

House Calendar

Tuesday, April 12, 2016

99th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 A.M.

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Action Postponed Until April 12, 2016

Favorable with Amendment

H. 870

An act relating to telecommunications.

(Rep. Carr of Brandon will speak for the Committee on **Commerce & Economic Development**.)

Rep. Wood of Waterbury, for the Committee on **Corrections & Institutions**, recommends the bill ought to pass when amended as follows:

By striking out Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. FY 2017 CAPITAL APPROPRIATION; CONNECTIVITY
INITIATIVE

The sum of \$750,000.00 is appropriated to the Connectivity Initiative, established in 30 V.S.A. § 7515b, from the FY17 Capital Budget Adjustment Act.

(Committee Vote 10-0-1)

Rep. Keenan of St. Albans City, for the Committee on **Appropriations**, recommends the bill ought to pass when amended as recommended by the Committee on **Corrections & Institutions**.

(Committee Vote: 11-0-0)

Rep. Young of Glover, for the Committee on **Ways & Means**, recommends the bill ought to pass when amended as recommended by the Committee on **Corrections & Institutions** and when further amended as follows:

First: By striking out Sec. 4 (capital appropriation for Connectivity Initiative) in its entirety

Second: In Sec. 5, 30 V.S.A. § 7523, in subsection (b), by striking out “2020” and inserting in lieu thereof “2021”

Third: By striking out Sec. 10 in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. PROPOSAL; SCHOOL CONNECTIVITY GRANT PROGRAM

On or before December 1, 2016, the Secretary of Education and the Director of Telecommunications and Connectivity shall propose to the General Assembly in the form of a draft bill a school connectivity grant program designed to provide competitive grants to public schools for capital costs associated with upgrading the Internet connection to a public school or purchasing hardware for infrastructure for internal Internet connections. The goal of the program is to ensure that the maximum Internet service available to the school is accessible by all personnel and students on school grounds, consistent with and supportive of educational policies and objectives. Proposed criteria shall prioritize rural communities having a percentage of households categorized as low-income that is higher than the State average, and shall seek to maximize the availability of federal matching funds.

Fourth: By adding a new Sec. 11 and a readers' assistance to read as follows:

* * * Miscellaneous Provisions; Telecommunications

Grant Programs * * *

Sec. 11. RECOVERY AND REPURPOSING OF TELECOMMUNICATIONS GRANT FUNDS

To the extent State funds are recovered by the Department of Public Service, as the successor in interest to the Vermont Telecommunications Authority (VTA), as the result of a grant recipient's failure to comply with the terms of a grant agreement entered into with the VTA, such public monies shall be deposited in the Connectivity Fund.

Fifth: By adding a new Sec. 12 to read as follows:

Sec. 12. HIGH-COST PROGRAM; PUBLIC SERVICE BOARD; DEADLINE

The Public Service Board shall issue a procedures order for implementation of the High-Cost Program established under 30 V.S.A. § 7515 not later than September 1, 2016. If the Board fails to do so, the Board shall provide a report to the General Assembly and the Governor detailing reasons for failing to comply with this mandate.

and by renumbering all sections to be numerically correct

(Committee Vote: 7-4-0)

Amendment to be offered by Reps. Hooper of Montpelier, and Keenan of St. Albans City to H. 870

That the bill be amended in Sec. 3, 30 V.S.A. § 7515b, subsection (e), regarding the Connectivity Initiative, by adding subdivision (10) to read as follows:

(10) a telecommunications service provider's performance with respect to the terms of a publicly-financed grant or loan awarded by a federal or State entity for the expansion of broadband or mobile telecommunications service in Vermont.

Amendment to be offered by Rep. Masland of Thetford to H. 870

That the bill be amended by adding Sec. 10a and a reader assistance to read as follows:

* * * Communications Union Districts; Budget; Hearing;
Date Changes * * *

Sec. 10a. 30 V.S.A. § 3075 is amended to read:

§ 3075. BUDGET

(a) Annually, ~~not later than September 15~~ on or before October 21, the board shall approve and cause to be distributed to the legislative body of each district member for review and comment an annual report of its activities, together with a financial statement, a proposed district budget for the next fiscal year, and a forecast presenting anticipated year-end results. The proposed budget shall include reasonably detailed estimates of:

- (1) deficits and surpluses from prior fiscal years;
- (2) anticipated expenditures for the administration of the district;
- (3) anticipated expenditures for the operation and maintenance of any district communications plant;
- (4) payments due on obligations, long-term contracts, leases, and financing agreements;
- (5) payments due to any sinking funds for the retirement of district obligations;
- (6) payments due to any capital or financing reserve funds;
- (7) anticipated revenues from all sources; and
- (8) such other estimates as the board deems necessary to accomplish its purpose.

(b) Coincident with a regular meeting thereof, the board shall hold a public hearing ~~not later than November 1~~ on or before November 15 of each year to receive comments from the legislative bodies of district members and hear all other interested persons regarding the proposed budget. Notice of such hearing shall be given to the legislative bodies of district members at least ~~30 days~~ 15 days prior to such hearing. The board shall give consideration to all comments received and make such changes to the proposed budget as it deems advisable.

(c) Annually, ~~not later than December 1~~ on or before December 15, the board shall adopt the budget and appropriate the sums it deems necessary to meet its obligations and operate and carry out the district's functions for the next ensuing fiscal year.

(d) Actions or resolutions of the board for the annual appropriations of any year shall not cease to be operative at the end of the fiscal year for which they were adopted. Appropriations made by the board for the various estimates of the budget shall be expended only for such estimates, but by majority vote of the board the budget may be amended from time to time to transfer funds between or among such estimates. Any balance left or unencumbered in any such budget estimate, or the amount of any deficit at the end of the fiscal year, shall be included in and paid out of the operating budget and appropriations in the next fiscal year. All such budget amendments shall be reported by the district treasurer to the legislative bodies of each district member within 14 days of the end of the fiscal year.

(e) Financial statements and audit results shall be delivered to the legislative bodies of each district member within 10 days of delivery to the board.

Amendment to be offered by Rep. Ancel of Calais to H. 870

First: In Sec. 1, 30 V.S.A. § 248a, in subdivision (c)(3)(A), concerning collocation assessments, by striking out the term "a three-mile radius of the site of" and by inserting in lieu thereof "the area to be served by"

Second: In Sec. 1, 30 V.S.A. § 248a, after the ellipses following subsection (c) and prior to subsection (h), by adding the following:

(e) Notice. No less than ~~45~~ 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application

concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the ~~45-day~~ 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the collocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's collocation assessment and to conduct further independent analysis, as necessary. Within 45 days of receiving the applicant's notice and collocation assessment, the Department shall report its own preliminary findings and recommendations regarding collocation to the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

* * *

Amendment to be offered by Reps. Marcotte of Coventry, Higley of Lowell, Keenan of St. Albans City and Young of Glover to H. 870

That the bill be amended by adding Sec. 10b and a reader assistance to read as follows:

* * * E-911; Call-taking Services; Study * * *

Sec. 10b. E-911; CALL-TAKING SERVICES; STUDY

(a) A working group shall be formed to study and make recommendations regarding the most efficient, reliable, and cost effective means for providing

statewide call-taking operations for Vermont's 911 system. Among other things, the group shall make findings related to the financing, operations, and geographical location of 911 call-taking services. In addition, the group's findings shall include a description of the number and nature of calls received, and an evaluation of current and potential State and local partnerships with respect to the provision of such services. The group shall take into consideration the "Enhanced 9-1-1 Board Operational and Organizational Report," dated September 4, 2015. The group's recommendations shall strive to achieve the best possible outcome in terms of ensuring the health and safety of Vermonters and Vermont communities.

(b) Members of the working group shall include a representative from each of the following entities: the Enhanced 911 Board; the Department of Public Safety; the Vermont State Employees Association; the Vermont League of Cities and Towns; the Vermont State Firefighters' Association; the Vermont Ambulance Association; the Vermont Association of Chiefs of Police; and the Vermont Sheriffs' Association.

(c) The representative from the E-911 Board shall convene the first meeting of the working group, at which the group shall elect a Chair and Vice Chair from among its members. The group shall meet as needed, and shall receive administrative and staffing support from the Department of Public Safety, and may request relevant financial information from the Joint Fiscal Office.

(d) On or before January 15, 2017, the group shall report its findings and recommendations to the House Committees on Commerce and Economic Development, on Government Operations, on Appropriations, and on Ways and Means and to the Senate Committees on Finance, on Government Operations, on Appropriations, and on Economic Development, Housing, and General Affairs, and to the Governor.

(e) The Department of Public Safety shall continue to provide 911 call-taking services unless otherwise directed by legislative enactment.

ACTION CALENDAR

Favorable with Amendment

J.R.H. 26

Joint resolution relating to the amendment of the federal Toxic Substances Control Act and its preemption provisions

Rep. Deen of Westminster, 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:

Joint resolution relating to the amendment of the federal Toxic Substances Control Act and its preemption provisions

Whereas, more than 84,000 chemicals are registered with the Environmental Protection Agency (EPA) for use in the United States, and each year approximately 1,000 chemicals are added to the list, and

Whereas, more than 90 percent of chemicals in commercial use have not been fully tested for potential impacts on human health or the environment, and

Whereas, since Congress's passage in 1976 of the Toxic Substances Control Act, Pub.L. 94-469 (TSCA), approximately 200 chemicals have been fully tested since passage, just five chemicals have been banned or restricted, and no chemicals have been banned in more than 20 years, and

Whereas, biomonitoring studies show that a wide range of chemicals is bioaccumulating in the bodies of Vermonters, and

Whereas, scientific studies demonstrate clear links between certain chemicals and adverse health effects, and

Whereas, the threat of adverse health effects is especially high for certain vulnerable populations such as children or pregnant women, and for these groups, safe exposure levels are much lower, and

Whereas, annually, more than \$2 billion are spent on the medical costs associated with detecting cancer, asthma, and neurobehavioral disorders directly associated with toxic chemicals, and

Whereas, the recent discovery that the chemical perfluorooctanoic acid (PFOA) is contaminating drinking water sources in multiple Vermont locations illustrates the need for legal authority that more effectively regulates toxic chemicals, and

Whereas, the use of PFOA is not regulated and significant health risks to Vermonters exist as a result of pollution from factories closed more than a decade ago, and

Whereas, Vermonters and most other Americans continue to be exposed to PFOA and other perfluorinated chemicals from other sources, including through exposure from products containing the chemicals imported into the United States, and

Whereas, Congress is considering Toxic Substances Control Act (TSCA) reform in two pieces of pending legislation, S.697, The Frank R. Lautenberg Chemical Safety for the 21st Century Act, and H.R. 2576, The TSCA Modernization Act of 2015, and

Whereas, there is broad consensus across industry, environmental, health, science, and government parties that comprehensive reform of the TSCA is necessary to help better ensure consistent, effective, and scientifically grounded regulation of chemicals, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly urges Congress to pass comprehensive TSCA reform legislation to strengthen and clarify the U.S. Environmental Protection Agency's (EPA) regulation of toxic chemicals, and be it further

Resolved: That the amended TSCA should include a safety standard that identifies and protects vulnerable populations, including potentially exposed workers, children, pregnant women, and those with compromised immune systems, and be it further

Resolved: That before new chemicals are introduced into commerce, the TSCA should be amended to include a requirement that industry include sufficient test data, when it submits premanufacture notices, in order that the EPA can determine if the chemicals meet the safety standard, and be it further

Resolved: That an amended TSCA provide clear timelines for starting and completing safety assessments on chemicals that are proposed for introduction into commerce or already in use in commerce, and for withdrawing from commerce chemicals found to be unsafe, and be it further

Resolved: That the EPA's current authority to require notice of potential new uses of perfluorinated chemicals and other chemicals of concern in products should not be altered or weakened in any way, and be it further

Resolved: That the EPA must receive the necessary financial resources and statutory mandate to initiate a reasonable number of reviews each year on existing chemicals of highest concern, including those already listed on the TSCA Work Plan for Chemical Assessment, and be it further

Resolved: That the states should not be preempted from taking action on a specific chemical until and only if the EPA has taken final action to regulate that chemical and that the scope of preemption should not be broader than the scope of the EPA's action, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to EPA Administrator Gina McCarthy and the Vermont Congressional Delegation.

(Committee Vote: 6-0-3)

Favorable

S. 190

An act relating to maintaining prescription drugs outside the original prescription container

Rep. Troiano of Stannard, for the Committee on **Human Services**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 10-0-1)

(For text see Senate Journal February 26, 2016)

NOTICE CALENDAR

Favorable with Amendment

S. 241

An act relating to regulation of marijuana

Rep. Grad of Moretown, for the Committee on **Judiciary**, recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Prevention * * *

Sec. 1. MARIJUANA YOUTH EDUCATION AND PREVENTION

(a)(1) Relying on lessons learned from tobacco and alcohol prevention efforts, the Department of Health, in collaboration with the Department of Public Safety, the Agency of Education, and the Governor's Highway Safety Program, shall develop and administer an education and prevention program focused on use of marijuana by youths under 25 years of age. In so doing, the Department shall consider at least the following:

(A) Community- and school-based youth and family-focused prevention initiatives that strive to:

(i) expand the number of school-based grants for substance abuse services to enable each supervisory union to develop and implement a plan for comprehensive substance abuse prevention education in a flexible manner that ensures the needs of individual communities are addressed;

(ii) improve the Screening, Brief Intervention and Referral to Treatment (SBIRT) practice model for professionals serving youths in schools and other settings; and

(iii) expand family education programs.

(B) An informational and countermarketing campaign using a public website, printed materials, mass and social media, and advertisements for the purpose of preventing underage marijuana use.

(C) Education for parents and health care providers to encourage screening for substance use disorders and other related risks.

(D) Expansion of the use of SBIRT among the State's pediatric practices and school-based health centers.

(E) Strategies specific to youths who have been identified by the Youth Risk Behavior Survey as having an increased risk of substance abuse.

(2) On or before March 15, 2017, the Department shall adopt rules to implement the education and prevention program described in this subsection and implement the program on or before September 15, 2017.

(b) The Department shall include questions in its biannual Youth Risk Behavior Survey to monitor the use of marijuana by youths in Vermont and to understand the source of marijuana used by this population.

(c) Any data collected by the Department on the use of marijuana by youths shall be maintained and organized in a manner that enables the pursuit of future longitudinal studies.

Sec. 2. FISCAL YEAR 2017 APPROPRIATION; EXECUTIVE BRANCH
POSITION AUTHORIZATION; DEPARTMENT OF HEALTH

(a) In fiscal year 2017, \$350,000.00 is appropriated to the Department of Health for the marijuana prevention, education, and countermarketing programs required by Sec. 1 of this act.

(b) One (1) Substance Abuse Program Manager is established as a new permanent classified position in the Department of Health in fiscal year 2017.

* * * Civil and Criminal Penalties for Marijuana * * *

Sec. 3. 18 V.S.A. § 4230(b) is amended to read:

(b) Selling or dispensing.

(1) A person knowingly and unlawfully selling marijuana or hashish shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing ~~one-half ounce or~~ more than one ounce of marijuana or ~~2.5~~ five grams or more of hashish shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana or 2.8 ounces of hashish shall be imprisoned not more than 15 years or fined not more than \$500,000.00, or both.

Sec. 4. REPEAL

18 V.S.A. § 4230c (marijuana possession by a person under 21 years of age; third or subsequent offense; crime) is repealed.

Sec. 5. 18 V.S.A. § 4230e is added to read:

§ 4230e. CHEMICAL EXTRACTION PROHIBITED

(a) No person shall manufacture concentrated marijuana or hemp by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.

* * * Impaired Driving * * *

Sec. 6. 23 V.S.A. § 1134 is amended to read:

§ 1134. MOTOR VEHICLE OPERATOR; CONSUMPTION OR POSSESSION OF ALCOHOL OR MARIJUANA

(a) A person shall not consume alcoholic beverages or marijuana while operating a motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) A person operating a motor vehicle on a public highway shall not possess any open container which contains alcoholic beverages or marijuana in the passenger area of the motor vehicle.

(c) As used in this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(d) A person who violates subsection (a) of this section shall be assessed a civil penalty of not more than \$500.00. A person who violates subsection (b)

of this section shall be assessed a civil penalty of not more than ~~\$25.00~~ \$50.00. A person adjudicated and assessed a civil penalty for an offense under subsection (a) of this section shall not be subject to a civil violation for the same actions under subsection (b) of this section.

Sec. 7. 23 V.S.A. § 1134a is amended to read:

§ 1134a. MOTOR VEHICLE PASSENGER; CONSUMPTION OR
POSSESSION OF ALCOHOL OR MARIJUANA

(a) Except as provided in subsection (c) of this section, a passenger in a motor vehicle shall not consume alcoholic beverages or marijuana or possess any open container which contains alcoholic beverages or marijuana in the passenger area of any motor vehicle on a public highway. As used in this section, “alcoholic beverages” shall have the same meaning as “intoxicating liquor” as defined in section 1200 of this title.

(b) As used in this section, “passenger area” shall mean the area designed to seat the operator and passengers while the motor vehicle is in operation and any area that is readily accessible to the operator or passengers while in their seating positions, including the glove compartment, unless the glove compartment is locked. In a motor vehicle that is not equipped with a trunk, the term shall exclude the area behind the last upright seat or any area not normally occupied by the operator or passengers.

(c) A person, other than the operator, may possess an open container which contains alcoholic beverages or marijuana in the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation or in the living quarters of a motor home or trailer coach.

(d) A person who violates this section shall be fined not more than \$25.00.

Sec. 8. 23 V.S.A. § 1201 is amended to read:

§ 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF
INTOXICATING LIQUOR OR OTHER SUBSTANCE; CRIMINAL
REFUSAL; ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

(a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:

(1) when the person’s alcohol concentration is:

(A) 0.08 or more; or

(B) 0.02 or more if the person is operating a school bus as defined in subdivision 4(34) of this title; or

(C) 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title; or

(D) 0.05 or more and the person has any detectable amount of delta-9 tetrahydrocannabinol in the person's blood; or

(2) when the person is under the influence of intoxicating liquor; or

(3) when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug; ~~or~~

~~(4) when the person's alcohol concentration is 0.04 or more if the person is operating a commercial motor vehicle as defined in subdivision 4103(4) of this title.~~

(b) A person who has previously been convicted of a violation of this section shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer had reasonable grounds to believe the person was in violation of subsection (a) of this section.

(c) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway and be involved in an accident or collision resulting in serious bodily injury or death to another and refuse a law enforcement officer's reasonable request under the circumstances for an evidentiary test where the officer has reasonable grounds to believe the person has any amount of alcohol in the system.

(d)(1) A person who is convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section when the person's alcohol concentration is proven to be 0.16 or more shall not, for three years from the date of the conviction for which the person's alcohol concentration is 0.16 or more, operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person's alcohol concentration is 0.02 or more. The prohibition imposed by this subsection shall be in addition to any other penalties imposed by law.

(2) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway when the person's alcohol concentration is 0.02 or more if the person has previously been convicted of a second or subsequent violation of subsection (a), (b), or (c) of this section within the preceding three years and the person's alcohol concentration for the second or subsequent violation was proven to be 0.16 or greater. A violation

of this subsection shall be considered a third or subsequent violation of this section and shall be subject to the penalties of subsection 1210(d) of this title.

(e) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this State shall not constitute a defense against any charge of violating this section.

(f) A person may not be convicted of more than one violation of subsection (a) of this section arising out of the same incident.

(g) For purposes of this section and section 1205 of this title, the defendant may assert as an affirmative defense that the person was not operating, attempting to operate, or in actual physical control of the vehicle because the person:

(1) had no intention of placing the vehicle in motion; and

(2) had not placed the vehicle in motion while under the influence.

(h) As used in subdivision (a)(3) of this section, “under the influence of a drug” means that a person’s ability to operate a motor vehicle safely is diminished or impaired in the slightest degree. This subsection shall not be construed to affect the meaning of the term “under the influence of intoxicating liquor.”

Sec. 9. 23 V.S.A. § 1202 is amended to read:

§ 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
ALCOHOL CONTENT

(a)(1) Implied consent. Every person who operates, attempts to operate, or is in actual physical control of any vehicle on a highway in this State is deemed to have given consent to an evidentiary test of that person’s breath for the purpose of determining the person’s alcohol concentration or the presence of other drug in the blood. The test shall be administered at the direction of a law enforcement officer.

(2)(A) Blood test. If A person is deemed to have given consent to the taking of an evidentiary sample of blood if:

(i) breath testing equipment is not reasonably available; or ~~if~~

(ii) the law enforcement officer has ~~reason~~ reasonable grounds to believe that the person:

(I) is unable to give a sufficient sample of breath for testing; or ~~if the law enforcement officer has reasonable grounds to believe that the person~~

(II) is under the influence of a drug other than alcohol; or

~~(III) the person is deemed to have given consent to the taking of an evidentiary sample of blood is under the influence of alcohol and a drug.~~

(B) If in the officer's opinion the person is incapable of decision or unconscious or dead, it is deemed that the person's consent is given and a sample of blood shall be taken.

(3) Evidentiary test. The evidentiary test shall be required of a person when a law enforcement officer has reasonable grounds to believe that the person was operating, attempting to operate, or in actual physical control of a vehicle in violation of section 1201 of this title.

(4) Fatal collision or incident resulting in serious bodily injury. The evidentiary test shall also be required if the person is the surviving operator of a motor vehicle involved in a fatal incident or collision or an incident or collision resulting in serious bodily injury and the law enforcement officer has reasonable grounds to believe that the person has any amount of alcohol or other drug in his or her system.

(b) If the person refuses to submit to an evidentiary test it shall not be given, except as provided in subsection (f) of this section, but the refusal may be introduced as evidence in a criminal proceeding.

(c) A person who is requested by a law enforcement officer to submit to an evidentiary test or tests has a right as herein limited to consult an attorney before deciding whether or not to submit to such a test or tests. The person must decide whether or not to submit to the evidentiary test or tests within a reasonable time and no later than 30 minutes from the time of the initial attempt to contact the attorney. The person must make a decision about whether or not to submit to the test or tests at the expiration of the 30 minutes regardless of whether a consultation took place.

(d) At the time a test is requested, the person shall be informed of the following statutory information:

(1) Vermont law authorizes a law enforcement officer to request a test to determine whether the person is under the influence of alcohol or other drug.

(2) If the officer's request is reasonable and testing is refused, the person's license or privilege to operate will be suspended for at least six months.

(3) If a test is taken and the results indicate that the person is under the influence of alcohol or other drug, the person will be subject to criminal charges and the person's license or privilege to operate will be suspended for at least 90 days.

(4) A person who is requested by a law enforcement officer to submit to an evidentiary test or tests has the limited right to consult an attorney before deciding whether or not to submit to such a test or tests. The person must decide whether or not to submit to the evidentiary test or tests within a reasonable time and no later than 30 minutes from the time of the initial attempt to contact the attorney regardless of whether a consultation took place. The person also has the right to have additional tests made by someone of the person's own choosing at the person's own expense. The person shall also be informed of the location of one or more facilities available for drawing blood.

(5) A person who is requested by a law enforcement officer to submit to an evidentiary test administered with an infrared breath-testing instrument may elect to have a second infrared test administered immediately after receiving the results of the first test.

(6) If the person refuses to take an evidentiary test, the refusal may be offered into evidence against the person at trial, whether or not a search warrant is sought. The person may be charged with the crime of criminal refusal if the person:

(A) has previously been convicted of a violation of section 1201 of this title; or

(B) is involved in an accident or collision resulting in serious bodily injury or death to another, in which case the court may issue a search warrant and order the person to submit to a blood test, the results of which may be offered into evidence against the person at trial.

(e) In any proceeding under this subchapter, a law enforcement officer's testimony that he or she is certified pursuant to ~~section~~ 20 V.S.A. § 2358 shall be prima facie evidence of that fact.

(f) If a person who has been involved in an accident or collision resulting in serious bodily injury or death to another refuses an evidentiary test, a law enforcement officer may apply for a search warrant pursuant to Rule 41 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an evidentiary test. If a blood sample is obtained by search warrant, the fact of the refusal may still be introduced in evidence, in addition to the results of the evidentiary test. Once a law enforcement official begins the application process for a search warrant, the law enforcement official is not obligated to discontinue the process even if the person later agrees to provide an evidentiary breath sample. The limitation created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding blood specimens shall not apply to search warrants authorized by this section.

(g) The Defender General shall provide statewide 24-hour coverage seven days a week to assure that adequate legal services are available to persons entitled to consult an attorney under this section.

Sec. 10. 23 V.S.A. § 1204 is amended to read:

§ 1204. PERMISSIVE INFERENCES

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating, attempting to operate or in actual physical control of a vehicle on a highway, the person's alcohol concentration or alcohol concentration and evidence of delta-9 tetrahydrocannabinol shall give rise to the following permissive inferences:

(1) If the person's alcohol concentration at that time was less than 0.08, such fact shall not give rise to any presumption or permissive inference that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(2) If the person's alcohol concentration at that time was 0.08 or more, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of subdivision 1201(a)(2) or (3) of this title.

(3) If the person's alcohol concentration at that time was 0.05 or more and the person had any detectable amount of delta-9 tetrahydrocannabinol in the person's blood, it shall be a permissive inference that the person was under the combined influence of alcohol and any other drug in violation of subdivision 1201(a)(3) of this title.

(4) If the person's alcohol concentration at any time within two hours of the alleged offense was 0.10 or more, it shall be a permissive inference that the person was under the influence of intoxicating liquor in violation of subdivision 1201(a)(2) or (3) of this title.

(b) The foregoing provisions shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor, nor shall they be construed as requiring that evidence of the amount of alcohol in the person's blood, breath, urine, or saliva must be presented.

Sec. 11. FISCAL YEAR 2017 APPROPRIATIONS; DEPARTMENT OF
PUBLIC SAFETY

(a) In fiscal year 2017, the following amounts are appropriated to the Department of Public Safety:

(1) \$124,000.00 for forensic laboratory equipment, supplies, training, testing, and contractual expenses.

(2) \$460,000.00 for the forensic laboratory capital construction renovations.

(3) \$63,500.00 for matching funds needed for Drug Recognition Expert training for the Department and other State law enforcement agencies in FY2017 after other available matching funds are applied.

(b) Funding in subdivision (a)(3) of this section shall be transferred to the Agency of Transportation's Governor's Highway Safety Program. The \$493,000.00 federal Governor's Highway Safety Program funds are appropriated in FY2017 to the Agency of Transportation.

Sec. 12. VERMONT GOVERNOR'S HIGHWAY SAFETY PROGRAM

(a) Impaired driving, operating a motor vehicle while under the influence of alcohol or drugs, is a significant concern for the General Assembly. While Vermont has made a meaningful effort to educate the public about the dangers of drinking alcohol and driving, the public seems to be less aware of the inherent risks of driving while under the influence of drugs, whether it is marijuana, a validly prescribed medication, or other drugs. It is the intent of the General Assembly that the State reframe the issue of drunk driving as impaired driving in an effort to address comprehensively the risks of such behavior through prevention, education, and enforcement.

(b)(1) The Agency of Transportation, through its Vermont Governor's Highway Safety Program, shall expand its public education and prevention campaign on drunk driving to impaired driving, which shall include drugged driving.

(2) The Agency shall report to the Senate and House Committees on Judiciary and on Transportation on or before January 15, 2017 regarding implementation of this section.

Sec. 13. TRAINING FOR LAW ENFORCEMENT; IMPAIRED DRIVING

(a) It is imperative that Vermont provide adequate training to both local and State law enforcement officers regarding the detection of impaired driving. Advanced Roadside Impaired Driving Enforcement (ARIDE) training provides instruction to officers at a level above Basic Standardized Sobriety Testing and proves helpful to an officer in determining when a Drug Recognition Expert (DRE) should be called. Vermont should endeavor to train as many law enforcement officers as possible in ARIDE. DREs receive a more advanced training in the detection of drugged driving and should be an available statewide resource for officers in the field.

(b) The Secretary of Transportation and the Commissioner of Public Safety shall work collaboratively to ensure that funding is available, either through the Governor's Highway Safety Program's administration of National Highway Traffic Safety Administration funds or other State funding sources, for training the number of officers necessary to provide sufficient statewide coverage for enforcement efforts to address impaired driving.

* * * Study Committees * * *

Sec. 14. MARIJUANA ADVISORY COMMISSION

(a) There is created a temporary Marijuana Advisory Commission for the purpose of providing guidance to the administration and the General Assembly on a number of issues relating to marijuana in consideration of the national trend toward reclassifying marijuana at the state level and the emergence of a regulated adult-use commercial market.

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

(1) four members of the public appointed by the Governor, one of whom shall have experience in public health;

(2) one member of the House of Representatives, appointed by the Speaker of the House;

(3) one member of the Senate, appointed by the Committee on Committees; and

(4) the Attorney General or designee.

(c) Legislative members shall serve only while in office.

(d) The Governor shall appoint one member for a one-year term, two members for two-year terms, and one member for a three-year term who shall serve as the Chair. The Governor may reappoint members or appoint new members when a vacancy occurs.

(e)(1) In developing proposals for consideration by the Administration and the General Assembly, the Commission shall:

(A) weigh the various options for the appropriate existing or new governmental agency or department to administer and enforce a marijuana regulatory system;

(B) propose a comprehensive regulatory structure that establishes controlled access to marijuana in a manner that, when compared to the current illegal marijuana market, increases public safety and reduces harm to public health;

(C) review the statutes and rules for the therapeutic marijuana program and dispensaries and determine whether additional amendments are necessary to maintain patient access to marijuana and viability of the dispensaries;

(D) examine the issue of marijuana concentrates and edible marijuana products and whether Vermont can allow and regulate their manufacture and sale safely and, if so, how;

(E) recommend strategies for addressing impaired driving as it relates to marijuana use;

(F) identify strategies for preventing youths from using marijuana; and

(G) any other issues the Commission finds important to the current policy discussions on marijuana.

(2) Any proposal shall take into consideration the shared state and federal concerns about marijuana reform and seek to provide better control of access and distribution of marijuana in a manner that prevents:

(A) distribution of marijuana to persons under 21 years of age;

(B) revenue from the sale of marijuana going to criminal enterprises;

(C) diversion of marijuana to states that do not permit possession of marijuana;

(D) State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or activity;

(E) violence and the use of firearms in the cultivation and distribution of marijuana;

(F) drugged driving and the exacerbation of any other adverse public health consequences of marijuana use;

(G) growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

(H) possession or use of marijuana on federal property.

(f) The Commission shall consult with other states and jurisdictions that have legalized marijuana and monitor them regarding implementation of regulation, policies, and strategies that have been successful and problems that have arisen.

(g) The Commission shall report to the Governor and the General Assembly, as needed, but shall issue its final recommendations on or before November 1, 2017.

(h) The Commission shall have the administrative, technical, and legal assistance of the Administration, including that of a Director of the Commission.

(i) The Administration shall call the first meeting of the Commission to occur on or before August 1, 2016. A majority of the membership shall constitute a quorum. The Commission shall cease meeting regularly after the issuance of its final report, but the Director shall continue in the position until July 1, 2018 and shall be available to meet with Administration officials and the General Assembly to discuss the Commission's recommendations. The Commission shall cease to exist on July 1, 2018.

(j) For attendance at meetings during adjournment of the General Assembly, legislative members of the Commission shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for as many meetings as the Chair deems necessary. Other members of the Commission who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010.

Sec. 15. FISCAL YEAR 2017 APPROPRIATION; EXECUTIVE BRANCH
POSITION AUTHORIZATION; AGENCY OF ADMINISTRATION

(a) In fiscal year 2017, \$150,000.00 is appropriated to the Agency of Administration for expenses and staffing of the Marijuana Advisory Commission established in Sec. 15 of this act.

(b) One (1) exempt Marijuana Advisory Commission Director is established in the Agency of Administration.

Sec. 16. WORKFORCE STUDY COMMITTEE

(a) Creation. There is created a Workforce Study Committee to examine the potential impacts of alcohol and drug use on the workplace.

(b) Membership. The Committee shall be composed of the following five members:

(1) the Secretary of Commerce and Community Development or designee;

(2) the Commissioner of Labor or designee;

(3) the Commissioner of Health or designee;

(4) one person representing the interests of employees appointed by the Governor; and

(5) one person representing the interests of employers appointed by the Governor.

(c) Powers and duties. The Committee shall study:

(1) whether Vermont's workers' compensation and unemployment insurance systems are adversely affected by alcohol and drug use and identify regulatory or legislative measures to mitigate any adverse impacts;

(2) the issue of alcohol and drugs in the workplace and determine whether Vermont's workplace drug testing laws should be amended to provide employers with broader authority to conduct drug testing, including by permitting drug testing based on a reasonable suspicion of drug use, or by authorizing employers to conduct postaccident, employerwide, or postrehabilitation follow-up testing of employees; and

(3) the impact of alcohol and drug use on workplace safety and identify regulatory or legislative measures to address adverse impacts and enhance workplace safety.

(d) Assistance. The Committee shall have the administrative, technical, and legal assistance of the Agency of Commerce and Community Development, the Department of Labor, and the Department of Health.

(e) Report. On or before December 1, 2016, the Committee shall submit a written report with findings and recommendations to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action.

(f) Meetings.

(1) The Secretary of Commerce or designee shall call the first meeting of the Committee to occur on or before September 15, 2016.

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

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

(4) The Committee shall cease to exist on December 31, 2016.

* * * Effective Date * * *

Sec. 17. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

(Committee vote: 6-5-0)

(For text see Senate Journal February 24, 25, 2016)

Senate Proposal of Amendment

H. 458

An act relating to automatic voter registration through motor vehicle driver's license applications

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

Sec. 1. 17 V.S.A. § 2145a is amended to read:

§ 2145a. REGISTRATIONS AT THE DEPARTMENT OF MOTOR
VEHICLES

(a) An application for, or renewal of, a motor vehicle driver's license or nondriver identification card shall serve as a simultaneous application to register to vote unless the applicant ~~declines to sign the voter registration portion of the application~~ checks the box on the application designating that he or she declines to use the application as a voter registration application.

(b)(1) ~~The voter registration portion of the~~ A motor vehicle driver's license or nondriver identification card application shall provide and request the following information ~~required to be provided under section 2145 of this chapter~~ and shall be in the form approved by the Secretary of State:

(A) The applicant's citizenship.

(B) The applicant's place and date of birth.

(C) The applicant's town of legal residence.

(D) The applicant's street address or a description of the physical location of the applicant's residence. The description must contain sufficient information so that the town clerk can determine whether the applicant is a resident of the town.

(E) The voter's oath.

(F) The applicant's e-mail address, which shall be optional to provide.

(2) A motor vehicle driver's license or nondriver identification card application shall provide the following statements:

(A) "By signing and submitting this application, you are authorizing the Department of Motor Vehicles to transmit this application to the Secretary of State for voter registration purposes. YOU MAY DECLINE TO REGISTER. Both the office through which you submit this application and your decision of whether or not to register will remain confidential and will be used for voter registration purposes only."

(B) "In order to be registered to vote, you must: (1) be a U.S. citizen; (2) be a resident of Vermont; (3) have taken the voter's oath; and (4) be 18 years of age or older. Any person meeting the requirements of (1)–(3) who will be 18 years of age on or before the date of a general election may register and vote in the primary election immediately preceding that general election. Failure to decline to register is an attestation that you meet the requirements to vote."

(3) A motor vehicle driver's license or nondriver identification card application shall provide the penalties provided by law for submission of a false voter registration application and shall require the signature of the applicant, under penalty of perjury.

* * *

(d)(1) The Department of Motor Vehicles shall transmit ~~voter registration~~ motor vehicle driver's license and nondriver identification card applications received under this section to the Secretary of State not later than five days after the date the application was accepted by the Department, or before the date of any primary or general election, whichever is sooner.

(2) The Department of Motor Vehicles shall not transmit motor vehicle driver's license and nondriver identification card applications when the applicant has designated that he or she declines to be registered.

(3) The Department of Motor Vehicles shall ensure confidentiality of records as required by subdivision (b)(2)(A) of this section.

* * *

(f) In transmitting applications received under this section, the Secretary shall ensure compliance with the requirements of 15 V.S.A. chapter 21, subchapter 3.

(g) If a person who is ineligible to vote becomes registered to vote pursuant to this section in the absence of a violation of subsection 2145(f) of this chapter, that person's registration shall be presumed to have been effected with official authorization and not the fault of that person.

(h) The Secretary shall take appropriate measures to educate the public about voter registration under this section.

Sec. 2. 17 V.S.A. § 2145 is amended to read:

§ 2145. APPLICATION FORMS

(a) The voter registration application shall be in the form approved by the Federal Election Commission or by the Secretary of State. The application form approved by the Secretary shall include:

* * *

~~(2) The voter's oath and a space for a person administering the voter's oath to another to execute the written notification required by section 2124 of this title.~~

* * *

(4) The following statements:

~~(A) "If you were provided with this form when you applied for, or renewed, a motor vehicle driver's license or were provided with this application form by a voter registration agency, you may decline to register. If you decline to register, your failure to register will remain confidential and will be used only for voter registration purposes."~~

~~(B) "If you are submitting this application in connection with a motor vehicle driver's license application, or renewal, or through a voter registration agency, the office through which you submitted this application will remain confidential and will be used only for voter registration purposes."~~

~~(5) The following statement on applications provided by the Department of Motor Vehicles: "Keep this receipt and take it to the polls when you go to vote. This is proof you submitted an application for registration." [Repealed.]~~

* * *

(f) A person who makes a false statement in completing a voter registration application form or the voter registration portion of an application for a motor vehicle driver's license or nondriver identification card knowing the statement to be false shall be subject to the penalties of perjury as provided in 13 V.S.A. § 2901, except that a person who is not eligible to register to vote and who otherwise completes the application accurately shall not be considered to have made a false statement under this subsection by his or her unintentional failure to decline to register on a motor vehicle driver's license or nondriver identification card application under section 2145a of this chapter.

* * *

Sec. 3. 17 V.S.A. § 2124 is amended to read:

§ 2124. VOTER'S OATH OR AFFIRMATION; HOW ADMINISTERED;
APPLICATION

* * *

~~(b) A person who administers the voter's oath or affirmation to another shall forthwith sign the appropriate place on the application or sign some other written notification giving the person's name and the date the oath or affirmation was administered. [Repealed.]~~

(c) At a minimum, the town clerk shall keep the completed applications for addition to the checklist, or an electronic copy thereof, through the end of the general election cycle that follows the one in which the application was received. ~~If the written notification that a person has taken the oath or affirmation is submitted separately from the application, it shall be filed along with the application.~~ The town clerk shall verify, upon request, that a voter has been given the oath or affirmation.

Sec. 4. 17 V.S.A. § 2144a is amended to read:

§ 2144a. REGISTRATION

A person who desires to register to vote may apply in any of the following ways:

(1) Simultaneously with his or her application for, or renewal of, a motor vehicle driver's license or nondriver identification card as provided in section 2145a of this chapter.

* * *

Sec. 5. 23 V.S.A. § 603(a)(4) is added to read:

(4) Any new or renewal application form shall provide for and request the information required in 17 V.S.A. § 2145a.

Sec. 6. 1 V.S.A. § 317(c) is amended to read:

(c) The following public records are exempt from public inspection and copying:

* * *

(31) Records of a registered voter's month and day of birth, motor vehicle operator's license number, and the last four digits of the applicant's Social Security number contained in an application to the statewide voter checklist or the statewide voter checklist established under 17 V.S.A. § 2154 or the failure to register to vote under 17 V.S.A. § 2145a.

* * *

Sec. 7. SECRETARY OF STATE; STUDY

The Secretary of State shall consult with the Office of the Attorney General to examine ways in which to register persons 16 years of age who will be 18 years of age on or before the next general election. The Secretary of State shall issue a report to the Senate and House Committees on Government Operations on or before January 15, 2017.

Sec. 7a. 17 V.S.A. § 2546a is added to read:

§ 2546a. DAY PRECEDING ELECTION; DEPOSIT OF EARLY VOTER
ABSENTEE BALLOTS IN VOTE TABULATOR

(a) Generally. Notwithstanding any provision of law to the contrary, if a town will be using a vote tabulator for the registering and counting of votes in the upcoming election and will check in early voter absentee ballots in accordance with subsection 2546(a) of this chapter for that election, the board of civil authority may vote to permit elections officials to deposit those early voter absentee ballots into the vote tabulator in accordance with the provisions of this section. This depositing of these ballots shall take place at the town clerk's office on the day preceding the election.

(b) Notice.

(1) If a board of civil authority votes to deposit ballots as described in subsection (a) of this section, the town clerk shall post notice that ballots will be so deposited in at least two public places in the municipality and in or near the town clerk's office not less than 30 nor more than 40 days before the election. If a municipality has more than one polling place and the polling places are not all in the same building, the notice shall be posted in at least two public places within each voting district and in or near the town clerk's office.

(2) In addition, at least five days before the day preceding the election, the notice shall be published in a newspaper of general circulation in the municipality and on the municipality's website, if the municipality actively updates its website on a regular basis.

(3) The notice shall include the date and time for the count, inspection, and depositing of the ballots and the location of the town clerk's office.

(c) Officials. The town clerk and at least two other election officials, from different political parties to the extent practicable, shall be present for the inspection of the sealed certificate envelopes and the processing of the ballots described in this section.

(d) Count and inspection. On the day preceding the election, at least one hour prior to depositing the ballots in the vote tabulator, the town clerk and the election officials shall:

(1) first open the secure container marked "checked in early voter absentee ballots," count the sealed certificate envelopes containing those ballots, and record the number counted; and

(2) permit these sealed certificate envelopes to be inspected by members of the public.

(e) Processing.

(1) Immediately after the expiration of the period for the count and inspection described in subsection (d) of this section, the town clerk and election officials shall open each sealed certificate envelope containing an early voter absentee ballot and deposit each ballot into a vote tabulator.

(2) The town clerk and the election officials shall ensure that all procedures for handling ballots are followed to the fullest extent practicable.

(3) At the end of the processing, the town clerk shall verify that the vote tabulator's memory card is locked in place and shall sign a statement verifying how many early voter absentee ballots were counted by the vote tabulator and that the memory card is so locked. The town clerk shall compare the vote tabulator's number of counted ballots to the original count of those ballots described in subsection (d) of this section.

(f) Security. The town clerk shall otherwise comply with all provisions of this title relating to the security of the vote tabulator.

(g) Election day. On the day of the election, when the vote tabulator is turned on at the polling place, the town clerk shall verify that the number of ballots that the vote tabulator displays as having been counted matches the number that the town clerk verified the tabulator counted on the preceding day.

(h) Rules. The Secretary of State may adopt rules to implement the provisions of this section.

Sec. 8. EFFECTIVE DATES

(a) This section and Sec. 7 (secretary of state study) shall take effect on passage.

(b) Sec. 7a, 17 V.S.A. § 2546a, shall take effect on January 1, 2017.

(c) The remainder of the act shall take effect on July 1, 2017.

(For text see House Journal February 26, 2016, March 8, 2016)

H. 517

An act relating to the classification of State waters

The Senate proposes to the House to amend the bill as follows:

The Senate proposes to the House to amend the bill in Sec. 1, 10 V.S.A. § 1252, in subsection (a), after “Class B(1): Waters in which one or more uses are of” and before “higher quality than Class B(2) waters” by inserting demonstrably and consistently

(For text see House Journal March 9, 2016)