rules, by a person designated by the respondent. A copy of the order also shall be delivered to the attorney general. An order shall be effective on receipt unless stayed under subsection 8012(e) of this title.

(b) An order shall include:

(1) a statement of the facts which provide the basis for claiming the violation exists;

(2) identification of the applicable statute, rule, permit, assurance or order;

(3) a statement that the respondent has a right to a hearing under section 8012 of this title, and a description of the procedures for requesting a hearing;

(4) a statement that the order is effective on receipt unless stayed on request for a hearing filed within 15 days; and

(5) if applicable, a directive that the respondent take actions necessary to achieve compliance, to abate potential or existing environmental or health hazards, and to restore the environment to the condition existing before the violation.

(c) An order may include:

(1) a "stop work" order that directs the respondent to stop work until a permit is issued, compliance is achieved, a hazard is abated, or any combination of the above. In issuing such an order, the secretary shall consider the economic effect of the order on individuals other than the respondent;

(2) a stay of the effective date or processing of a permit under section 8011 of this title; and

(3) a proposed penalty or penalty structure.

(d)(1) The administrative order and proof of service shall be simultaneously filed with the attorney general and the environmental court. The court shall sign the administrative order in the event that:

(A) The administrative order is properly served on a respondent in accordance with subsection (a) of this section;

(B) The respondent does not request a hearing in accordance with subsection (b) of this section; and

(C) the order otherwise meets the requirements of this chapter.

(2) When signed by the environmental court, the administrative order shall become a judicial order. Upon motion by the attorney general made within 10 days of the date the administrative order is signed by the court and upon a finding by the court that the order is insufficient to carry out the purposes of this chapter, the court shall vacate the order.

Sec. 5. 10 V.S.A. § 8010 is amended to read:

§ 8010. ADMINISTRATIVE PENALTIES

(a) An administrative penalty may be included in an administrative order issued under section 8008 of this title or in an emergency administrative order issued under subdivision 8009(a)(1) or (3) of this title. An order assessing administrative penalties shall be accompanied by an affidavit setting forth the facts establishing the date of violation.

(b) In determining the amount of the penalty, the secretary shall consider the following:

(1) the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violation;

(2) the presence of mitigating circumstances, including unreasonable delay by the secretary in seeking enforcement;

(3) whether the respondent knew or had reason to know the violation existed;

(4) the respondent's record of compliance;

(5) ~~the economic benefit gained from the violation;~~

(6) the deterrent effect of the penalty;

(7) the state's actual costs of enforcement; and

(8) the length of time the violation has existed.

(c)(1) A penalty of not more than ~~\$25,000.00~~ \$42,500.00 may be assessed for each determination of a separate violation. In addition, if the secretary determines that a violation is continuing the secretary may assess a penalty of not more than ~~\$10,000.00~~ \$17,000.00 for each day the violation continues. The maximum amount of penalty assessed under this subsection shall not exceed ~~\$100,000.00~~ \$170,000.00.

(2) In addition to a penalty assessed under subdivision (1) of this subsection, the secretary may assess a penalty for the economic benefit gained from a violation.

(d) Notwithstanding the provisions of subsection 8003(b) of this title, imposition of an administrative penalty under this section precludes imposition of any other administrative or civil penalty under any other provisions of law for the same violation.

(e) Penalties assessed under this section shall be deposited in the general fund, except for those penalties which are assessed as a result of a municipality's enforcement action under chapter 64 of this title, in which case the municipality involved shall receive the penalty monies.

Sec. 6. 10 V.S.A. § 8011(a) is amended to read:

(a) An administrative order may stay the effective date or processing of a permit:

(1) when any activity has been commenced illegally without a permit. The order may stay the effective date of the permit for a period of time up to the number of days that the activity was commenced before the permit was issued. This period of time shall not include the time from the date that work was stopped until the date a permit is issued; or

(2) when an applicant for a permit, or for an amendment to a permit, is not in compliance with an administrative order or an assurance of discontinuance with respect to a violation that is directly related to the activity which is the subject of the application; or

(3) when an applicant for a permit, or for an amendment to a permit, has one or more current violations, ~~which when viewed together constitute substantial noncompliance.~~

Sec. 7. 10 V.S.A. § 8014 is amended to read:

§ 8014. ENFORCEMENT OF FINAL ORDERS; COLLECTION ACTIONS

(a) The secretary may seek enforcement of a final administrative order or a landfill extension order in the superior or district court or before the environmental court.

(b) If a penalty is assessed and the respondent fails to pay the assessed penalty within the time prescribed, the secretary may bring a collection action in any superior or district court. In addition, when a respondent fails to pay an assessed penalty or fails to pay a contribution under subdivision 8007(b)(2) of this title within the prescribed time period, the secretary or the land use panel shall stay the effective date or the processing of any pending permit application or renewal application in which the respondent is involved until payment in full of all outstanding penalties has been received. The secretary or the land use panel may collect interest on an assessed penalty that a respondent fails to pay within the prescribed time. The secretary or the land use panel shall collect interest on a contribution under subdivision 8007(b)(2) of this title that a respondent fails to pay within the prescribed time.

(c) The Notwithstanding 32 V.S.A. § 502, the secretary may contract with private collection agencies, or with attorneys engaged for similar purposes, for the collection of penalties or other monetary awards owed pursuant to assurances of discontinuance, final administrative orders, emergency administrative orders, or judgments after hearing or other judicial rulings. The cost of collection shall be assessed against and added to the penalty assessed against a respondent. The secretary may agree to pay private collection agencies or attorneys a fixed rate for services rendered or a percentage of the amount actually collected by the agencies or attorneys and remitted to the secretary. ~~Notwithstanding 32 V.S.A. § 502, the secretary may charge against collections an agreed upon fixed rate or percentage of collections, for the purpose of making payments to private collection agencies or attorneys.~~

Sec. 8. 10 V.S.A. § 8015 is amended to read:

§ 8015. STATUTE OF LIMITATIONS

Notwithstanding any other provision of law, actions brought under this chapter or chapter 211 of this title shall be commenced within the ~~latter~~ later of:

(1) six years from the date the violation is or reasonably should have been discovered; or

(2) six years from the date a continuing violation ceases.

Sec. 9. 10 V.S.A. § 8017 is amended to read:

§ 8017. ANNUAL REPORT

The secretary and the attorney general shall report annually to the president pro tempore of the senate, the speaker of the house, the house committee on fish, wildlife and water resources, and the chairs of the senate and house committees on natural resources and energy. The report shall be filed no later

than January 15, on the enforcement actions taken under this chapter, and on the status of citizen complaints about environmental problems in the state. The report shall describe, at a minimum, the number of violations, the actions taken, disposition of cases, the amount of penalties collected, and the cost of administering the enforcement program.

Sec. 10. 10 V.S.A. § 8221(b)(6) is amended to read:

(b) The court may grant temporary and permanent injunctive relief, and may:

* * *

(6) levy a civil penalty as provided in this subdivision. A civil penalty of not more than ~~\$50,000.00~~ \$85,000.00 may be imposed for each violation. In addition, in the case of a continuing violation, a penalty of not more than ~~\$25,000.00~~ \$42,500.00 may be imposed for each day the violation continues. In fixing the amount of the penalty the court shall apply the criteria set forth in subsection 8010(b) of this title. The cost of collection of penalties or other monetary awards shall be assessed against and added to a penalty assessed against a respondent.

Sec. 11. 10 V.S.A. § 6083(d) is amended to read:

(d) The panels of the board and commissions shall make all practical efforts to process matters before the board and permits in a prompt manner. The land use panel shall establish time limits for the processing of land use permits issued under section 6086 of this title as well as procedures and time periods within which to notify applicants whether an application is complete. The land use panel shall report annually by February 15 to the house and senate committees on natural resources and energy and on government operations, and the house committee on fish, wildlife and water resources. The annual report shall assess the performance of the board and commissions in meeting the limits; identify areas which hinder effective performance; list fees collected for each permit; summarize changes made to improve performance; and describe staffing needs for the coming year. The annual report shall list the number of enforcement actions taken by the land use panel, the disposition of such cases, and the amount of penalties collected.

Sec. 12. DATABASE OF ENVIRONMENTAL ENFORCEMENT ACTIONS

On or before January 15, 2009, the agency of natural resources, after consultation with the attorney general and the land use panel, shall report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy with a recommendation for establishing a publicly available, searchable database of enforcement actions initiated by the agency of natural resources or the land use panel under chapter

201 of Title 10 and enforcement actions initiated by the attorney general under chapter 211 of Title 10. The report shall include:

(1) A recommendation on how to establish the database, including coordination among the agency of natural resources, the attorney general, and the land use panel;

(2) A recommendation of the type of documents that should be posted to the database;

(3) An estimate of the cost to the agency of natural resources, the attorney general, and the land use panel of establishing and maintaining the database; and

(4) An estimate of the time necessary to develop the database so that it is available for public use.

Sec. 13. ENVIRONMENTAL ENFORCEMENT OFFICERS

The commissioner of fish and wildlife shall deputize environmental enforcement officers employed by the agency of natural resources as deputy game wardens of the state, and environmental enforcement officers so deputized shall have the same powers and immunities as those conferred to deputy game wardens under 10 V.S.A. §§ 4193 and 4198, provided that the environmental enforcement officer shall comply with any additional requirements for certification under these sections.

Sec. 14. AGENCY OF NATURAL RESOURCES REPORT ON IMPLEMENTATION OF THE GENERAL PERMIT FOR POTABLE WATER SUPPLIES AND WASTEWATER SYSTEMS

On or before January 15, 2009, the agency of natural resources shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy a status report regarding implementation of the potable water supply and wastewater system general permitting program authorized under No. 32 of the Acts of 2007. The report shall include:

(1) The number of persons seeking coverage under the general permit for potable water supplies and wastewater systems;

(2) The number of site visits completed by agency of natural resources personnel to review applications for coverage under and compliance with the general permit for potable water supplies and wastewater systems; and

(3) The number of and disposition of actions brought by the agency of natural resources to enforce the requirements of the general permit for potable water supplies and wastewater systems.

Sec. 15. AGENCY OF NATURAL RESOURCES REPORT ON
IMPLEMENTATION OF STORMWATER GENERAL PERMITS

As part of the report required under 10 V.S.A. § 1264(f)(3), the agency of natural resources shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy on or before January 15, 2009 a status report on implementation of the stormwater general permits issued under chapter 47 of Title 10. The report shall include:

(1) The number of persons seeking coverage under each general permit issued under chapter 47 of Title 10;

(2) The number of site visits completed by agency of natural resources personnel to review applications for coverage under and compliance with a general permit issued under chapter 47 of Title 10; and

(3) The number of and disposition of enforcement actions brought by the agency of natural resources to enforce the requirements of a general permit issued under chapter 47 of Title 10.

Sec. 16. AGENCY OF NATURAL RESOURCES REPORT ON
ENFORCEMENT BY THE DEPARTMENT OF FORESTS,
PARKS AND RECREATION

On or before January 15, 2009, the secretary of natural resources shall report to the house and senate committees on natural resources and energy, and the house committee on fish, wildlife and water resources with a proposal to increase enforcement of the existing laws and regulations within the jurisdiction of the department of forests, parks and recreation. The report shall include:

(1) An evaluation and recommendation of whether violations of laws and rules within the jurisdiction of the department of forests, parks and recreation should be enforced as judicial bureau offenses under 4 V.S.A.

§ 1102.

(2) An analysis of whether effective enforcement of the laws and rules within the jurisdiction of the department of forests, parks and recreation requires additional enforcement authority not currently included in 10 V.S.A. chapter 201 or 29 V.S.A. chapter 11.

(3) A recommendation of whether authority beyond the ability of filing a civil action should be granted to the department of forests, parks and

recreation to enforce encroachments on state land boundaries, including the unauthorized cutting of trees.

(4) An assessment of the feasibility and necessity for statutory or regulatory changes to enhance compliance with state park rules;

(5) A proposal to clarify public access rights along state forest highways; and

(6) A proposal to use rulemaking by the department of forests, parks and recreation to establish enforceable standards and increased fines and penalties where appropriate.

Rep. Morley of Barton, for the committee on Appropriations, recommended the bill ought to pass when amended as recommended by the committee on Fish, Wildlife and Water Resources.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, the report of the committees on Fish, Wildlife and Water Resources and Appropriations agreed to and third reading ordered.

Proposal of Amendment Agreed to; Third Reading Ordered

S. 280

Rep. Morrissey of Bennington, for the committee on Human Services, to which had been referred Senate bill, entitled

An act relating to prosthetic parity;

Reported in favor of its passage in concurrence with proposal of amendment as follows:

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

§ 4088f. PROSTHETIC PARITY

(a) As used in this section:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term shall not include policies or plans providing coverage for specific disease or other limited benefit coverage.

(2) "Prosthetic device" means an artificial limb device to replace, in whole or in part, an arm or a leg.

(b) A health insurance plan shall provide coverage for prosthetic devices in all health plans at least equivalent to that provided by the federal Medicare program. Coverage may be limited to the prosthetic device that is the most appropriate model that is medically necessary to meet the patient's medical needs. Any dispute between the insured and the carrier concerning coverage and the application of this section shall be subject to independent external review under section 4089f of this title.

(c) A health insurance plan may require prior authorization for prosthetic devices in the same manner and to the same extent as prior authorization is required for any other covered benefit.

(d) A health insurance plan shall provide coverage under this section for the medically necessary repair or replacement of a prosthetic device.

(e) A health insurance plan shall not impose any annual or lifetime dollar maximum on coverage for prosthetics that is less than the annual or lifetime dollar maximum that applies generally to all terms and services covered under the plan.

(f) The coverage required may not be subject to a deductible, co-payment, or coinsurance provision that is less favorable to a covered individual than the deductible, co-payment, or coinsurance provisions that apply generally to other non-primary care items and services under the health plan.

Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2008 and shall apply to all health benefit plans on and after October 1, 2008 on such date as a health insurer offers, issues, or renews the health benefit plan, but in no event later than October 1, 2009.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time and the recommendation of proposal of amendment agreed to and third reading ordered.

Bill Amended; Third Reading Ordered

H. 890

Rep. Atkins of Winooski spoke for the committee on Government Operations.

Rep. Larson of Burlington, for the committee on Appropriations, to which had been referred House bill, entitled

An act relating to compensation for certain state employees;

Reported in favor of its passage when amended as follows:

First: by adding Secs. 13a, 13b, and 13c as follows:

Sec. 13a. 3 V.S.A. § 2222(i) is amended to read:

(i) The secretary of administration is authorized to transfer vacant positions throughout the executive branch of state government, and to adjust appropriations in the executive branch in accordance with the secretary's statewide vacancy savings plan that reflects realistic savings due to vacant positions. Such appropriation adjustments shall result in no change to the total statewide legislative appropriations to the executive branch. This authority is separate from the secretary's authority provided in section 706 of Title 32. A report of all actions taken during the preceding fiscal year pursuant to this authority shall be furnished to the legislature no later than January 15 of each year. The report shall include a list of all authorized filled and vacant positions by department and all positions subject to this subdivision and shall indicate whether each position is classified, exempt, or temporary. In addition, the secretary shall periodically furnish the legislature with a report of accomplishments and recommendations concerning improvements in better managing resources on a statewide basis.

Sec. 13b. SECRETARY OF ADMINISTRATION; REPORT; STATE EMPLOYEE POSITIONS

(a) The general assembly finds that the goal in reducing state employee positions is to meet certain financial targets and not to simply reduce positions. Because the general assembly needs detailed information to evaluate the specific actions required to meet these financial targets, the reports required by this section and 3 V.S.A. § 2222(i) are necessary for the general assembly to perform its constitutional responsibilities.

(b) The secretary of administration shall submit the report required under 3 V.S.A. § 2222(i) to the joint fiscal committee and chairs of every legislative standing committee on July 1, 2008, September 1, 2008, and November 1, 2008. In addition to the information required by 3 V.S.A. § 2222(i), the secretary shall also report on the number of positions eliminated since January 1, 2008 by department and indicate whether each position is classified, exempt, or temporary. The secretary shall also recommend positions for elimination that are necessary to meet the financial targets and explain the projected fiscal year savings attributable to the position by funding source and appropriations by name and unit.

Sec. 13c. POSITIONS ELIMINATIONS

Notwithstanding 3 V.S.A. § 327(b), no position shall be eliminated or abolished unless by act of the general assembly.

Second: By striking Sec. 14 in its entirety and inserting in lieu thereof a new Sec. 14 as follows:

Sec. 14. REPEAL

(a) Sec. 12 of this act shall be repealed on July 1, 2013.

(b) Sec. 13c of this act shall be repealed on July 1, 2009.

The bill, having appeared on the Calendar one day for notice, was taken up, read the second time, report of the committee on Appropriations agreed to and third reading ordered.

Action on Bill Postponed

H. 889

House bill, entitled

An act relating to the state's transportation program;

Was taken up and pending the second reading of the bill, on motion of **Rep. Westman of Cambridge**, action on the bill was postponed until the next legislative day.

Adjournment

At four o'clock and thirty minutes in the afternoon, on motion of **Rep. Adams of Hartland**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.

WEDNESDAY, APRIL 2, 2008

At nine o'clock and thirty minutes in the forenoon the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Speaker Gaye Symington of Jericho.

House Resolution Placed on Calendar

The Speaker placed before the House the following resolution which was read and in the Speaker's discretion, placed on the Calendar for action tomorrow under Rule 52.

H.R. 32

House resolution, entitled

House resolution in support of the creation of a veterans' transitional housing facility in central Vermont;

Whereas, according to federal government statistics, one-fourth of the nation's homeless population consists of U.S. military veterans, and

Whereas, according to The Veterans Place, Inc., an organization founded to create a transitional housing facility in central Vermont, there are an estimated 150 homeless veterans in the state, and approximately 30 of these individuals reside in central Vermont, and

Whereas, because of this state's proportionally large number of homeless veterans, the U.S. Department of Veterans Affairs has ranked Vermont high on the priority list for the receipt of grant money for transitional assistance, and

Whereas, although a significant number of these homeless individuals are veterans of the Vietnam conflict, some served during Operation Desert Storm or even more recently during the current war in Iraq, and

Whereas, because posttraumatic stress disorder afflicts many veterans returning from Iraq, there is concern that the number of homeless veterans in Vermont and elsewhere will rise, and

Whereas, currently, the only facility in Vermont to provide temporary shelter specifically for veterans is the eight-bed Dodge House in Rutland City, and

Whereas, The Veterans Place, Inc. envisions the establishment of a multi-service transitional housing facility for 15 or more central Vermont veterans, to be located in Barre or Montpelier, that would provide housing, food, legal services, dental care, job-seeking support, substance-abuse counseling, clothing, and personal hygiene assistance, and

Whereas, the organizations partnering with The Veterans Place, Inc. in this worthy endeavor include the VA Medical Center in White River Junction, various state agencies and departments, veterans' service organizations, local businesses, homeless shelters, municipal governments, and Vermont's congressional delegation, and

Whereas, if The Veterans Place, Inc. is able to raise \$200,000.00 by April 4, 2008, the U.S. Department of Veterans Affairs through a capital grant application filed under its Homeless Provider Grant and Per Diem Program, is prepared to award the sum of \$600,000.00 toward the establishment of this multi-service housing facility, and

Whereas, the Hedding United Methodist Church Council, under the leadership of Rev. Ralph W. Howe has donated \$10,000.00 toward the \$200,000.00 amount, and

Whereas, although the state of Vermont is unable to support this project financially due to the tight fiscal constraints of the FY 2009 budget, it is important that the House of Representatives be recorded as supportive of this critically needed transitional residential facility, now therefore be it

Resolved by the House of Representatives:

That the Vermont House of Representatives strongly supports the efforts of The Veterans Place, Inc. to secure a \$600,000.00 grant from the U.S. Department of Veterans Affairs for the establishment of a multi-service veterans transitional residential facility in central Vermont, and be it further

Resolved: That the clerk of the house be directed to send copies of this resolution to Rev. Ralph W. Howe in care of The Veterans Place, Inc. in Barre City, to Jack McDermott at the governor's veterans advisory council, to Clayton Clark at the office of veterans affairs, and to the Vermont congressional delegation.

Action on Bill Postponed

H. 889

House bill, entitled

An act relating to the state's transportation program;

Was taken up and pending second reading of the bill, on motion of **Rep. Westman of Cambridge**, action on the bill was postponed until the next legislative day.

**Third Reading; Bill Passed in Concurrence
With Proposals of Amendment**

S. 280

Senate bill, entitled

An act relating to prosthetic parity;

Was taken up, read the third time and passed in concurrence with proposals of amendment.

Bill Amended; Action Postponed

H. 685

House bill, entitled

An act relating to enforcement of environmental laws;

Was taken up and pending third reading of the bill, Rep. Deen of Westminster moved to amend the bill as follows:

First: In Sec. 3, 10 V.S.A. § 8007, by striking subdivision 8007(b)(2)(B) in its entirety and inserting in lieu thereof the following:

(B) in the event that a respondent fails to comply with subdivision (A) of this subdivision (2), the respondent shall place the funds into either an attorneys' interest on lawyers' trust account (IOLTA) or an escrow account until such time as the terms of the agreement between the secretary and the respondent authorize the release of the funds, provided that the secretary may, as a term of the agreement, require payment of the funds as a monetary penalty if noncompliance with subdivision (A) of this subdivision (2) continues.

Second: In Sec. 4, 10 V.S.A. § 8008, by striking subsection (b) in its entirety and inserting in lieu thereof the following:

(b) An order shall include:

(1) a statement of the facts which provide the basis for claiming the violation exists;

(2) identification of the applicable statute, rule, permit, assurance or order;

(3) a statement that the respondent has a right to a hearing under section 8012 of this title, and a description of the procedures for requesting a hearing;

(4) a statement that the order is effective on receipt unless stayed on request for a hearing filed within 15 days; and

(5) if applicable, a directive that the respondent take actions necessary to achieve compliance, to abate potential or existing environmental or health hazards, and to restore the environment to the condition existing before the violation; and

(6) a statement that unless the respondent requests a hearing under this section, the order becomes a judicial order when filed with and signed by the environmental court.

Third: By adding a Sec. 6a to read as follows:

Sec. 6a. 10 V.S.A. § 8012(b) is amended to read:

(b) The environmental court shall have authority to:

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