

# House Calendar

Friday, March 13, 2015

66th DAY OF THE BIENNIAL SESSION

House Convenes at 9:30 A.M.

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**ORDERS OF THE DAY**

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**ACTION CALENDAR**

**Favorable**

**H. 248**

An act relating to miscellaneous revisions to the air pollution statutes

**Rep. Chesnut-Tangerman of Middletown Springs**, for the Committee on **Natural Resources & Energy**, recommends the bill ought to pass.

( **Committee Vote: 10-0-1**)

**NOTICE CALENDAR**

**Committee Bill for Second Reading**

**H. 477**

An act relating to miscellaneous amendments to election law.

(**Rep. Cole of Burlington** will speak for the Committee on **Government Operations**.)

**Favorable with Amendment**

**H. 20**

An act relating to licensed alcohol and drug abuse counselors as participating providers in Medicaid

**Rep. Troiano of Stannard**, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 26 V.S.A. § 3242 is added to read:

§ 3242. MEDICAID PARTICIPATING PROVIDERS

(a) The Department of Vermont Health Access shall grant authorization to a licensed alcohol and drug abuse counselor acting within the scope of his or her practice to participate as a Medicaid provider to deliver clinical and case coordination services to Medicaid beneficiaries consistent with federal law, regardless of whether the counselor is a preferred provider.

(b) The Department shall amend Vermont's Medicaid State Plan as necessary to comply with subsection (a) of this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on October 1, 2015.

( **Committee Vote: 11-0-0**)

## H. 25

An act relating to natural burial grounds

**Rep. Gonzalez of Winooski**, for the Committee on **General, Housing & Military Affairs**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 5302 is amended to read:

### § 5302. DEFINITIONS

~~For the purposes of~~ As used in this chapter and unless otherwise required by the context:

\* \* \*

(10) “Ecological land management practices” means utilization of land stewardship decision-making processes that account for the best available understanding of ecosystem functions and biological diversity;

(11) “Natural burial ground” means a cemetery maintained using ecological land management practices and without the use of vaults for the burial of unembalmed human remains or human remains embalmed using nontoxic embalming fluids and that rest in either no burial container or in a nontoxic, nonhazardous, plant-derived burial container or shroud;

(12) “Niche” means a recess in a columbarium, used, or intended to be used, for the permanent disposition of the cremated remains of one or more deceased persons;

~~(11)~~(13) “Temporary receiving vault” means a vault, or crypt, in a structure of durable and lasting construction, used or intended to be used for the temporary deposit therein of the remains of a deceased person for a period of time not exceeding one year of the remains of a deceased person.

Sec. 2. 18 V.S.A. § 5319 is amended to read:

### § 5319. DISPOSITION OF REMAINS OF DEAD

(a) The permanent disposition of ~~the human~~ human remains ~~of the human dead~~ shall be by interment in the earth or deposit in a chamber, vault, or tomb formed wholly or partly above the surface of the ground of a cemetery conducted and maintained pursuant to the laws of the ~~state~~, State, or by deposit in a crypt of a mausoleum or by cremation. However, this shall not be construed to prevent a private individual from setting aside a portion of his or her premises owned in fee by him or her, and using the ~~same~~ premises as a burial space for the members of his or her immediate family, so long as his or her use for such purpose is not in violation of the health laws and regulations

of the ~~state~~ State and the town in which ~~such~~ the land is situated.

(b)(1) ~~No interment~~ Interment of any human body in the earth shall not be made unless the distance from the bottom of the outside coffin shall be at least five feet below the natural surface of the ground, excepting only infants under four years of age, whose bodies shall be so interred that the bottom of the outside coffin enclosing them shall be at least three and one-half feet below the natural surface of the ground.

(2) The burial boundaries of a new or expanded cemetery shall be located:

(A) not less than 200 feet up gradient of a drilled bedrock well or a drilled well in a confined aquifer that is part of an exempt or permitted potable water supply or a transient noncommunity public water system source;

(B) not less than 500 feet up gradient from any other groundwater source that is part of an exempt or permitted potable water supply or a transient noncommunity public water system;

(C) not less than 150 feet cross or down gradient from any groundwater source that is part of an exempt or permitted potable water supply or transient noncommunity public water system;

(D) outside zone one or two of the source protection area for an existing or permitted public community water system;

(E) outside the source protection area for an existing or permitted nontransient, noncommunity public water system;

(F) outside a river corridor as defined in 10 V.S.A. § 1422 and delineated by the Agency of Natural Resources; and

(G) outside a flood hazard area as defined in 10 V.S.A. §752, and delineated by the Federal Emergency Management Agency, National Flood Insurance Program.

\* \* \*

Sec. 3. 18 V.S.A. § 5323 is added to read:

§ 5323. NATURAL BURIAL GROUNDS; EXEMPTIONS

(a) A natural burial ground shall not be subject to the following provisions of this chapter:

(1) section 5310 of this title, to the extent that while plats of a natural burial ground shall be recorded with the town clerk and made to show the parts improved, in use, or held for future use, standard methods of locating human remains may be employed, including a map or electronic locating device;

(2) section 5362 of this title;

(3) section 5364 of this title, to the extent that selectboard members or cemetery commissioners need not maintain or repair a fence around a public natural burial ground so long as the perimeter of the natural burial ground is marked in a less obtrusive manner, such as by survey markers; and

(4) section 5371, unless the regulations governing a particular natural burial ground require a marker on a person's grave, in which case the selectboard members of the town or the aldermen of a city where the person is buried shall cause to be erected on the person's grave a marker in keeping with the regulations of that natural burial ground.

(b)(1) A person shall not construct improvements on property used as a natural burial ground, except for improvements that serve as a winter storage facility or that are either educational or devotional in nature and maintain the character of the land.

(2) A deed transferring rights in property used as a natural burial ground shall set forth the prohibition in subdivision (1) of this subsection.

#### Sec. 4. PUBLIC HEALTH; RULEMAKING

The Commissioner of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 enabling the Commissioner to govern the disposition of human remains in a natural burial ground when the deceased person had a disease or condition considered a Public Health Emergency of International Concern or when a burial poses a potential "public health hazard" as defined by 18 V.S.A. § 2.

#### Sec. 5. RETROACTIVE CREATION OF NATURAL BURIAL GROUND; PROHIBITED

Notwithstanding any other provision of law, a natural burial ground as defined in 18 V.S.A. § 5302 shall not be established prior to the passage of this act.

#### Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

**( Committee Vote: 8-0-0)**

## H. 105

An act relating to disclosure of sexually explicit images without consent

**Rep. Rachelson of Burlington**, for the Committee on **Judiciary**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2605 is amended to read:

§ 2605. VOYEURISM

(a) As used in this section:

\* \* \*

(6) “Sexual conduct” shall have the same meaning as in section 2821 of this title.

(7) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person.

~~(7)~~(8) “View” means the intentional looking upon another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or a device designed or intended to improve visual acuity.

\* \* \*

(e) No person shall intentionally photograph, film, or record in any format a person without that person’s knowledge and consent while that person is in a place where a person has a reasonable expectation of privacy and that person is engaged in a sexual act ~~as defined in section 3251 of this title~~ conduct.

\* \* \*

Sec. 2. 13 V.S.A. § 2606 is added to read:

§ 2606. DISCLOSURE OF SEXUALLY EXPLICIT IMAGES WITHOUT CONSENT

(a) As used in this section:

(1) “Disclose” includes transfer, publish, distribute, exhibit, or reproduce.

(2) “Minor” means a person less than 18 years of age.

(3) “Nude” means any one or more of the following uncovered parts of the human body:

(A) genitals;

(B) pubic area;

(C) buttocks; or

(D) female breast below the top of the areola.

(4) "Sexual conduct" shall have the same meaning as in section 2821 of this title.

(5) "Visual image" includes a photograph, film, videotape, recording, or digital reproduction.

(b)(1) No person shall knowingly disclose a visual image of an identifiable person who is nude or who is engaged in sexual conduct when the actor knows or should have known that the depicted person did not consent to the disclosure. A person may be identifiable from the image itself or information displayed in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than six months or fined not more than \$1,000.00, or both.

(2) No person shall violate subdivision (1) of this subsection with the intent to harm the person depicted in the image. Except as provided in subdivision (3) of this subsection, a person who violates this subdivision shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.

(3) A delinquency petition shall be filed in the Family Division of the Superior Court for a minor who violates subdivision (1) or (2) of this subsection. The minor may be referred to the Juvenile Diversion Program of the district in which the action is filed.

(4) No person shall violate subdivision (1) of this subsection with the intent of disclosing the image for profit or knowingly maintain an Internet website, online service, online application, or mobile application for the purpose of disclosing such images. A person who violates this subdivision shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(c) A person who maintains an Internet website, online service, online application, or mobile application that contains a visual image of an identifiable person who is nude or who is engaged in sexual conduct shall not solicit or accept a fee or other consideration to remove, delete, correct, modify, or refrain from posting or disclosing the visual image if requested by the depicted person.

(d) This section shall not apply to:

(1) Images involving voluntary exposure in public or commercial

settings.

(2) Disclosures made in the public interest, including the reporting of unlawful conduct, or lawful and common practices of law enforcement, criminal reporting, corrections, legal proceedings, or medical treatment.

(3) Disclosures of materials that constitute a matter of public concern.

(4) Interactive computer services, as defined in 47 U.S.C. § 230(f)(2), or information services or telecommunications services, as defined in 47 U.S.C. § 153, for content provided by another person. This subdivision shall not preclude other remedies available at law.

(e)(1) A plaintiff shall have a private cause of action against a defendant who violates subsection (b) of this section and causes the plaintiff emotional distress or economic loss.

(2) In addition to any other relief available at law, the Court may order equitable relief, including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the image. The Court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

### Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

**( Committee Vote: 11-0-0)**

## **H. 217**

An act relating to potable water or wastewater system permits for a change in use of a building

**Rep. Sheldon of Middlebury**, for the Committee on **Fish, Wildlife & Water Resources**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 1976 is amended to read:

### § 1976. DELEGATION OF AUTHORITY TO MUNICIPALITIES

(a)(1) The Secretary may delegate to a municipality authority to:

(A) implement all sections of this chapter, except for sections 1975 and 1978 of this title; or

(B) implement permitting under this chapter for the subdivision of land, a building or structure, or a campground when the subdivision, building or structure, or campground is served by sewerage connections and water service lines, provided that:

(i) the lot, building or structure, or campground utilizes both a sanitary sewer service line and a water service line; and

(ii) the water main and sanitary sewer collection line that the water service line and sanitary sewer service line are connected to are owned and controlled by the delegated municipality.

(2) If a municipality submits a written request for delegation of this chapter, the ~~secretary~~ Secretary shall delegate authority to the municipality to implement and administer provisions of this chapter, the rules adopted under this chapter, and the enforcement provisions of chapter 201 of this title relating to this chapter, provided that the ~~secretary~~ Secretary is satisfied that the municipality:

(A) has established a process for accepting, reviewing, and processing applications and issuing permits, which shall adhere to the rules established by the ~~secretary~~ Secretary for potable water supplies and wastewater systems, including permits, by rule, for sewerage connections;

(B) has hired, appointed, or retained on contract, or will hire, appoint, or retain on contract, a licensed designer to perform technical work which must be done by a municipality under this section to grant permits;

(C) will take timely and appropriate enforcement actions pursuant to the authority of chapter 201 of this title;

(D) commits to reporting annually to the ~~secretary~~ Secretary on a form and date determined by the ~~secretary~~ Secretary; ~~and~~

(E) will only issue permits for water service lines and sanitary sewer service lines when there is adequate capacity in the public water supply system source, wastewater treatment facility, or indirect discharge system; and

(F) will comply with all other requirements of the rules adopted under section 1978 of this title.

~~(2) Notwithstanding the provisions of this subsection, there shall be no delegation of this section or of section 1975 or 1978 of this title.~~

\* \* \*

## Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

**( Committee Vote: 9-0-0)**

## H. 241

An act relating to rulemaking on emergency involuntary procedures

**Rep. Pugh of South Burlington**, for the Committee on **Human Services**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 2012 Acts and Resolves No. 79, Sec. 33a is amended to read:

### Sec. 33a. RULEMAKING

~~On or before September 1, 2012, the commissioner of mental health shall initiate a rulemaking process that establishes~~ The Commissioner of Mental Health shall adopt rules pursuant to 3 V.S.A. chapter 25 on emergency involuntary procedures for adults in the custody or temporary custody of the Commissioner who are admitted to a psychiatric inpatient unit. The rules shall establish standards that meet or exceed and are consistent with standards set by the Centers for Medicare and Medicaid Services and the Joint Commission for regarding the use and reporting of the emergency involuntary procedures of seclusion or restraint on individuals within the custody of the commissioner and that, restraint, and emergency involuntary medication. The rules shall also require the personnel performing those emergency involuntary procedures to receive training and certification on the their use of these procedures. Standards established by rule shall be consistent with the recommendations made pursuant to Sec. 33(a)(1) and (3) of this act policies set forth in the Department's final proposed rule, as amended, on emergency involuntary procedures submitted to the Legislative Committee on Administrative Rules on November 6, 2013, with the following exceptions:

(1) Emergency involuntary medication shall only be ordered by a psychiatrist, an advanced practice registered nurse licensed by the Vermont Board of Nursing as a nurse practitioner in psychiatric nursing, or a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist.

(2) Personal observation of an individual prior to ordering emergency involuntary medication:

(A) Shall be conducted by a certified physician assistant licensed by the State Board of Medical Practice and supervised by a psychiatrist if the physician assistant is issuing the order.

(B) May be conducted by a psychiatrist or an advanced practice registered nurse licensed by the Vermont Board of Nursing as a nurse practitioner in psychiatric nursing if the psychiatrist or advanced practice registered nurse is issuing the order. If a psychiatrist or advanced practice

registered nurse does not personally observe the individual prior to ordering emergency involuntary medication, the individual shall be observed by a registered nurse trained to observe individuals for this purpose or by a physician assistant.

Sec. 2. 18 V.S.A. § 7251 is amended to read:

§ 7251. PRINCIPLES FOR MENTAL HEALTH CARE REFORM

The General Assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

\* \* \*

(9) Individuals with a psychiatric disability or mental condition who are in the custody or temporary custody of the Commissioner of Mental Health and who receive treatment in an acute inpatient hospital unit, intensive residential recovery facility, or a secure residential recovery facility shall be afforded ~~at least the same rights and protections as those individuals cared for at the former Vermont State Hospital~~ that reflect evolving medical practice and evidence-based best practices that are aimed at reducing the use of coercion.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

( Committee Vote: 10-1-0)

**H. 269**

An act relating to the transportation and disposal of excavated development soils legally categorized as solid waste

**Rep. Ellis of Waterbury**, for the Committee on **Natural Resources & Energy**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. LEGISLATIVE FINDINGS

The General Assembly finds and declares that:

(1) polycyclic aromatic hydrocarbons (PAHs), arsenic, lead, and certain other heavy metals may be considered hazardous materials under State law;

(2) PAHs, arsenic, lead, and other heavy metals frequently are present in the environment as a result of atmospheric deposition of exhaust products from incomplete combustion of hydrocarbons, including oil, gasoline, coal, wood, and solid waste;

(3) arsenic, lead, and other heavy metals can be present as naturally occurring elements in soils;

(4) soils on properties within downtowns or village centers often contain PAHs, arsenic, lead, and other heavy metal at levels that exceed the Vermont soil screening standards even though there is no identifiable, site-specific source of the PAHs, arsenic, lead, or other heavy metals contamination on the property;

(5) presence of PAHs, arsenic, lead, or other heavy metals due to atmospheric deposition or natural occurrence can complicate the development of properties in downtowns and village centers; and

(6) to facilitate development in downtowns and village centers, while also arranging for the proper disposition of contaminated soil, a process should be established to allow the transfer of soil containing PAHs, arsenic, lead, or other heavy metals to receiving sites that meet criteria.

Sec. 2. 10 V.S.A. § 6602 is amended to read:

§ 6602. DEFINITIONS

As used in this chapter:

\* \* \*

(37) “Background concentration level” means the concentration level of PAHs, arsenic, and lead in soils, expressed in units of mass per volume, that is attributable to site contamination caused by atmospheric deposition or is naturally occurring and determined to be representative of statewide or regional concentrations through a scientifically valid means as determined by the Secretary.

(38) “Commencement of construction” means the construction of the first improvement on the land or to any structure or facility located on the land. “Commencement of construction” shall not mean soil testing or other work necessary for assessment of the environmental conditions of the land and subsurface of the land.

(39) “Development soils” means unconsolidated mineral and organic matter, otherwise legally categorized as solid waste, that contains PAHs, arsenic, or lead concentration levels that qualify for categorization as solid waste.

(40) “Development soils concentration level” means those levels of PAHs, arsenic, or lead expressed in units of mass per volume, contained in the development soils.

(41) “Downtown development district” shall have the meaning stated in 24 V.S.A. § 2791(4).

(42) “Existing settlement” shall have the same meaning stated in

subdivision 6001(16) of this title.

(43) “Growth center” shall have the meaning stated in 4 V.S.A. § 2793c.

(44) “Neighborhood development area” shall have the meaning stated in 24 V.S.A. § 2793e.

(45) “Origin site” means a location where development soils originate.

(46) “PAHs” means polycyclic aromatic hydrocarbons.

(47) “Receiving site” means a location where development soils are deposited.

(48) “Receiving site concentration level” means those levels of PAHs, arsenic, or lead, expressed in units of mass per volume, that exist in soils at a receiving site.

(49) “TIF district” means a tax increment financing district created by a municipality pursuant to 24 V.S.A. § 1892.

(50) “Village center” shall have the meaning stated in 24 V.S.A. § 2791(10).

Sec. 3. 10 V.S.A. § 6604c is added to read:

§ 6604c. MANAGEMENT OF DEVELOPMENT SOILS

(a)(1) The Secretary shall not require a person that manages development soils in a manner that meets the requirements of this section to take corrective action procedures pursuant to section 6615b or 6648 of this title or to obtain a solid waste certification under this chapter for the management, transport, or receipt of development soils, provided that:

(A) the soils are removed from an origin site located in a designated downtown development district, growth center, neighborhood development area, existing settlement, TIF district, or village center;

(B) the origin site or the receiving site of the development soils is not:

(i) the subject of a planned or ongoing removal action under the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.; or

(ii) listed or proposed for listing as a CERCLA site under 42 U.S.C. § 9605; and

(C) the investigation and management of development soils occur under subsection (b) of this section.

(2) This section shall apply to the management of development soils only until the Secretary adopts rules under this chapter for the management of development soils, provided that those rules satisfy all of the requirements of subsection (d) of this section.

(b) Development soils cleanup requirements.

(1) The development of plans and work performed pursuant to plans under this section shall be supervised and certified by an environmental professional, as that term is defined in 40 C.F.R. § 312.10.

(2) Prior to the commencement of construction activities, a person applying to manage development soils under this subsection shall provide the Secretary with:

(A) investigation workplans for the origin site and the proposed receiving site that shall be deemed complete so long as it includes:

(i) for the origin site, representative sampling and analysis of the development soil proposed for management under this section for PAHs, arsenic, and lead;

(ii) for the receiving site, representative in site surface soil sampling and analysis for PAHs, arsenic, and lead;

(iii) at least one synthetic precipitation leachate procedure analysis representative of the development soil to determine likelihood of adverse impacts to groundwater; and

(iv) establishment of approximate seasonal depth to groundwater and underlying soil stratigraphy at the receiving site.

(B) a report of the results of any approved investigation workplan;

(C) the management plans for the origin site and proposed receiving site;

(i) the management plans shall demonstrate that the management of the development soils will not present an unreasonable threat to groundwater, surface water, human health, or the environment; and

(ii) the management plan for a receiving site shall include a description of the siting, construction, operation, and closure of the receiving site; and

(D) documentation that the development soils concentration levels are approximately equivalent to or less than the receiving site concentration levels for the same potential contaminants.

(3) The Secretary shall make a final determination as to whether any

complete investigation workplan or management plan submitted under this subsection satisfies the applicable requirements within 30 days of receipt of the respective plan. If the Secretary does not make a final determination within 30 days of receipt of the respective plan, the plan shall be deemed approved.

(4) The Secretary shall make a final determination as to whether the developer has satisfied all requirements of the management plan within 30 days of receipt of the developer's request for such a determination. If the Secretary fails to make a final determination within 30 days of receipt of the request for such a determination, the request shall be deemed approved.

(c) Notwithstanding the requirement under subdivision (b)(2) of this section for submission of required materials prior to the commencement of construction, development soils stockpiled on municipal properties as of the effective date of this section shall be eligible for management under the provisions of this section, unless the Secretary determines that the stockpiled soils present an unreasonable threat to groundwater, surface water, human health, or the environment.

(d) On or before July 1, 2016, the Secretary shall:

(1) adopt by rule statewide or regional background concentration levels for PAHs, arsenic, and lead;

(2) adopt or amend rules to specify that development soils with concentration levels equal to or lower than the background concentration levels established by the Secretary shall not be defined or required to be treated as solid waste;

(3) adopt by rule criteria for determining site-specific maximum development soil concentration levels for PAHs, arsenic, and lead;

(4) adopt by rule procedures, in addition to disposal at a certified waste facility, for the management or disposal of development soils which have concentration levels that are otherwise categorized as solid waste but are below the site-specific maximum development soils concentration levels; and

(5) adopt by rule a process to preapprove sites to receive development soils from multiple developments.

(e) At any time, the Secretary may adopt by rule background and maximum concentration levels of other potentially hazardous material in soils such that the development soils containing these other materials would be categorized and treated according to the rules established by the Secretary pursuant to subsection (d) of this section.

(f) A tract of land shall not be considered development under subdivision 6001(3)(A) of this title solely due to its use as a receiving site under this

section.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

( **Committee Vote: 9-0-2**)

**H. 304**

An act relating to making miscellaneous amendments to Vermont's retirement laws

**Rep. Devereux of Mount Holly**, for the Committee on **Government Operations**, recommends the bill be amended as follows:

First: In Sec. 3, 3 V.S.A. § 477a, in subsection (a), by striking out the word "VISTA" where it twice appears after the word "AmeriCorps."

Second: In Sec. 7, 16 V.S.A. § 1944, in subdivision (b)(8), by striking out the word "VISTA" where it twice appears after the word "AmeriCorps."

Third: In Sec. 8, 24 V.S.A. § 5054a(b), by striking out the word "VISTA" where it twice appears after the word "AmeriCorps."

( **Committee Vote: 10-0-1**)

**H. 306**

An act relating to unemployment compensation

**Rep. O'Sullivan of Burlington**, for the Committee on **Commerce & Economic Development**, recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

(a) An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response to the specific allegation in the complaint filed by the employee or the Department with the Department within 10 calendar days of receipt.

(b) The Commissioner shall investigate the complaint, and may examine the employer's records, enter and inspect the employer's business premises, question such employees, subpoena witnesses, and compel the production of books, papers, correspondence, memoranda, and other records necessary and

material to investigate the complaint. If a person fails to comply with any lawfully issued subpoena, or a witness refuses to testify to any matter on which he or she may be lawfully interrogated, the Commissioner may seek an order from the Civil Division of the Superior Court compelling testimony or compliance with the subpoena.

~~(c)(1) If after the investigation wages are found to be due, the Commissioner shall attempt to settle the matter between the employer and employee. If the attempt fails, Following the investigation of the complaint:~~

(A) If the Commissioner determines that wages are due the employee, the Commissioner shall attempt to settle the matter between the employer and the employee before issuing a written determination. If the Commissioner is unable to settle the matter, the Commissioner shall issue a written determination and order for collection, stating that wages are due, which shall specify the facts and the conclusions upon which the determination is based. The Department shall collect from the employer the amounts due and remit them to the employee.

(B) If the Commissioner determines that wages are not due the employee, the Commissioner shall issue a written determination stating that wages are not due, which shall specify the facts and conclusions upon which the determination is based.

(2) Notice of the a determination and the order for collection to the employer shall be provided to all interested parties by certified mail or service. If the Commissioner has determined that wages are due the employee, the Commissioner shall issue an order for collection following the resolution of any appeal from the determination filed pursuant to subsection (e) of this section or the expiration of the appeal period set forth in that subsection.

(d) If the Commissioner determines that the unpaid wages were willfully withheld by the employer, the order for collection may provide that the employer is liable to pay an additional amount not to exceed twice the amount of unpaid wages, one-half of which will be remitted to the employee and one-half of which shall be retained by the Commissioner to offset administrative and collection costs.

(e) Within 30 days after the date of the ~~collection order~~ determination, the employer or employee may file an appeal from the determination to a departmental administrative law judge. The appeal shall, after notice to the employer and employee, be heard by the administrative law judge within a reasonable time. The administrative law judge shall review the complaint de novo, and after a hearing, the determination ~~and order for collection~~ shall be sustained, modified, or reversed by the administrative law judge. Prompt

notice in writing of the decision of the administrative law judge and the reasons for it shall be given to all interested parties.

\* \* \*

Sec. 2. 21 V.S.A. § 1330 is amended to read:

§ 1330. ASSESSMENT PROVIDED

(a) When any employer fails to pay any contributions or payments required under this chapter, ~~the commissioner~~ Commissioner shall make an assessment of contributions against ~~such~~ the employer together with interest and penalty thereon. After making the assessment, ~~due notice shall be given thereof, by ordinary or certified mail, to the employer~~ the Commissioner shall provide the employer with notice of the assessment by ordinary or certified mail and the assessment shall be final unless the employer petitions for a hearing on ~~such~~ the assessment within the time ~~hereinafter~~ specified by section 1331 of this chapter.

(b) If the employer fails to comply with the reporting requirements of section 1314a or 1322 of this chapter, or if the employer files an incorrect or insufficient report pursuant to section 1314a or 1322 of this chapter and fails to file a corrected or sufficient report within 30 days after the Commissioner provides written notice to the employer to correct or supplement the report, the Commissioner shall, on the basis of the information that is available to the Commissioner, make an assessment of the amount of the contribution due from the employer together with interest and penalty.

Sec. 3. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

\* \* \*

(5) For any week with respect to which the individual is receiving or has received remuneration in the form of:

(A) ~~wages~~ Wages in lieu of notice; ~~or~~.

(B) ~~vacation~~ Vacation pay ~~or holiday pay~~.

Vacation pay due at time of separation in accordance with a work agreement (whether a formal contract or established custom) shall be allocated to the period immediately following separation, or if due subsequent to separation, it shall be allocated to the week in which due or the next following week, and that number of weeks immediately following as required to equal the total of the weeks of pay due. Any mutual agreement between the

employer and employee(s) (whether or not payment is made), allocating such remuneration to any period during which work is performed, within four weeks prior to the date of separation, shall not be valid for the purpose of determining unemployment compensation entitlement or waiting period credit purposes and such payment shall be allocated to the period immediately following separation.

There shall be no disqualification amount for any holiday. As used in this section, "holiday" means a legal holiday pursuant to 1 V.S.A. § 317.

\* \* \*

(F) ~~{Repealed.}~~ Sick pay.

(G) Bereavement pay.

(H) Wages or remuneration for jury duty that are paid by the individual's employer.

\* \* \*

Sec. 4. 21 V.S.A. § 1347 is amended to read:

#### § 1347. NONDISCLOSURE OR MISREPRESENTATION

(a) Any person who fails, without good cause, to make reasonable effort to secure suitable work when directed to do so by the employment office or the Commissioner and has received any amount as benefits under this chapter with respect to weeks for which the person is determined to be ineligible for such failure, and any person who by nondisclosure or misrepresentation by him or her, or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any amount as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his or her case or while he or she was disqualified from receiving benefits, shall be liable for such amount. Notice of determination in such cases shall specify that the person is liable to repay to the Fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which such benefits were paid. The determination shall be made within ~~three~~ six years from the date of such overpayment.

(b) Any person who receives remuneration described in subdivision 1344(a)(5)(A), ~~(B), (C), (D), (E), or (F)~~ of this title which is allocable in whole or in part to prior weeks during which he or she received any amounts as benefits under this chapter shall be liable for all ~~such~~ amounts of benefits or those portions of ~~such~~ the amounts equal to the portions of ~~such~~ the remuneration properly allocable to the weeks in question. Notice of determination in such cases shall specify that the person is liable to repay to

the Fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which ~~such~~ the benefits were paid. The determination shall be made within ~~three~~ six years from the date of such overpayment or within one year from the date of receipt of the remuneration, whichever period is longer.

\* \* \*

Sec. 5. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

\* \* \*

(c)(1) Financing benefits paid to employees of nonprofit organizations. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. ~~For the purposes of~~ As used in this subsection, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of the United States which is exempt from income tax under Section 501(a) of such code.

(2) Liability for contributions and election of reimbursement. Any nonprofit organization which, pursuant to subdivision 1301(5)(B)(i) of this title, is, or becomes, subject to this chapter on or after January 1, 1972 shall pay contributions under the provisions of this section, unless it elects, in accordance with this subsection, to pay to the Commissioner, for the Unemployment Fund, an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

\* \* \*

(C) Any nonprofit organization which makes an election in accordance with subdivisions (c)(2)(A) and (B) of this section will continue to be liable for payments in lieu of contributions until ~~it files its election is terminated by the Commissioner.~~ An employer shall file with the Commissioner a written notice ~~terminating its election~~ requesting that its election be terminated not later than 30 days prior to the beginning of the calendar year for which such termination shall ~~would~~ first be effective. The Commissioner, in accordance with rules adopted by the Board, shall determine whether the employer is eligible to terminate its election based on the employer's anticipated contributions to the Unemployment Trust Fund and any additional liability expected to be incurred by the Fund as a result of the proposed termination. The Commissioner's determinations shall be subject to

reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

\* \* \*

(e) Any municipality, any State institution of higher education, and any political or governmental subdivisions or instrumentalities of the State shall pay contributions unless it elects to pay to the Commissioner for the Unemployment ~~Compensation~~ Trust Fund, an amount equal to the amount of benefits paid, including the full amount of extended benefits paid, attributable to service by individuals in the employ of these entities. Subsections (a) and (b) and subdivisions (3)(C) through (3)(F), inclusive, and subdivisions (4) through (6), inclusive, of subsection (c) of this section as they apply to nonprofit organizations shall also apply to the entities designated in this subsection, except that these entities shall be liable for all benefits paid, including the full amount of extended benefits paid, attributable to service in the employ of these entities.

\* \* \*

(3) Any entity designated in this subsection which makes an election in accordance with subdivisions (1) and (2) of this subsection will continue to be liable for payments in lieu of contributions until ~~it files with its election is terminated by the Commissioner.~~ The entity shall file with the Commissioner a written notice ~~terminating its election~~ requesting that its election be terminated not later than 30 days prior to the beginning of the calendar year for which the termination shall would first be effective. The Commissioner, in accordance with rules adopted by the Board, shall determine whether the entity is eligible to terminate its election based on the entity's anticipated contributions to the Unemployment Trust Fund and any additional liability expected to be incurred by the Fund as a result of the proposed termination. The Commissioner's determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

\* \* \*

## Sec. 6. STUDY; REPORT

The Commissioner of Labor shall study whether reimbursable employers pursuant to 21 V.S.A. § 1321(c) should be required to procure and maintain a bond, escrow account, or other surety to fund unemployment compensation benefit liability in the event the employer dissolves or ceases to operate while liability still exists. The Commissioner shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance regarding the findings of the study and any recommendations for

statutory changes on or before November 15, 2015.

Sec. 7. 21 V.S.A. § 1358 is amended to read:

§ 1358. UNEMPLOYMENT ~~COMPENSATION~~ TRUST FUND;  
ESTABLISHMENT AND CONTROL

There is hereby established as a special fund, to be kept separate and apart from all other public moneys or funds of this ~~state~~ State, an ~~unemployment compensation fund~~ Unemployment Trust Fund, which shall be administered by the ~~commissioner~~ Commissioner exclusively for the purposes of this chapter. This ~~fund~~ Fund shall consist of (1) all contributions collected under this chapter; (2) interest earned upon any ~~moneys~~ monies in the ~~fund~~ Fund; (3) any property or securities acquired through the use of ~~moneys~~ monies belonging to the ~~fund~~ Fund; (4) all earnings of such property or securities; (5) all money credited to this ~~state's~~ State's account in the ~~unemployment trust fund~~ federal Unemployment Trust Fund pursuant to ~~section 903 of~~ the Social Security Act, 42 U.S.C. § 1103 as amended; and (6) all other ~~moneys~~ monies received for the ~~fund~~ Fund from any other source. All ~~moneys~~ monies in the ~~fund~~ Fund shall be mingled and undivided.

Sec. 8. STATUTORY REVISION

The Legislative Council, in its statutory revision capacity pursuant to 2 V.S.A. § 424, is authorized to correct the name of the Unemployment Trust Fund in the Vermont Statutes Annotated as necessary to reflect the provisions of Sec. 7 of this act (amending 21 V.S.A. § 1358). Such changes may also be made when new legislation is proposed or when there is a republication of a volume of the Vermont Statutes Annotated.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2015.

( **Committee Vote: 11-0-0** )

**Favorable**

**H. 128**

An act relating to the use of results-based accountability common language in Vermont law

**Rep. Evans of Essex**, for the Committee on **Government Operations**, recommends the bill ought to pass.

( **Committee Vote: 10-0-1** )

## **Consent Calendar**

### **Concurrent Resolutions for Adoption Under Joint Rule 16a**

The following concurrent resolutions have been introduced for approval by the Senate and House and will be adopted automatically unless a Senator or Representative requests floor consideration before today's adjournment. Requests for floor consideration in either chamber should be communicated to the Secretary's office and/or the House Clerk's office, respectively. For text of resolutions, see Addendum to House Calendar and Senate Calendar of March 12, 2015.

#### **H.C.R. 60**

House concurrent resolution honoring John P. Dumville for his 36 years of exemplary service as Vermont's State Owned Historic Sites Section Chief

#### **H.C.R. 61**

House concurrent resolution honoring former representative and outgoing Sergeant at Arms Francis K. Brooks of Montpelier for his dedicated public service

#### **H.C.R. 62**

House concurrent resolution designating March 12, 2015, as Vermont Writes Day

#### **H.C.R. 63**

House concurrent resolution in memory of former Representative Ronald K. Knapp

#### **H.C.R. 64**

House concurrent resolution honoring Marlboro College President Ellen McCulloch-Lovell for her outstanding academic leadership and contributions to Vermont and the nation

#### **H.C.R. 65**

House concurrent resolution congratulating the 2014 South Burlington High School Rebels Division I boys' soccer championship team

#### **H.C.R. 66**

House concurrent resolution congratulating the South Burlington High School Rebels 2014 Division I boys' track and field championship team

#### **H.C.R. 67**

House concurrent resolution congratulating the 2014 South Burlington High School Rebels State championship girls' lacrosse team

**S.C.R. 5**

Senate concurrent resolution congratulating Onion River Sports on its 40th anniversary

**S.C.R. 6**

Senate concurrent resolution congratulating the 2014 Montpelier High School Solons Ultimate State Open championship and Spirit Award team

**S.C.R. 7**

Senate concurrent resolution congratulating the East Montpelier Fire Department on its 50th anniversary

**S.C.R. 8**

Senate concurrent resolution congratulating True Colors Home Decorating in Montpelier on its 25th anniversary

**S.C.R. 9**

Senate concurrent resolution commemorating the 75th anniversary of the Montpelier Recreation Field

**S.C.R. 10**

Senate concurrent resolution honoring Vermont State Geologist and Geological Survey Director Laurence R. Becker

**S.C.R. 11**

Senate concurrent resolution congratulating Julia Hatch of Northfield on her winning the National Rifle Association's 2014 Daniel Morgan Trophy

**S.C.R. 12**

Senate concurrent resolution congratulating the 2013–2014 Norwich University multiple national championship women's rugby team

**Public Hearings**

March 17, 2015 - Room 11 - 5:30-7:30 pm - Consolidation of Call Centers - House and Senate Committees on Government Operations

March 24, 2015 - Room 11 - 6:00-8:00 pm - Renewable Energy Siting - House and Senate Committees on Natural Resources and Energy