

# Journal of the Senate

WEDNESDAY, MAY 3, 2017

The Senate was called to order by the President.

## Devotional Exercises

A moment of silence was observed in lieu of devotions.

## Message from the Governor

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

Mr. President:

I am directed by the Governor to inform the Senate that on the first day of May, 2017 he approved and signed bills originating in the Senate of the following titles:

**S. 5.** An act relating to plea agreements.

**S. 7.** An act relating to deferred sentences and the sex offender registry.

**S. 39.** An act relating to the repeal of the crime of obtaining maps and plans while at war.

**S. 60.** An act relating to the repeal of 21 V.S.A. § 6.

**S. 69.** An act relating to an employer's compliance with an income withholding order from another state.

## Bills Passed in Concurrence with Proposal of Amendment

House bills of the following titles were severally read the third time and passed in concurrence with proposal of amendment:

**H. 59.** An act relating to technical corrections.

**H. 510.** An act relating to the cost share for State agricultural water quality financial assistance grants.

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

**H. 111.**

House bill entitled:

An act relating to vital records.

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Was taken up.

Thereupon, pending third reading of the bill, Senators Pearson and Flory moved to amend the Senate proposal of amendment in Sec. 17, 18 V.S.A. § 5016, in subdivision (b)(2)(A), by striking out the following: “guardian, or petitioner for appointment as executor,” and inserting in lieu thereof the following: or guardian; a person petitioning to open a decedent’s estate; a court-appointed executor or administrator;

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

### **Third Reading Ordered**

#### **H. 312.**

Senator Ayer, for the Committee on Government Operations, to which was referred House bill entitled:

An act relating to retirement and pensions.

Reported that the bill ought to pass in concurrence.

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

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

#### **H. 411.**

House bill entitled:

An act relating to Vermont’s energy efficiency standards for appliances and equipment.

Was taken up.

Thereupon, pending third reading of the bill, Senators MacDonald, Lyons and Sirotkin moved to amend the Senate proposal of amendment as follows:

First: By striking out Sec. 7 in its entirety and inserting in lieu thereof two new sections to be numbered Secs. 7 and 7a to read as follows:

#### **Sec. 7. LEGISLATIVE INTENT**

The General Assembly intends that the Public Service Board, in adopting rules pursuant to 30 V.S.A. § 8010, minimize the effect of those rules on existing net metering systems as defined in Sec. 7a of this act.

Sec. 7a. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING

\* \* \*

(f) Rather than the other provisions of this section, an existing net metering system shall be governed by the provisions of section 219a of this title and Board rules implementing that section as they existed on December 31, 2016, except that the Board may allow a provider, commencing 10 years from the date on which an existing net metering system was interconnected to the provider's distribution system, to calculate credits for kWh generated by the system at the blended residential rate or disallow applying such credits to nonbypassable charges, or both.

(1) In such case, a customer with an existing net metering system may continue to apply credits for kWh generated by the system to nonbypassable charges for a period of 10 years from the date on which the system was interconnected to the distribution system of the provider.

(2) As used in this subsection (f):

(A) "Blended residential rate" means the lower of the provider's residential retail rate or the weighted statewide average of all providers' residential retail rates, as determined by the Board. For the purpose of this subdivision (A):

(i) If a provider's general residential service tariff does not include inclining block rates, the provider's residential rate shall be the dollars per kWh charge set forth in that provider's tariff for general residential service.

(ii) If a provider's general residential service tariff does include inclining block rates, the provider's residential rate shall be a blend of the provider's general residential service inclining block rates that is determined by adding together all of the revenues to the provider during the most recent calendar year from kWh sold under those block rates and dividing the sum by the total kWh sold by the company at those rates during the same year.

(B) "Existing net metering system" means a net metering system for which a complete application was filed with the Board before January 1, 2017.

(C) "Nonbypassable charge" means a charge on the bill of a retail electricity provider that a customer must pay whether or not the customer engages in net metering. Only the following shall be nonbypassable charges under this subsection (f):

(i) the customer charge;

(ii) the energy efficiency charge pursuant to subdivision 209(d)(3) of this title;

(iii) the energy assistance program charge pursuant to subsection 218(e) of this title;

(iv) a charge for on-bill financing not related to a net metering system; and

(v) an equipment rental charge.

Second: By striking out Sec. 9 in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. EFFECTIVE DATES; APPLICABILITY

(a) This act shall take effect on passage.

(b) Notwithstanding 1 V.S.A. § 214 and any contrary provision of 2014 Acts and Resolves No. 99, Sec. 10(f), Secs. 7 and 7a shall apply to:

(1) existing net metering systems as defined in Sec. 7a;

(2) net metering systems for which complete applications were or are filed on or after January 1, 2017; and

(3) net metering rules of the Public Service Board adopted on or after January 1, 2017.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as recommended by Senators MacDonald, Lyons and Sirotkin?, Senator MacDonald requested and was granted leave to withdraw the proposal of amendment.

Thereupon, pending third reading of the bill, Senator Rodgers moved to amend the Senate proposal of amendment by inserting four new sections to be numbered Secs. 9, 10, 11, and 12 and reader assistances thereto to read as follows:

\* \* \* Determination of Energy Compliance; Regional Plans; Renewable Technologies \* \* \*

Sec. 9. 24 V.S.A. § 4352(a) is amended to read:

(a) Regional plan. A regional planning commission may submit its adopted regional plan to the Commissioner of Public Service appointed under 30 V.S.A. § 1 for a determination of energy compliance. The Commissioner shall issue an affirmative determination on finding that the regional plan meets the requirements of subsection (c) of this section ~~and allows for the siting in the region of all types of renewable generation technologies.~~

\* \* \* Determination of Energy Compliance; Transportation Planning \* \* \*

Sec. 10. 24 V.S.A. § 4352(c) is amended to read:

(c) Enhanced energy planning; requirements. To obtain an affirmative determination of energy compliance under this section, a plan must:

(1) in the case of a regional plan, include the energy element as described in subdivision 4348a(a)(3) of this title;

(2) in the case of a municipal plan, include an energy element that has the same components as described in subdivision 4348a(a)(3) of this title for a regional plan other than transportation and be confirmed under section 4350 of this title;

\* \* \*

\* \* \* Substantial Deference for Five Years \* \* \*

Sec. 11. 30 V.S.A. § 248(b)(1) is amended to read:

(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However:

\* \* \*

(C) With respect to an in-state electric generation facility, the Board shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. In this subdivision (C), “substantial deference” means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative under 24 V.S.A. § 4352.

(D) With respect to an application for an electric generation facility filed before July 1, 2023, the Board shall give substantial deference as defined in subdivision (C) of this subdivision (1) to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This subdivision (D) shall apply

regardless of whether the duly adopted plan of the municipality or region has obtained an affirmative determination of energy compliance pursuant to 24 V.S.A. § 4352.

Sec. 12. PROSPECTIVE REPEAL

30 V.S.A. § 248(b)(1)(D) is repealed effective on July 1, 2023.

And by renumbering the remaining section to be numerically correct.

Thereupon, pending the question, Shall the Senate propose to the House to amend the Senate proposal of amendment as moved by Senator Rodgers? Senator Campion raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senator Rodgers was *not germane* to the bill and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that the proposal of amendment offered by Senator Rodgers was *not germane*.

Thereupon, Senator Rodgers moved that the rules be suspended to permit the Senate to consider a non-germane amendment which was disagreed to on a roll call, Yeas 14, Nays 15.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Balint, Benning, Branagan, Collamore, Cummings, Degree, Flory, Kitchel, MacDonald, Mullin, Rodgers, Starr, Westman, White.

**Those Senators who voted in the negative were:** Ashe, Ayer, Baruth, Bray, Brooks, Campion, Clarkson, Ingram, Lyons, Mazza, McCormack, Nitka, Pearson, Pollina, Sirotkin.

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

Thereupon, pending third reading of the bill, Senator Lyons moved to amend the Senate proposal of amendment as follows:

First: In Sec. 7, 30 V.S.A. § 8010(c)(2), in subdivision (F)(ii), by striking out subdivision (I) and inserting in lieu thereof a new subdivision (I) to read as follows:

(I) Commencing 10 years from the date on which an existing net metering system was installed, the Board may apply to the system the same rules governing bill credits and the use of those credits on the customer's bill, other than any adjustments related to siting and tradeable renewable energy

credits, as set forth for net metering systems filed on or after January 1, 2017 in the Board's revised net metering rule as submitted to the Legislative Committee on Administrative Rules on February 7, 2017.

Second: By adding a new section to be numbered Sec. 7a to read as follows:

Sec. 7a. LEGISLATIVE INTENT

The General Assembly intends that the Public Service Board, in adopting rules pursuant to 30 V.S.A. § 8010, minimize the effect of those rules on existing net metering systems as defined in Sec. 7 of this act.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Lyons?, Senator Lyons requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call Yeas 29, Nays 1.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Balint, Baruth, Benning, Branagan, Bray, Brooks, Campion, Clarkson, Collamore, Cummings, Degree, Flory, Ingram, Kitchel, MacDonald, Mazza, McCormack, Mullin, Nitka, Pearson, Pollina, Rodgers, Sears, Sirotkin, Starr, Westman, White.

**The Senator who voted in the negative was:** Lyons.

**House Proposal of Amendment Concurred In with Amendment**

**S. 61.**

House proposal of amendment to Senate bill entitled:

An act relating to offenders with mental illness.

Was taken up.

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

Sec. 1. 13 V.S.A. § 4820(5) is added to read:

(5) When a person who is found to be incompetent to stand trial pursuant to subdivision (2) of this section, the court shall appoint counsel from Vermont Legal Aid to represent the person who is the subject of the proceedings and from the Office of the Attorney General to represent the State in the proceedings.

Sec. 2. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the ~~State's Attorney or other prosecuting officer representing~~ counsel appointed pursuant to subsection 4820(5) of this title to represent the State in the case, shall be given notice of the time and place of a hearing under section 4820 of this title. Procedures for hearings for persons with a mental illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

Sec. 3. 28 V.S.A. § 3 is amended to read:

§ 3. GENERAL DEFINITIONS

As used in this title:

\* \* \*

(12) Despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population that may or may not include placement in a single-occupancy cell and that is used for disciplinary, administrative, or other reasons, but shall not mean confinement to an infirmary or a residential treatment setting for purposes of evaluation, treatment, or provision of services.

Sec. 4. 28 V.S.A. § 701a(b) is amended to read:

(b) ~~For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons~~ As used in this section, "segregation" shall have the same meaning as in subdivision 3(12) of this title.

Sec. 5. 28 V.S.A. § 907 is amended to read:

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The Commissioner shall administer a program of trauma-informed mental health services ~~which~~ that shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:



(1)(A) Within 24 hours of admittance to a correctional facility, all inmates shall be screened for any signs of mental illness, mental condition or, psychiatric disability or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental disabilities home and ~~community-based~~ community-based services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(B) Every inmate who is identified as a result of screening by a mental health professional as requiring inpatient evaluation, treatment, or services shall, within 24 hours of the screening, be referred for such treatment, evaluation, or services in a setting appropriate to the clinical needs of the inmate.

\* \* \*

Sec. 6. 28 V.S.A. § 907 is amended to read:

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

\* \* \*

(1)(A) Within 24 hours of admittance to a correctional facility, all inmates shall be screened for any signs of mental illness, mental condition or, psychiatric disability or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental disabilities home and community-based services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(B) Every inmate who is identified as a result of screening by a mental health professional as requiring inpatient evaluation, treatment, or services shall, within 24 48 hours of the screening, be ~~referred for~~ provided with such treatment, evaluation, or services in a setting appropriate to the clinical needs of the inmate.

\* \* \*

Sec. 7. AGENCY OF HUMAN SERVICES; OFFICE OF THE ATTORNEY GENERAL; REPORT TO STANDING COMMITTEES

On or before January 18, 2018:

(1) the Secretary of Human Services shall report to the House and Senate Committees on Judiciary, the House Committee on Corrections and

Institutions, the Senate Committee on Health and Welfare, and the House Committee on Health Care on how best to provide mental health treatment and services to inmates and detainees housed in a correctional facility, including recommendations on whether those services should be provided by a classified State employee working within the Agency of Human Services, by designated agencies, or by other professionals contracted for professional mental health care services within the Department; and

(2) the Secretary of Human Services, in consultation with the Attorney General, shall report to the House and Senate Committees on Judiciary and the House and Senate Committees on Appropriations on the resources necessary to comply with the requirements set forth in 13 V.S.A. § 4820(5). The Committees on Appropriations shall consider the report during their FY 2019 budget deliberations in determining the appropriate funding for the State to meet the requirements of 13 V.S.A. § 4820(c).

Sec. 8. LEGISLATIVE INTENT; DEPARTMENT OF CORRECTIONS;  
USE OF SEGREGATION

It is the intent of the General Assembly that the Department of Corrections continue to house inmates in the least restrictive setting necessary to ensure their own safety as well as the safety of staff and other inmates, and to use segregation only in instances when it serves a specific disciplinary or administrative purpose, pursuant to 28 V.S.A. § 3, and to ensure that inmates designated as seriously functionally impaired or inmates with a serious mental illness receive the support and rehabilitative services they need.

Sec. 9. DEPARTMENT OF CORRECTIONS; DEPARTMENT OF  
MENTAL HEALTH; FORENSIC MENTAL HEALTH CENTER;  
MEMORANDUM OF UNDERSTANDING FOR MENTAL  
HEALTH SERVICES; REPORTS

(a)(1) On or before July 1, 2017, the Department of Corrections shall, jointly with the Department of Mental Health, execute a memorandum of understanding regarding mental health services for inmates prior to the establishment of a forensic mental health center as required by subdivision (c) of this section. The memorandum of understanding shall:

(A) establish that when an inmate is identified by the Department of Corrections as requiring a level of care that cannot be adequately provided by the Department of Corrections, then the Department of Mental Health and the Department of Corrections will work together to determine how to augment the inmate's existing treatment plan until the augmented treatment plan is no longer clinically necessary; and

(B) formally outline the role of the Department of Mental Health Care Management Team in facilitating the clinical placement of inmates coming into the custody of the Commissioner of Mental Health pursuant to Title 13 or Title 18 and inmates voluntarily seeking hospitalization who meet inpatient criteria.

(2) On or before July 1, 2017, the Departments shall jointly report on the memorandum of understanding to the Joint Legislative Justice Oversight Committee.

(b) On or before January 18, 2018, the Department of Corrections shall, in consultation with the Department of Mental Health and the designated agencies, and in accordance with the principles set forth in 18 V.S.A. § 7251, develop a plan to create or establish access to a forensic mental health center pursuant to subsection (c) of this section. On or before January 18, 2018, the Departments shall jointly report on the plan to the House and Senate Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Health Care, and the Senate Committee on Health and Welfare.

(c) On or before July 1, 2019, pursuant to the plan set forth in subsection (b) of this section, a forensic mental health center shall be available to provide comprehensive assessment, evaluation, and treatment for detainees and inmates with mental illness, while preventing inappropriate segregation.

Sec. 10. 2016 Acts and Resolves No. 137, Sec. 7 is amended to read:

Sec. 7. EFFECTIVE DATE; TRANSITION PROVISION

(a) This act shall take effect on passage.

(b) Except as provided in subsection (c) of this section, the Commissioner of Corrections may only release or permit inspection of offender or inmate records in reliance upon an exception to the confidentiality of offender and inmate records if the exception is created by law, including an exception created by rule adopted in accordance with the Administrative Procedure Act under the mandate in Sec. 5, 28 V.S.A. § 107(b)(5).

(c) The Department of Corrections may rely upon exceptions to the confidentiality of offender and inmate files under directives adopted by the Department prior to the effective date of this act until the Commissioner adopts rules pursuant to the rulemaking mandates of Sec. 5, 28 V.S.A. § 107(a) and (b)(5). On or before September 1, 2016, the Commissioner shall prefile rules with the Interagency Committee on Administrative Rules in accordance with these mandates. The Commissioner shall update the Joint Legislative Justice Oversight Committee on the status of its efforts to adopt the rules at the Oversight Committee's first meeting on or after September 1, 2016.

(d)(1) On August 30, 2016, to implement the rulemaking requirements of 28 V.S.A. § 107, the Commissioner prefiled a proposed rule entitled “inmate/offender records and access to information” with the Interagency Committee on Administrative Rules. The Commissioner filed the proposed rule, as corrected, with the Secretary of State on October 13, 2016 and the final proposed rule, as revised, with the Legislative Committee on Administrative Rules (LCAR) on January 31, 2017. After reviewing and receiving testimony on the final proposed rule, as revised, the House Committee on Corrections and Institutions found that it was not consistent with legislative intent because the rule would potentially cause significant costs and disruptions to the Department.

(2) The Commissioner shall:

(A) withdraw the proposed final rule filed with LCAR on January 31, 2017; and

(B) redraft the proposed rule so that it reflects legislative intent as described in subsection (e) of this section.

(3) The Department of Corrections may continue to rely upon exceptions to the confidentiality of offender and inmate files under directives adopted by the Department prior to May 26, 2016 until the Commissioner adopts final rules as required under 28 V.S.A. § 107.

(e) The General Assembly intends that, in either of the following situations, 28 V.S.A. § 107 shall be interpreted not to require the Department to provide an inmate or offender a copy of records:

(1) Previously provided by the Department to the inmate or offender, if the inmate or offender has custody of or the right to access the copy.

(2) If the inmate or offender is responsible for the loss or destruction of a previously provided copy. In the case of such loss or destruction, the inmate or offender may—subject to the limitations of 28 V.S.A. § 107—be entitled to a replacement copy, but the Department may charge him or her for the replacement copy in accordance with law.

(f) On or before October 1, 2017, the Commissioner shall:

(1) develop a plan to implement and use modern records management technology and practices in order to minimize the costs of reviewing, redacting, and furnishing such records in accordance with law; and

(2) send to the members of the House Committee on Corrections and Institutions and of the Senate Committee on Institutions a copy of the plan required under subdivision (1) of this subsection, and a written report that:

(A) summarizes the status of the Department's efforts to redraft the rules as required under subsection (d) of this section; and

(B) outlines the implementation steps, expected benefits and costs to the State of Vermont, and time line associated with transitioning to digital delivery of inmate and offender records.

(g) On or before January 15, 2018, the Commissioner shall submit a copy of the redrafted rules to the House Committee on Corrections and Institutions and to the Senate Committee on Institutions. On or before July 1, 2018, the Commissioner shall prefile the redrafted rules, as may be revised, with the Interagency Committee on Administrative Rules.

Sec. 11. SUBSTANCE ABUSE RECOVERY SERVICES AT  
CORRECTIONAL FACILITIES; STUDY

(a) The Commissioner of Corrections, in consultation with the Division of Alcohol and Drug Abuse, the Judiciary, and the Vermont State Employees Association, shall study approaches to substance abuse recovery services in State and out-of-state correctional facilities for inmates who are in need of substance abuse recovery in order to provide a holistic approach to their recovery. The study shall include:

(1) a review of recovery regimens for inmates, including:

(A) screening by a medical and mental health professional upon initial entry into a correctional facility;

(B) continuing preexisting prescriptions and medication treatments during an inmate's incarceration;

(C) providing supportive and treatment-enhancing activities throughout the inmate's incarceration, including recovery coaching, certified drug and alcohol counselors, and technology-enabled substance abuse recovery programs; and

(D) developing relationships with community providers once an inmate approaches release;

(2) ways to link recovery programs with increased secondary and postsecondary educational opportunities and job skills and training opportunities;

(3) opportunities to develop and use self-help peer groups to assist in recovery and in maintaining abstinence;

(4) opportunities for mandatory and voluntary services;

(5) the estimated number of inmates impacted and costs associated with providing recovery services;

(6) any operational challenges associated with providing recovery services; and

(7) the feasibility of using classified State employees for delivery of services.

(b) On or before December 1, 2017, the Commissioner of Corrections shall submit a report to the House Committees on Corrections and Institutions, on Human Services, and on Judiciary and the Senate Committees on Institutions, on Health and Welfare, and on Judiciary on the findings of the study described in subsection (a) of this section. The report shall include recommendations for legislative action to implement new recovery services based on the findings of the study.

#### Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (Department of Corrections; Department of Mental Health; forensic mental health center; memorandum of understanding for provision of mental health services; report to standing committees), and Sec. 10 (2016 Acts and Resolves No. 137, Sec. 7 ) shall take effect on passage.

(b) Secs. 3 (general definitions), 4 (28 V.S.A. § 701a(b)), 5 (mental health service for inmates; powers and responsibilities of commissioner), 7 (Agency of Human Services; Office of the Attorney General report to standing committees), 8 (legislative intent, Department of Corrections; use of segregation), and 11 (substance abuse recovery services at correctional facilities; study) shall take effect on July 1, 2017.

(c) Sec. 6 (mental health service for inmates; powers and responsibilities of Commissioner) shall take effect on July 1, 2019.

(d) Secs. 1 (hearing regarding commitment) and 2 (notice of hearing; procedures) shall take effect on July 1, 2018.

And that after passage the title of the bill be amended to read:

An act relating to offenders with mental illness, inmate records, and inmate services.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, Senator Sears moved that the Senate concur in the House proposal of amendment with an amendment as follows:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

Sec. 1. [Deleted.]

Second: By striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. [Deleted.]

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. AGENCY OF HUMAN SERVICES; REPORT TO STANDING COMMITTEES

On or before January 18, 2018, the Secretary of Human Services shall report to the House and Senate Committees on Judiciary, the House Committees on Corrections and Institutions and on Health Care, and the Senate Committee on Health and Welfare on how best to provide mental health treatment and services to inmates and detainees housed in a correctional facility, including recommendations on whether those services should be provided by a classified State employee working within the Agency of Human Services, by designated agencies, or by other professionals contracted for professional mental health care services within the Department.

Fourth: By striking out Sec. 11, substance abuse recovery services at correctional facilities; study, in its entirety and inserting in lieu thereof a new Sec. 11 to read as follows:

Sec. 11. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;  
SUBSTANCE ABUSE RECOVERY SERVICES AT  
CORRECTIONAL FACILITIES

During the 2017 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate approaches to substance abuse recovery services in correctional facilities for inmates, including the use of medication-assisted therapy. Any resulting legislative recommendations shall be introduced as a bill in the 2018 legislative session.

Fifth: In Sec. 12, effective dates, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) Secs. 3 (general definitions), 4 (28 V.S.A. § 701a(b)), 5 (mental health service for inmates; powers and responsibilities of commissioner), 7 (Agency of Human Services; report to standing committees), 8 (legislative intent, Department of Corrections; use of segregation), and 11 (Joint Legislative Justice Oversight; substance abuse recovery services at correctional facilities) shall take effect on July 1, 2017.

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Sixth: In Sec. 12, effective dates, by striking out subsection (d) in its entirety.

Which was agreed to.

**Rules Suspended; Consideration Interrupted by Adjournment**

**S. 100.**

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

An act relating to promoting affordable and sustainable housing.

Was taken up for immediate consideration.

Thereupon, on motion of Senator Ashe, moved that the Senate adjourn until two o'clock in the afternoon.

**Rules Suspended; Bills Messaged**

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

**H. 59, H. 111, H. 411, H. 510.**

**Afternoon**

The Senate was called to order by the President.

**Rules Suspended; House Proposal of Amendment Not Concurred In;  
Committee of Conference Requested; Committee of Conference  
Appointed; Bill Messaged**

**S. 16.**

Appearing on the Calendar for notice, on motion of Senator Sears, the rules were suspended and House proposal of amendment to Senate bill entitled:

An act relating to expanding patient access to the Medical Marijuana Registry.

Was taken up for immediate consideration.

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

Sec. 1. 18 V.S.A. § 4472 is amended to read:

§ 4472. DEFINITIONS

As used in this subchapter:



(1)(A) “Bona fide health care professional-patient relationship” means a treating or consulting relationship of not less than three months’ duration, in the course of which a health care professional has completed a full assessment of the registered patient’s medical history and current medical condition, including a personal physical examination.

(B) The three-month requirement shall not apply if:

(i) a patient has been diagnosed with:

(I) a terminal illness;

(II) cancer; or

(III) acquired immune deficiency syndrome; ~~or~~

~~(IV) is currently under hospice care.~~

(ii) a patient is currently under hospice care;

~~(ii)(iii)~~ a patient had been diagnosed with a debilitating medical condition by a health care professional in another jurisdiction in which the patient had been formerly a resident and the patient, now a resident of Vermont, has the diagnosis confirmed by a health care professional in this State or a neighboring state as provided in subdivision (6) of this section, and the new health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination;

~~(iii)(iv)~~ a patient who is already on the ~~registry~~ Registry changes health care professionals three months or less prior to the annual renewal of the patient’s registration, provided the patient’s new health care professional has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination;

(v) a patient is referred by his or her health care professional to another health care professional who has completed advanced education and clinical training in specific debilitating medical conditions, and that health care professional conducts a full assessment of the patient’s medical history and current medical condition, including a personal physical examination;

(vi) a patient’s debilitating medical condition is of recent or sudden onset.

\* \* \*

~~(4) “Debilitating medical condition,” provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision (4), reasonable medical efforts have been made over a reasonable amount of time to relieve the symptoms, means:~~

---

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, Crohn's disease, Parkinson's disease, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) post-traumatic stress disorder, provided the Department confirms the applicant is undergoing psychotherapy or counseling with a licensed mental health care provider; or

(C) a disease, or medical condition, or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome; chronic pain; severe nausea; or seizures.

(5) "Dispensary" means a nonprofit entity business organization registered under section 4474e of this title which that acquires, possesses, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center and to his or her registered caregiver for the registered patient's use for symptom relief. A dispensary may provide marijuana for symptom relief to registered patients at only one facility or location, but may have a second location associated with the dispensary where the marijuana is cultivated or processed. Both locations are considered to be part of the same dispensary. A dispensary may serve patients and caregivers at not more than three locations, as approved by the Department in consideration of factors provided in subsection 4474f(e) of this title, and may cultivate and process marijuana at a separate location from where patients and caregivers are served. All locations shall be considered part of the same dispensary operation under one registration.

(6) "Financier" means a person, other than a financial institution as defined in 8 V.S.A. § 11101, that makes an investment in, or a gift, loan, or other financing to, another person with the expectation of a financial return. If a financier is a business organization, as used in this chapter, the term "financier" includes each owner and principal of that organization.

~~(6)~~(7)(A) "Health care professional" means an individual licensed to practice medicine under 26 V.S.A. chapter 23 or 33, an individual licensed as a naturopathic physician under 26 V.S.A. chapter 81, an individual certified as a physician assistant under 26 V.S.A. chapter 31, or an individual licensed as an advanced practice registered nurse under 26 V.S.A. chapter 28.

(B) This definition includes individuals who are professionally licensed under substantially equivalent provisions in New Hampshire, Massachusetts, or New York.

~~(7)~~(8) “Immature marijuana plant” means a female marijuana plant that has not flowered and which does not have buds that may be observed by visual examination.

~~(8)~~(9) “Marijuana” shall have the same meaning as provided in subdivision 4201(15) of this title.

~~(9)~~(10) “Mature marijuana plant” means a female marijuana plant that has flowered and which has buds that may be observed by visual examination.

(11) “Mental health care provider” means a person licensed to practice medicine who specializes in the practice of psychiatry; a psychologist, a psychologist-doctorate, or a psychologist-master as defined in 26 V.S.A. § 3001; a clinical social worker as defined in 26 V.S.A. § 3201; or a clinical mental health counselor as defined in 26 V.S.A. § 3261.

(12) “Ounce” means 28.35 grams.

(13) “Owner” means:

(A) a person that has a direct or beneficial ownership interest of ten percent or more in a business organization, including attribution of the ownership interests of a spouse or domestic partner, parent, spouse’s or domestic partner’s parent, sibling, and children; or

(B) a person that has the power to direct, or cause the direction of, the management and policies of a business organization, including through the ownership of voting securities, by contract, or otherwise.

~~(40)~~(14) “Possession limit” means the amount of marijuana collectively possessed between the registered patient and the patient’s registered caregiver which that is no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana.

(15) “Principal” means a person that has the authority to conduct, manage, or supervise the operation of a business organization, and includes the president, vice president, secretary, treasurer, manager, or similar executive officer of a business organization; a director of a business corporation, nonprofit corporation, or mutual benefit enterprise; a member of a nonprofit corporation, cooperative, or member-managed limited liability company; a manager of a manager-managed limited liability company; and a general partner of a partnership, limited partnership, or limited liability partnership.

~~(11)~~(16) “Registered caregiver” means a person who is at least 21 years of age, has met eligibility requirements as determined by the Department in accordance with this chapter, and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

~~(12)~~(17) “Registered patient” means a resident of Vermont who has been issued a registration card by the Department of Public Safety, identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter. “Resident of Vermont” means a person whose domicile is Vermont.

~~(13)~~(18) “Secure indoor facility” means a building or room equipped with locks or other security devices that permit access only by a registered caregiver, or registered patient, ~~or a principal officer or employee of a dispensary.~~

~~(14)~~(19) “Transport” means the movement of marijuana and marijuana-infused products from registered growing locations to their associated dispensaries, between dispensaries, to registered patients and registered caregivers in accordance with delivery protocols, or as otherwise allowed under this subchapter.

~~(15)~~(20) “Usable marijuana” means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

~~(16)~~(21) “Use for symptom relief” means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana, or of paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient’s debilitating medical condition ~~which~~ that is in compliance with all the limitations and restrictions of this subchapter.

Sec. 2. 18 V.S.A. § 4473 is amended to read:

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

\* \* \*

(b) The Department of Public Safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit a signed application for registration to the Department. ~~A patient’s initial application to the registry shall be notarized, but subsequent renewals shall not require notarization.~~ If the patient is under 18 years of age, the application must be signed by both the patient and a parent or guardian. The application shall

require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant shall attach to the application a medical verification form developed by the Department pursuant to subdivision (2) of this subsection.

(2) The Department of Public Safety shall develop a medical verification form to be completed by a health care professional and submitted by a patient applying for registration in the program. The form shall include:

(A) A cover sheet ~~which~~ that includes the following:

(i) A statement of the penalties for providing false information.

(ii) Definitions of the following statutory terms:

(I) "Bona fide health care professional-patient relationship" as defined in section 4472 of this title.

(II) "Debilitating medical condition" as defined in section 4472 of this title.

(III) "Health care professional" as defined in section 4472 of this title.

(iii) A statement that the medical verification form is not considered a prescription and that the only purpose of the medical verification form is to confirm that the applicant patient has a debilitating medical condition.

(B) A verification sheet ~~which~~ that includes the following:

(i) A statement that a bona fide health care professional-patient relationship exists under section 4472 of this title, ~~or that, under subdivision (3)(A) of this subsection (b), the debilitating medical condition is of recent or sudden onset, and the patient has not had a previous health care professional who is able to verify the nature of the disease and its symptoms.~~

~~(ii) A statement that reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms. [Repealed.]~~

(iii) A statement that the patient has a debilitating medical condition as defined in section 4472 of this title, including the specific disease or condition ~~which~~ that the patient has and whether the patient meets the criteria under section 4472.

(iv) A signature line ~~which~~ that provides in substantial part: "I certify that I meet the definition of 'health care professional' under

18 V.S.A. § 4472, that I am a health care professional in good standing in the State of ..... , and that the facts stated above are accurate to the best of my knowledge and belief.”

(v) The health care professional’s contact information, license number, category of his or her health care profession as defined in subdivision 4472(6) of this title, and contact information for the out-of-state licensing agency, if applicable. The Department of Public Safety shall adopt rules for verifying the goodstanding of out-of-state health care professionals.

(vi) A statement that the medical verification form is not considered a prescription and that the only purpose of the medical verification form is to confirm that the applicant patient has a debilitating medical condition.

~~(3)(A) The Department of Public Safety shall transmit the completed medical verification form to the health care professional and contact him or her for purposes of confirming the accuracy of the information contained in the form. The Department may approve an application, notwithstanding the six-month requirement in section 4472 of this title, if the Department is satisfied that the medical verification form confirms that the debilitating medical condition is of recent or sudden onset, and that the patient has not had a previous health care professional who is able to verify the nature of the disease and its symptoms.~~

(B) If the health care professional is licensed in another state as provided section 4472 of this title, the Department shall verify that the health care professional is in good standing in that state.

\* \* \*

Sec. 3. 18 V.S.A. § 4474(c)(1) is amended to read:

(c)(1) Except as provided in subdivision (2) of this subsection, a registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time. A registered patient may serve as a registered caregiver for one other registered patient.

Sec. 4. 18 V.S.A. § 4474d is amended to read:

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION;  
RULEMAKING

\* \* \*

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the Department may verify the identities and registered

property addresses of the registered patient and the patient's registered caregiver, a dispensary, ~~and the principal officer, the Board members, and an owner, a principal, a financier, and the employees of a dispensary.~~

(c) The Department shall maintain a separate secure electronic database accessible to law enforcement personnel 24 hours a day that uses a unique identifier system to allow law enforcement to verify that a person or entity is a registered patient, a registered caregiver, a dispensary, ~~or the principal officer, a board member~~ an owner, a principal, a financier, or an employee of a dispensary.

\* \* \*

Sec. 5. 18 V.S.A. § 4474e is amended to read:

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

\* \* \*

(d)(1) A dispensary shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana and shall ensure that each location has an operational security alarm system. All cultivation of marijuana shall take place in ~~an enclosed~~ a secure, locked facility which is either indoors or ~~otherwise outdoors, but~~ not visible to the public, and which can only be accessed by ~~principal officers~~ the owners, principals, financiers, and employees of the dispensary who have valid ~~registry~~ Registry identification cards. An outdoor facility is not required to have a roof provided all other requirements are met. The Department of ~~Public Safety~~ shall perform an annual on-site assessment of each dispensary and may perform on-site assessments of a dispensary without limitation for the purpose of determining compliance with this subchapter and any rules adopted pursuant to this subchapter and may enter a dispensary at any time for such purpose. During an inspection, the Department may review the dispensary's confidential records, including its dispensing records, which shall track transactions according to registered patients' ~~registry~~ Registry identification numbers to protect their confidentiality.

\* \* \*

(f) A person may be denied the right to serve as an owner, a principal officer, ~~board member,~~ financier, or employee of a dispensary because of the person's criminal history record in accordance with section 4474g of this title and rules adopted by the Department of Public Safety pursuant to that section.

(g)(1) A dispensary shall notify the Department of ~~Public Safety~~ within 10 days of when ~~a principal officer, board member,~~ an owner, principal, financier, or employee ceases to be associated with or work at the dispensary. His or her

~~registry~~ Registry identification card shall be deemed null and void, and the person shall be liable for any penalties that may apply.

(2) A dispensary shall notify the Department of ~~Public Safety~~ in writing of the name, address, and date of birth of any proposed new ~~principal officer, board member~~ owner, principal, financier, or employee and shall submit a fee for a new ~~registry~~ Registry identification card before a new ~~principal officer, board member~~ owner, principal, financier, or employee begins his or her official duties related to the dispensary and shall submit a complete set of fingerprints for ~~the each~~ prospective ~~principal officer, board member~~ owner, principal, financier, or employee who is a natural person.

\* \* \*

(k)(1) No dispensary, ~~principal officer, board member~~ or owner, principal, financier of a dispensary shall:

\* \* \*

(B) acquire usable marijuana or marijuana plants from any source other than registered dispensary ~~principal officers, board members~~ owners, principals, financiers, or employees who cultivate marijuana in accordance with this subchapter;

(C) dispense more than two ounces of usable marijuana to a registered patient directly or through the qualifying patient's registered caregiver during a 30-day period;

(D) dispense an amount of usable marijuana to a qualifying patient or a designated caregiver that the ~~principal officer, board member~~ owner, principal, financier, or employee knows would cause the recipient to possess more marijuana than is permitted under this subchapter;

(E) dispense marijuana to a person other than a registered patient who has designated the dispensary to provide for his or her needs or other than the patient's registered caregiver.

(2) A person found to have violated subdivision (1) of this subsection may no longer serve as a ~~principal officer, board member~~ an owner, principal, financier, or employee of any dispensary, and such person's ~~registry~~ Registry identification card shall be immediately revoked by the Department of ~~Public Safety~~.

(l)(1) A registered dispensary shall not be subject to the following, provided that it is in compliance with this subchapter:

(A) prosecution for the acquisition, possession, cultivation, manufacture, transfer, transport, supply, sale, or dispensing of marijuana,



marijuana-infused products, or marijuana-related supplies for symptom relief in accordance with the provisions of this subchapter and any rule adopted by the Department of ~~Public Safety~~ pursuant to this subchapter;

(B) inspection and search, except pursuant to this subchapter or upon a search warrant issued by a court or judicial officer;

(C) seizure of marijuana, marijuana-infused products, and marijuana-related supplies, except upon a valid order issued by a court;

(D) imposition of any penalty or denied any right or privilege, including imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this subchapter to assist registered patients or registered caregivers.

(2) No ~~principal officer, board member~~ owner, principal, financier, or employee of a dispensary shall be subject to arrest, prosecution, search, seizure, or penalty in any manner or denied any right or privilege, including civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for working for or with a dispensary to engage in acts permitted by this subchapter.

\* \* \*

Sec. 6. 18 V.S.A. § 4474f is amended to read:

§ 4474f. DISPENSARY APPLICATION, APPROVAL, AND  
REGISTRATION

\* \* \*

(c) Each application for a dispensary registration certificate shall include all of the following:

(1) a nonrefundable application fee in the amount of \$2,500.00 paid to the Department of ~~Public Safety~~;

(2) the legal name, ~~articles of incorporation, and bylaws~~ of the dispensary and the organizational documents that create the dispensary, govern its operation and internal affairs, and govern relations between and among its owners;

(3) the proposed physical address of the dispensary, if a precise address has been determined or, if not, the general location where it would be located;

(4) a description of the ~~enclosed~~ secure, locked facility where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary;

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(5) the name, address, and date of birth of each ~~principal officer and board member~~ owner, principal, and financier of the dispensary who is a natural person and a complete set of fingerprints for each of them;

(6) proposed security and safety measures, which shall include at least one security alarm system for each location and planned measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana;

(7) proposed procedures to ensure accurate record-keeping.

(d) Any time one or more dispensary registration applications are being considered, the Department of ~~Public Safety~~ shall solicit input from registered patients and registered caregivers.

(e) Each time a dispensary certificate is granted, the decision shall be based on the overall health needs of qualified patients. The following factors shall weigh heavily in the consideration of an application:

(1) geographic convenience to patients from throughout the State of Vermont to a dispensary if the applicant were approved;

(2) the entity's ability to provide an adequate supply to the registered patients in the State;

(3) the entity's ability to demonstrate ~~its board members'~~ that its owners, principals, and financiers have sufficient experience running a ~~nonprofit organization or~~ business;

(4) the comments, if any, of registered patients and registered caregivers regarding which applicant should be granted a registration certificate;

(5) the sufficiency of the applicant's plans for record-keeping, which records shall be considered confidential health care information under Vermont law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended;

(6) the sufficiency of the applicant's plans for safety and security, including the proposed location and security devices employed.

(f) The Department of ~~Public Safety~~ may deny an application for a dispensary if it determines that an applicant's criminal history record indicates that the ~~person's~~ association of an owner, principal, or financier with a dispensary would pose a demonstrable threat to public safety.

(g) After a dispensary is approved but before it begins operations, it shall submit the following to the Department:

(1) the legal name and articles of incorporation of the dispensary and the organizational documents that create the dispensary, govern its operation and internal affairs, and govern relations between and among its owners;

(2) the physical address of the dispensary;

(3) the name, address, and date of birth of each ~~principal officer and board member~~ owner, principal, and financier of the dispensary along with a complete set of fingerprints for each;

(4) a registration fee of \$20,000.00 for the first year of operation, and an annual fee of \$25,000.00 in subsequent years.

Sec. 7. 18 V.S.A. § 4474g is amended to read:

§ 4474g. DISPENSARY REGISTRY IDENTIFICATION CARD;  
CRIMINAL BACKGROUND CHECK

(a) Except as provided in subsection (b) of this section, the Department of ~~Public Safety~~ shall issue each ~~principal officer, Board member~~ owner, principal, financier, and employee of a dispensary a ~~registry~~ Registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of \$50.00. The fee shall be paid by the dispensary and the cost shall not be passed on to a ~~principal officer, Board member~~ an owner, principal, financier, or employee. A person shall not serve as ~~principal officer, Board member~~ an owner, principal, financier, or employee of a dispensary until that person has received a ~~registry~~ Registry identification card issued under this section. Each card shall specify whether the cardholder is a ~~principal officer, Board member~~ an owner, principal, financier, or employee of a dispensary and shall contain the following:

(1) the name, address, and date of birth of the person;

(2) the legal name of the dispensary with which the person is affiliated;

(3) a random identification number that is unique to the person;

(4) the date of issuance and the expiration date of the ~~registry~~ Registry identification card; and

(5) a photograph of the person.

(b) Prior to acting on an application for a ~~registry~~ Registry identification card, the Department of ~~Public Safety~~ shall obtain with respect to the applicant a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation. Each applicant shall consent to the release of criminal history records to the Department on forms developed by the Vermont Crime Information Center.

(c) When the Department of ~~Public Safety~~ obtains a criminal history record, the Department shall promptly provide a copy of the record to the applicant and to the ~~principal officer and Board~~ owner, principal, or financier of the dispensary if the applicant is to be an employee. The Department shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Department.

(d) The Department of ~~Public Safety~~ shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. No person shall confirm the existence or nonexistence of criminal history record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(e) The Department of ~~Public Safety~~ shall not issue a ~~registry~~ Registry identification card to any applicant who has been convicted of a drug-related offense or a violent felony or who has a pending charge for such an offense. ~~For purposes of~~ As used in this subchapter, “violent felony” means a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.

(f) The Department of ~~Public Safety~~ shall adopt rules for the issuance of a ~~registry~~ Registry identification card and shall set forth standards for determining whether an applicant should be denied a ~~registry~~ Registry identification card because his or her criminal history record indicates that the person’s association with a dispensary would pose a demonstrable threat to public safety. The rules shall consider whether a person who has a conviction for an offense not listed in subsection (e) of this section has been rehabilitated. A conviction for an offense not listed in subsection (e) of this section shall not automatically disqualify a person for a ~~registry~~ Registry identification card. A dispensary may deny a person the opportunity to serve as a Board member or an employee based on his or her criminal history record. An applicant who is denied a ~~registry~~ Registry identification card may appeal the ~~Department of Public Safety’s~~ Department’s determination in Superior Court in accordance with Rule 75 of the Vermont Rules of Civil Procedure.

(g) A registration identification card of a ~~principal officer, Board member~~ an owner, principal, or financier, or employee shall expire one year after its issuance or upon the expiration of the registered organization’s registration certificate, whichever occurs first.

Sec. 8. 18 V.S.A. § 4474h is amended to read:

§ 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient or his or her caregiver may obtain marijuana only from the patient’s designated dispensary and may designate only one

~~dispensary. If a registered patient designates a dispensary, the patient and his or her caregiver may not grow marijuana or obtain marijuana or marijuana-infused products for symptom relief from any source other than the designated dispensary. A registered patient who wishes to change his or her dispensary shall notify the Department of Public Safety in writing on a form issued by the Department and shall submit with the form a fee of \$25.00. The Department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the Department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any 30-day period.~~

\* \* \*

Sec. 9. AUTHORITY FOR CURRENTLY REGISTERED NONPROFIT DISPENSARY TO CONVERT TO FOR-PROFIT BUSINESS

(a) Notwithstanding any contrary provision of Title 11B of the Vermont Statutes Annotated, a nonprofit dispensary registered pursuant to 18 V.S.A. chapter 86 may convert to a different type of business organization by approving a plan of conversion pursuant to this section.

(b) A plan of conversion shall include:

(1) the name of the converting organization;

(2) the name and type of organization of the converted organization;

(3) the manner and basis for converting the assets of the converting organization into interests in the converted organization or other consideration;

(4) the proposed organizational documents of the converted organization; and

(5) the other terms and conditions of the conversion.

(c) A converting organization shall approve a plan of conversion by a majority vote of its directors, and by a separate majority vote of its members if it has members.

(d) A converting organization may amend or abandon a plan of conversion before it takes effect in the same manner it approved the plan, if the plan does not specify how to amend the plan.

(e) A converting organization shall sign a statement of conversion and deliver it to the Secretary of State for filing. A statement of conversion shall include:

- 
- (1) the name and type of organization prior to the conversion;
  - (2) the name and type of organization following the conversion;
  - (3) a statement that the converting organization approved the plan of conversion in accordance with the provisions of this act; and
  - (4) the organizational documents of the converted organization.

(f) The conversion of a nonprofit dispensary takes effect when the statement of conversion takes effect, and when the conversion takes effect:

(1) The converted organization is:

(A) organized under and subject to the governing statute of the converted organization; and

(B) the same organization continuing without interruption as the converting organization.

(2) Subject to the plan of conversion, the property of the converting organization continues to be vested in the converted organization without transfer, assignment, reversion, or impairment.

(3) The debts, obligations, and other liabilities of the converting organization continue as debts, obligations, and other liabilities of the converted organization.

(4) A court or other authority may substitute the name of the converted organization for the name of the converting organization in any pending action or proceeding.

(5) The organizational documents of the converted organization take effect.

(6) The assets of the converting organization are converted pursuant to the plan of conversion.

(g) When a conversion takes effect, a person that did not have personal liability with respect to the converting organization and becomes subject to personal liability with respect to the converted organization as a result of the conversion has personal liability only to the extent provided by the governing statute of the converted organization and only for those debts, obligations, and other liabilities that the converted organization incurs after the conversion.

(h) When a conversion takes effect, a person that had personal liability for a debt, obligation, or other liability of the converting organization but that does not have personal liability with respect to the converted organization is subject to the following rules:

(1) The conversion does not discharge any personal liability under this title to the extent the personal liability was incurred before the conversion took effect.

(2) The person does not have personal liability under this title for any debt, obligation, or other liability that arises after the conversion takes effect.

(3) Title 11B of the Vermont Statutes Annotated continues to apply to the release, collection, or discharge of any personal liability preserved under subdivision (1) of this subsection as if the conversion had not occurred.

(i) A conversion does not require an organization to wind up its affairs and does not constitute or cause the dissolution of the organization.

#### Sec. 10. MARIJUANA-INFUSED PRODUCT TESTING; REPORT

The General Assembly recognizes the importance of independent testing of marijuana-infused products sold by dispensaries to determine proper labeling of products in compliance with 18 V.S.A. § 4474e. Therefore, the Agency of Agriculture, Food and Markets and the Department of Public Safety, in consultation with registered dispensaries, shall report their recommendations to the Joint Committee on Justice Oversight and the General Assembly no later than October 15, 2017 on the following:

(1) Who should be responsible for testing marijuana-infused products.

(2) The approved methods and frequency of testing.

(3) Estimated costs associated with such testing and how these costs should be funded.

(4) If testing will be done through an independent testing entity, the process by which the State will certify such entities and oversee such testing.

(5) How to implement a weights and measures program for medical marijuana dispensaries.

#### Sec. 11. MEDICAL MARIJUANA REGISTRY; WEB PAGE

The Department of Public Safety and the Agency of Digital Services shall develop an independent web page for the Medical Marijuana Registry, separate from any other registry or program administered by the Department, that is up-to-date and user-friendly on or before September 30, 2017 and shall report to the General Assembly on activation of the web page at such time.

#### Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? On motion of Senator Sears, the Senate refused to

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concur in the House proposal of amendment and requested a Committee of Conference.

Thereupon, pursuant to the request of the Senate, the President announced the appointment of

Senator Sears  
Senator Benning  
Senator White

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

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

### **Appointment to Committee of Conference**

#### **S. 134.**

The President announced the appointment of

Senator Nitka

as a replacement for

Senator Sears

as a member of the committee of Conference on the part of the Senate to consider the disagreeing votes of the two Houses upon House bill entitled:

An act relating to court diversion and pretrial services.

### **Consideration Resumed; Bill Amended; Third Reading Ordered; Rules Suspended; Bill Passed; Bill Messaged**

#### **S. 100.**

Consideration was resumed on Senate bill entitled:

An act relating to promoting affordable and sustainable housing.

Senator Sirotkin, for the Committee on Finance, to which was referred reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Housing Help Surcharge; Housing Bond \* \* \*

Sec. 1. VERMONT HOUSING AND CONSERVATION BOARD;  
HOUSING FOR ALL

(a) Findings and purpose.



(1) The General Assembly finds that investments are needed to help house the most vulnerable as well as creating more homes for workers.

(2) The shortage of affordable and available homes has been highlighted recently by:

(A) the Vermont Futures Project of the Vermont Chamber of Commerce, which set a growth target of 5,000 new and improved housing units annually;

(B) a national consultant's recommendations for a Roadmap to End Homelessness, which calls for 368 new units for permanent supportive housing and 1,251 new homes affordable at 30 percent of median or below over the next five years; and

(C) the 2015 statewide housing needs assessment by Bowen National Research, which found the largest gaps in housing affordable to households below 30 percent of median and between 85 percent and 120 percent, and a lack of housing availability across the income spectrum.

(3) The purpose of this section is to promote the development and improvement of housing for Vermonters.

(b) The Vermont Housing and Conservation Board shall use the proceeds of bonds, notes, and other obligations issued by the Vermont Housing Finance Agency pursuant to 10 V.S.A. § 621(22) and transferred to the Vermont Housing and Conservation Trust Fund to fund the creation and improvement of ownership and rental housing for Vermonters with very low to middle income in areas targeted for growth and reinvestment, as follows:

(1) not less than 25 percent of the housing shall be targeted to Vermonters with very low income, meaning households below 50 percent of area median income; and

(2) not less than 25 percent shall be targeted to Vermonters with moderate income, meaning households between 80 and 120 percent of median income.

Sec. 2. 32 V.S.A. § 9241 is amended to read:

§ 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine percent of the rent of each occupancy plus a \$2.00 housing help surcharge for each night of the occupancy.

\* \* \*

Sec. 3. 32 V.S.A. § 9241a is added to read:

§ 9241A. HOUSING HELP SURCHARGE; ALLOCATION OF REVENUES

(a) The revenues generated by the \$2.00 housing help surcharge imposed under subsection 9241(a) of this title shall be allocated as follows:

(1) the first \$2.5 million shall be transferred to the Vermont Housing Finance Agency to pay the principal of and interest due on the bonds, notes, and other obligations authorized to be issued by the Agency pursuant to 10 V.S.A. § 621(22), the proceeds of which the Vermont Housing and Conservation Board shall use to create affordable housing pursuant to 10 V.S.A. chapter 15 and Sec. 1 of S.100 (2017) as enacted; and

(2) any remaining revenues shall be transferred to the Clean Water Fund created in 10 V.S.A. § 1388.

(b) As long as the bonds, notes, and other obligations incurred pursuant to subdivision (a)(1) of this section remain outstanding, the housing help surcharge imposed pursuant to section 9241 of this title shall not be reduced below a rate estimated, at the time of any reduction, to generate annual revenues of at least \$6 million.

\* \* \* Vermont Housing Finance Agency; Authority to Issue Bonds for  
Affordable Housing \* \* \*

Sec. 4. 10 V.S.A. § 621 is amended to read:

§ 621. GENERAL POWERS AND DUTIES

The Agency shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided a business corporation by 11A V.S.A. § 3.02 and those general powers provided a nonprofit corporation by 11B V.S.A. § 3.02 and including, without limiting the generality of the foregoing, the power to:

\* \* \*

(22) issue bonds, notes, and other obligations secured by the housing help surcharge revenues transferred to the Agency pursuant to 32 V.S.A. § 9241a(a)(1).

Sec. 5. 10 V.S.A. § 631(1) is added to read:

(1)(1) The bonds, notes, and other obligations authorized to be issued pursuant to subdivision 621(22) of this title shall be secured by a pledge of the housing help surcharge revenues to be transferred to the Agency pursuant to 32 V.S.A. § 9241a(a)(1) and shall mature not later than June 30, 2038.

(2) The Agency may issue the bonds, notes, and other obligations in one or more series at one time or from time to time, provided that the aggregate annual debt service on the bonds, notes, and other obligations shall not exceed \$2.5 million at any time.

(3) The Agency shall transfer the proceeds of the bonds, notes, and other obligations, less issuance fees and costs and required reserves, to the Vermont Housing and Conservation Trust Fund established pursuant to section 312 of this title, for use by the Vermont Housing and Conservation Board as provided in chapter 15 of this title and Sec. 1 of S.100 (2017) as enacted.

(4) The Agency, the Vermont Housing and Conservation Board, and the State Treasurer may execute one or more agreements governing the terms and conditions under which the housing help surcharge revenues that secure the bonds, notes, and obligations will be transferred to the Agency, and any other issues they determine appropriate.

#### Sec. 6. REPEAL

The following shall be repealed on July 1, 2038:

(1) 32 V.S.A. § 9241a (housing help surcharge for affordable housing debt repayment and clean water fund).

(2) 10 V.S.A. § 621(22) (Vermont Housing Finance Agency (VHFA) authority to issue debt obligations secured by property transfer tax).

(3) 10 V.S.A. § 631(l) (debt obligations issued by VHFA).

Sec. 6a. 32 V.S.A. § 9241 is amended to read:

#### § 9241. IMPOSITION OF TAX

(a) An operator shall collect a tax of nine percent of the rent of each occupancy.

\* \* \*

Sec. 7. 10 V.S.A. § 323 is amended to read:

#### § 323. ANNUAL REPORT

Prior to January 31 of each year, the ~~board~~ Board shall submit a report concerning its activities to the ~~governor~~ Governor and legislative committees on agriculture, natural resources and energy, appropriations, ways and means, finance, and institutions. The report shall include, ~~but not be limited to,~~ the following:

(1) a list and description of activities funded by the ~~board~~ Board during the preceding year, including commitments made to fund projects through housing bond proceeds pursuant to Sec. 1 of S.100 (2017) as enacted, and project descriptions, levels of affordability, and geographic location;

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\* \* \*

\* \* \* Municipal Outreach; Sewerage and Water Service Connections \* \* \*

Sec. 8. AGENCY OF NATURAL RESOURCES; EDUCATION AND  
OUTREACH; DELEGATION; SEWERAGE AND WATER  
SERVICE CONNECTIONS

(a) The Secretary of Natural Resources, after consultation with the Vermont League of Cities and Towns, shall conduct outreach and education for municipalities regarding the ability of a municipality under 10 V.S.A. § 1976 to be delegated the authority to permit the connection of a municipal sewer or water service line to subdivided land, a building, or a campground.

(b) The education and outreach shall specify the conditions or requirements for delegation, how a municipality can seek delegation, and contact information or other resource to provide additional information regarding delegation. The education and outreach may include educational materials, workshops, or classes regarding the ability of a municipality to be delegated under 10 V.S.A. § 1976 the permitting of sewer and water service connection.

(c) On or before January 15, 2018, the Secretary of Natural Resources shall submit a report to the Senate Committees on Natural Resources and Energy and Economic Development, Housing and General Affairs and the House Committees on Natural Resources, Fish and Wildlife and on Commerce and Economic Development summarizing the education and outreach conducted or planned by the Secretary under the requirements of this section and whether any municipality has sought delegation of sewer and water service connection permitting under 10 V.S.A. § 1976 since the effective date of this act.

\* \* \* Municipal Land Use and Development; Affordable Housing \* \* \*

Sec. 9. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

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

(1) “Affordable housing” means either of the following:

(A) ~~Housing that is owned by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees is not more than 30 percent of the household’s gross annual income.~~

Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 120 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

~~(B) Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.~~

Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

\* \* \*

\* \* \* Act 250; Priority Housing Projects \* \* \*

Sec. 10. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

In this chapter:

\* \* \*

(3)(A) "Development" means each of the following:

---

\* \* \*

(iv) The construction of housing projects such as cooperatives, condominiums, or dwellings, or construction or maintenance of mobile homes or mobile home parks, with 10 or more units, constructed or maintained on a tract or tracts of land, owned or controlled by a person, within a radius of five miles of any point on any involved land, and within any continuous period of five years. However:

(I) A priority housing project shall constitute a development under this subdivision (iv) only if the number of housing units in the project is:

(aa) ~~275 or more, in a municipality with a population of 15,000 or more;~~ [Repealed.]

(bb) ~~150 or more, in a municipality with a population of 10,000 or more but less than 15,000;~~ [Repealed.]

(cc) 75 or more, in a municipality with a population of 6,000 or more but less than 10,000;

(dd) 50 or more, in a municipality with a population of 3,000 or more but less than 6,000;

(ee) 25 or more, in a municipality with a population of less than 3,000; ~~and.~~

(ff) ~~notwithstanding~~ Notwithstanding subdivisions (aa)(cc) through (ee) of this subdivision (3)(A)(iv)(I), 10 or more if the construction involves the demolition of one or more buildings that are listed on or eligible to be listed on the State or National Register of Historic Places. However, demolition shall not be considered to create jurisdiction under this subdivision if the Division for Historic Preservation has determined that the proposed demolition will have no adverse effect, will have no adverse effect if specified conditions are met, or will have an adverse effect that will be adequately mitigated. Any imposed conditions shall be enforceable through a grant condition, deed covenant, or other legally binding document.

(II) The determination of jurisdiction over a priority housing project shall count only the housing units included in that discrete project.

(III) Housing units in a priority housing project shall not count toward determining jurisdiction over any other project.

\* \* \*

(D) The word “development” does not include:

\* \* \*

(viii) The construction of a priority housing project in a municipality with a population of 10,000 or more. However, if the construction of the project involves demolition of one or more buildings that are listed or eligible to be listed on the State or National Register of Historic Places, this exemption shall not apply unless the Division for Historic Preservation has made the determination described in subdivision (3)(A)(iv)(I)(ff) of this section and any imposed conditions are enforceable in the manner set forth in that subdivision.

\* \* \*

(27) “Mixed income housing” means a housing project in which the following apply:

(A) Owner-occupied housing. At the option of the applicant, owner-occupied housing may be characterized by either of the following:

(i) at least 15 percent of the housing units have a purchase price which at the time of first sale does not exceed 85 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency; or

(ii) at least 20 percent of the housing units have a purchase price which at the time of first sale does not exceed 90 percent of the new construction, targeted area purchase price limits established and published annually by the Vermont Housing Finance Agency;

(B) Rental Housing housing. At least 20 percent of the housing units that are rented constitute affordable housing and have a duration of affordability of ~~no~~ not less than ~~20~~ 15 years.

(28) “Mixed use” means construction of both mixed income housing and construction of space for any combination of retail, office, services, artisan, and recreational and community facilities, provided at least 40 percent of the gross floor area of the buildings involved is mixed income housing. “Mixed use” does not include industrial use.

(29) “Affordable housing” means either of the following:

(A) ~~Housing that is owned by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees is not more than 30 percent of the household’s gross annual income.~~

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Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 120 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

~~(B) Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.~~

Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed 30 percent of the gross annual income of a household at 80 percent of the highest of the following:

(i) the county median income, as defined by the U.S. Department of Housing and Urban Development;

(ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or

(iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

\* \* \*

(35) "Priority housing project" means a discrete project located on a single tract or multiple contiguous tracts of land that consists exclusively of:

(A) mixed income housing or mixed use, or any combination thereof, and is located entirely within a designated downtown development district, designated new town center, designated growth center, or designated village center that is also a designated neighborhood development area under 24 V.S.A. chapter 76A; or



(B) mixed income housing and is located entirely within a designated Vermont neighborhood or designated neighborhood development area under 24 V.S.A. chapter 76A.

\* \* \*

Sec. 11. 10 V.S.A. § 6081 is amended to read:

§ 6081. PERMITS REQUIRED; EXEMPTIONS

(a) No person shall sell or offer for sale any interest in any subdivision located in this State, or commence construction on a subdivision or development, or commence development without a permit. This section shall not prohibit the sale, mortgage, or transfer of all, or an undivided interest in all, of a subdivision unless the sale, mortgage, or transfer is accomplished to circumvent the purposes of this chapter.

\* \* \*

(o) If a ~~downtown development district~~ designation pursuant to 24 V.S.A. ~~§ 2793~~ chapter 76A is removed, subsection (a) of this section shall apply to any subsequent substantial change to a priority housing project that was originally exempt pursuant to subdivision 6001(3)(A)(iv)(I) of this title on the basis of that designation.

(p)(1) No permit or permit amendment is required for any change to a project that is located entirely within a downtown development district designated pursuant to 24 V.S.A. § 2793, if the change consists exclusively of any combination of mixed use and mixed income housing, and the cumulative changes within any continuous period of five years, commencing on or after the effective date of this subsection, remain below the jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title.

(2) No permit or permit amendment is required for a priority housing project in a designated center other than a downtown development district if the project remains below the jurisdictional threshold specified in subdivision 6001(3)(A)(iv)(I) of this title and will comply with all conditions of any existing permit or permit amendment issued under this chapter that applies to the tract or tracts on which the project will be located. If such a priority housing project will not comply with one or more of these conditions, an application may be filed pursuant to section 6084 of this title.

\* \* \*

Sec. 12. 10 V.S.A. § 6084 is amended to read:

§ 6084. NOTICE OF APPLICATION; HEARINGS, COMMENCEMENT OF REVIEW

\* \* \*

(f) This subsection concerns an application for a permit amendment to change the conditions of an existing permit or permit amendment in order to authorize the construction of a priority housing project described in subdivision 6081(p)(2) of this title.

(1) The District Commission may authorize a district coordinator to issue such an amendment, without notice and a hearing, if the applicant demonstrates that all parties to the permit or permit amendment or their successors in interest have consented to the proposed changes to conditions relative to the criteria for which the party retained party status.

(2) If the applicant is not able to obtain the consent of a party or parties or their successors in interest with respect to one or more of the conditions proposed to be changed, the applicant shall file a permit application pursuant to this section. However, review by the District Commission shall be limited to whether the changes to conditions not consented to by the party or parties or their successors in interest enable positive findings under subsection 6086(a) and are authorized under subsection 6086(c) of this title.

\* \* \* ACCD; Publication of Median Household Income and Qualifying Costs for Affordable Housing \* \* \*

Sec. 13. 3 V.S.A. § 2472 is amended to read:

§ 2472. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

(a) The Department of Housing and Community Development is created within the Agency of Commerce and Community Development. The Department shall:

\* \* \*

(5) In conjunction with the Vermont Housing Finance Agency, annually publish data and information to enable the public to determine income levels and costs for owner-occupied and rental housing to qualify as affordable housing, as defined in 24 V.S.A. § 4303 and 10 V.S.A. § 6001(29), including:

(A) the median income for each Vermont county, as defined by the U.S. Department of Housing and Urban Development;

(B) the standard metropolitan statistical area median income for each municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; and

(C) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

\* \* \*

\* \* \* Downtown Tax Credits \* \* \*

Sec. 14. 32 V.S.A. § 5930ee is amended to read:

§ 5930ee. LIMITATIONS

Beginning in fiscal year 2010 and thereafter, the State Board may award tax credits to all qualified applicants under this subchapter, provided that:

(1) the total amount of tax credits awarded annually, together with sales tax reallocated under section 9819 of this title, does not exceed ~~\$2,200,000.00~~ \$2,400,000.00;

\* \* \*

\* \* \* Tax Credit for Affordable Housing; Captive Insurance Companies \* \* \*

Sec. 15. 32 V.S.A. § 5930u is amended to read:

§ 5930u. TAX CREDIT FOR AFFORDABLE HOUSING

(a) As used in this section:

\* \* \*

(5) “Credit certificate” means a certificate issued by the allocating agency to a taxpayer that specifies the amount of affordable housing tax credits that can be applied against the taxpayer’s individual or corporate income tax, or franchise, captive insurance premium, or insurance premium tax liability as provided in this subchapter.

\* \* \*

(c) Amount of credit. A taxpayer who makes an eligible cash contribution shall be entitled to claim against the taxpayer’s individual income, corporate, franchise, captive insurance premium, or insurance premium tax liability a credit in an amount specified on the taxpayer’s credit certificate. The first-year allocation of a credit amount to a taxpayer shall also be deemed an allocation of the same amount in each of the following four years.

\* \* \*

---

Sec. 16. 24 V.S.A. chapter 53, subchapter 5 is amended to read:

Subchapter 5. Tax Increment Financing

\* \* \*

§ 1892. CREATION OF DISTRICT

\* \* \*

(d) The following municipalities have been authorized to use education tax increment financing for a tax increment financing district, ~~and the Vermont Economic Progress Council is not authorized to approve any additional tax increment financing districts even if one of the districts named in this subsection is terminated pursuant to subsection 1894(a) of this subchapter:~~

- (1) the City of Burlington, Downtown;
- (2) the City of Burlington, Waterfront;
- (3) the Town of Milton, North and South;
- (4) the City of Newport;
- (5) the City of Winooski;
- (6) the Town of Colchester;
- (7) the Town of Hartford;
- (8) the City of St. Albans;
- (9) the City of Barre; ~~and~~
- (10) the Town of Milton, Town Core; and
- (11) the City of South Burlington, New Town Center.

\* \* \*

§ 1894. POWER AND LIFE OF DISTRICT

\* \* \*

(c) Use of the municipal property tax increment. For only debt incurred within the period permitted under subdivision (a)(1) of this section after creation of the district, and related costs, not less than an equal share plus five percent of the municipal tax increment pursuant to subsection (f) of this section shall be retained to service the debt, beginning the first year in which debt is incurred, pursuant to subsection (b) of this section.

\* \* \*

(f) Equal share required. If any tax increment utilization is approved pursuant to 32 V.S.A. § 5404a(h), no more than 75 percent of the State

property tax increment and no less than an equal percent, plus five percent, of the municipal tax increment may be approved by the Council or used by the municipality to service this debt.

\* \* \*

Sec. 17. 32 V.S.A. § 5404a is amended to read:

§ 5404a. TAX STABILIZATION AGREEMENTS; TAX INCREMENT  
FINANCING DISTRICTS

\* \* \*

(f) A municipality that establishes a tax increment financing district under 24 V.S.A. chapter 53, subchapter 5 shall collect all property taxes on properties contained within the district and apply up to 75 percent of the State education property tax increment, and not less than an equal share plus five percent of the municipal tax increment, as defined in 24 V.S.A. § 1896<sub>2</sub>, to repayment of financing of the improvements and related costs for up to 20 years pursuant to 24 V.S.A. § 1894, if approved by the Vermont Economic Progress Council pursuant to this section, subject to the following:

(1) In a municipality with one or more approved districts, the Council shall not approve an additional district until the municipality retires the debt incurred for all of the districts in the municipality.

(2) The Council shall not approve more than two districts in a single county, and not more than an additional 14 districts in the State, provided:

(A) The districts listed in 24 V.S.A. § 1892(d) shall not be counted against the limits imposed in this subdivision (2).

(B) The Council shall consider complete applications in the order they are submitted, except that if during any calendar month the Council receives applications for more districts than are actually available in a county, the Council shall evaluate each application and shall approve the application that, in the Council's discretion, best meets the economic development needs of the county.

(C) If, while the General Assembly is not in session, the Council receives applications for districts that would otherwise qualify for approval but, if approved, would exceed the 14-district limit in the State, the Council shall make one or more presentations to the Emergency Board concerning the applications, and the Emergency Board may, in its discretion, increase the 14-district limit.

---

(3)(A) A municipality shall immediately notify the Council if it resolves not to incur debt for an approved district within five years of approval or a five-year extension period as required in 24 V.S.A. § 1894.

(B) Upon receiving notification pursuant to subdivision (3)(A) of this subsection, the Council shall terminate the district and may approve a new district, subject to the provisions of this section and 24 V.S.A. chapter 53, subchapter 5.

(4) The Council shall not approve any additional districts on or after July 1, 2024.

\* \* \*

(h) Criteria for approval. To approve utilization of incremental revenues pursuant to subsection (f) of this section, the Vermont Economic Progress Council shall do all the following:

(1) Review each application to determine that the ~~new real property~~ proposed infrastructure improvements and the proposed development would not have occurred or would have occurred in a significantly different and less desirable manner but for the proposed utilization of the incremental tax revenues. The review shall take into account:

(A) the amount of additional time, if any, needed to complete the proposed development within the tax increment district and the amount of additional cost that might be incurred if the project were to proceed without education property tax increment financing;

(B) how the proposed development components and size would differ, if at all, without education property tax increment financing, including, if applicable to the development, the number of units of affordable housing, as defined in 24 V.S.A. § 4303; and

(C) the amount of additional revenue expected to be generated as a result of the proposed development; the percentage of that revenue that shall be paid to the education fund; the percentage that shall be paid to the municipality; and the percentage of the revenue paid to the municipality that shall be used to pay financing incurred for development of the tax increment financing district.

(2) Process requirements. Determine that each application meets all of the following four requirements:

(A) The municipality held public hearings and established a tax increment financing district in accordance with 24 V.S.A. §§ 1891-1900.

(B) The municipality has developed a tax increment financing district plan, including: a project description; a development financing plan; a pro forma projection of expected costs; a projection of revenues; a statement and demonstration that the project would not proceed without the allocation of a tax increment; evidence that the municipality is actively seeking or has obtained other sources of funding and investment; and a development schedule that includes a list, a cost estimate, and a schedule for public improvements and projected private development to occur as a result of the improvements.

(C) The municipality has approved or pledged the utilization of incremental municipal tax revenues for purposes of the district in the same proportion as the utilization of education property tax revenues approved by the Vermont Economic Progress Council for the tax increment financing district.

(D) The proposed infrastructure improvements and the projected development or redevelopment are compatible with approved municipal and regional development plans, and the project has clear local and regional significance for employment, housing, and transportation improvements.

(3) Location criteria. Determine that each application meets one of the following criteria:

(A) The development or redevelopment is compact, high density, and located in or near existing industrial areas.

(B) The proposed district is within an approved growth center, designated downtown, designated village center, ~~or~~ new town center, or neighborhood development area.

(C) The development will occur in an area that is economically distressed, which for the purposes of this subdivision means that the ~~area has experienced patterns of increasing unemployment, a drop in average wages, or a decline in real property values~~ municipality in which the area is located has:

(i) median family income that is 80 percent or less of the statewide median family income as reported by the Vermont Department of Taxes for the most recent year for which data is available;

(ii) an annual average unemployment rate that is at least one percent greater than the latest annual average statewide unemployment rate as reported by the Vermont Department of Labor; or

(iii) a median sales price for residential properties under six acres that is 80 percent or less than the statewide median sales price for residential properties under six acres as reported by the Vermont Department of Taxes.

(4) Project criteria. Determine that the proposed development within a tax increment financing district will accomplish at least ~~three~~ two of the following ~~five~~ four criteria:

~~(A)~~ The development within the tax increment financing district clearly requires substantial public investment over and above the normal municipal operating or bonded debt expenditures.

~~(B)~~ The development includes new or rehabilitated affordable housing that is affordable to the majority of the residents living within the municipality and is developed at a higher density than at the time of application. “Affordable” has the same meaning as in 10 V.S.A. § 6001(29), as defined in 24 V.S.A. § 4303.

~~(C)~~(B) The project will affect the remediation and redevelopment of a brownfield located within the district. As used in this section, “brownfield” means an area in which a hazardous substance, pollutant, or contaminant is or may be present, and that situation is likely to complicate the expansion, development, redevelopment, or reuse of the property.

~~(D)~~(C) The development will include at least one entirely new business or business operation or expansion of an existing business within the district, and this business will provide new, quality, full-time jobs that meet or exceed the prevailing wage for the region as reported by the department of labor.

~~(E)~~(D) The development will enhance transportation by creating improved traffic patterns and flow or creating or improving public transportation systems.

\* \* \*

#### Sec. 18. IMPLEMENTATION

Secs. 16 and 17 of this act shall apply only to tax increment financing district applications filed, and districts approved, on or after the date of passage of this act.

#### Sec. 19. EFFECTIVE DATES

(a) This section and Secs. 16–18 (tax increment financing districts) shall take effect on passage.

(b) Sec. 6a (repeal of housing help surcharge) shall take effect on July 1, 2038.

(c) The remaining sections of this act shall take effect on July 1, 2017.

And that when so amended the bill ought to pass.



Senator Westman, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Vermont Housing and Conservation Board;  
Housing Bond Proceeds for Affordable Housing \* \* \*

Sec. 1. FINDINGS AND PURPOSE; AFFORDABLE HOUSING BOND

(a) Findings.

(1) The General Assembly finds that investments are needed to help house the most vulnerable as well as creating more homes for workers.

(2) The shortage of affordable and available homes has been highlighted recently by:

(A) the Vermont Futures Project of the Vermont Chamber of Commerce, which set a growth target of 5,000 new and improved housing units annually;

(B) a national consultant's recommendations for a Roadmap to End Homelessness, which calls for, over the next five years, 368 new units for permanent supportive housing and 1,251 new homes affordable to families with income that is not more than 30 percent of the median; and

(C) the 2015 statewide housing needs assessment by Bowen National Research, which found the largest gaps in housing affordable to households with income below 30 percent of median and households with income between 85 percent and 120 percent of median, and found a lack of housing availability across the income spectrum.

(b) Purpose. The purpose of this act is to promote the development and improvement of housing for Vermonters.

Sec. 2. 10 V.S.A. § 314 is added to read:

§ 314. AFFORDABLE HOUSING BOND; INVESTMENT

The Vermont Housing and Conservation Board shall use the proceeds of bonds, notes, and other obligations issued by the Vermont Housing Finance Agency pursuant to subdivision 621(22) of this title and transferred to the Vermont Housing and Conservation Trust Fund to fund the creation and improvement of owner-occupied and rental housing for Vermonters with very low to middle income, in areas targeted for growth and reinvestment, as follows:

(1) not less than 25 percent of the housing shall be targeted to Vermonters with very low income, meaning households with income below 50 percent of area median income;

(2) not less than 25 percent of the housing shall be targeted to Vermonters with moderate income, meaning households with income between 80 and 120 percent of area median income; and

(3) the remaining housing shall be targeted to Vermonters with income that is less than or equal to 120 percent of area median income, consistent with the provisions of this chapter.

Sec. 3. 10 V.S.A. § 323 is amended to read:

§ 323. ANNUAL REPORT

Prior to January 31 of each year, the ~~board~~ Board shall submit a report concerning its activities to the ~~governor~~ Governor and ~~legislative committees on agriculture, natural resources and energy, appropriations, ways and means, finance, and institutions~~ to the House Committees on Agriculture and Forestry, on Appropriations, on Corrections and Institutions, on Natural Resources, Fish and Wildlife, and on Ways and Means and the Senate Committees on Agriculture, on Appropriations, on Finance, on Institutions, and on Natural Resources and Energy. The report shall include, ~~but not be limited to,~~ the following:

(1) a list and description of activities funded by the ~~board~~ Board during the preceding year, including commitments made to fund projects through housing bond proceeds pursuant to section 314 of this title, and project descriptions, levels of affordability, and geographic location;

\* \* \*

\* \* \* Allocation of Property Transfer Tax Revenues \* \* \*

Sec. 4. 32 V.S.A. § 9610 is amended to read:

§ 9610. REMITTANCE OF RETURN AND TAX; INSPECTION OF RETURNS

(a) Not later than 30 days after the receipt of any property transfer return, a town clerk shall file the return in the office of the town clerk and electronically forward a copy of the acknowledged return to the Commissioner; provided, however, that with respect to a return filed in paper format with the town, the Commissioner shall have the discretion to allow the town to forward a paper copy of that return to the ~~department~~ Department.

(b) The copies of property transfer returns in the custody of the town clerk may be inspected by any member of the public.

(c) Prior to distributions of property transfer tax revenues under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), and ~~32 V.S.A. § subdivision 435(b)(10) of this title~~, one percent of the revenues received from the property transfer tax shall be deposited in a special fund in the Department of Taxes for Property Valuation and Review administration costs.

(d)(1) Prior to any distribution of property transfer tax revenue under 10 V.S.A. § 312, 24 V.S.A. § 4306(a), subdivision 435(b)(10) of this title, and subsection (c) of this section, \$2,500,000.00 of the revenue received from the property transfer tax shall be transferred to the Vermont Housing Finance Agency to pay the principal of and interest due on the bonds, notes, and other obligations authorized to be issued by the Agency pursuant to 10 V.S.A. § 621(22), the proceeds of which the Vermont Housing and Conservation Board shall use to create affordable housing pursuant to 10 V.S.A. § 314.

(2) As long as the bonds, notes, and other obligations incurred pursuant to subdivision (1) of this subsection remain outstanding, the rate of tax imposed pursuant to section 9602 of this title shall not be reduced below a rate estimated, at the time of any reduction, to generate annual revenues of at least \$12,000,000.00.

\* \* \* Vermont Housing Finance Agency; Authority to Issue Bonds for  
Affordable Housing \* \* \*

Sec. 5. 10 V.S.A. § 621 is amended to read:

§ 621. GENERAL POWERS AND DUTIES

The Agency shall have all of the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided a business corporation by 11A V.S.A. § 3.02 and those general powers provided a nonprofit corporation by 11B V.S.A. § 3.02 and including, without limiting the generality of the foregoing, the power to:

\* \* \*

(21) use funds received from real estate trust and escrow accounts established under 26 V.S.A. § 2214(c), IORTA funds, for down payment and closing cost assistance with priority given to persons and families at or below 90 percent of median income and to persons and families purchasing perpetually affordable housing;

(22) issue bonds, notes, and other obligations secured by the property transfer tax revenues transferred to the Agency pursuant to 32 V.S.A. § 9610(d).

Sec. 6. 10 V.S.A. § 631(1) is added to read:

(1)(1) The bonds, notes, and other obligations authorized to be issued pursuant to subdivision 621(22) of this title shall be secured by a pledge of the property transfer tax revenues to be transferred to the Agency pursuant to 32 V.S.A. § 9610(d) and shall mature on or before June 30, 2038.

(2) The Agency may issue the bonds, notes, and other obligations in one or more series at one time or from time to time, provided that the aggregate annual debt service on the bonds, notes, and other obligations shall not exceed \$2,500,000.00 at any time.

(3) The Agency shall transfer the proceeds of the bonds, notes, and other obligations, less issuance fees and costs and required reserves, to the Vermont Housing and Conservation Trust Fund established pursuant to section 312 of this title for use by the Vermont Housing and Conservation Board as provided in section 314 of this title.

(4) The Agency, the Vermont Housing and Conservation Board, and the State Treasurer may execute one or more agreements governing the terms and conditions under which the property transfer tax revenues that secure the bonds, notes, and obligations shall be transferred to the Agency, and any other issues they determine appropriate.

\* \* \* Funding for Affordable Housing Bond Program;  
Allocation of Revenues; Intent \* \* \*

Sec. 7. INTENT; FUNDING FOR AFFORDABLE HOUSING BOND  
PROGRAM; ALLOCATION OF PROPERTY TRANSFER TAX  
REVENUES

(a) Revenues from the property transfer tax are currently allocated pursuant to statute as follows:

(1) The first two percent is deposited in a special fund in the Department of Taxes for Property Valuation and Review administration costs pursuant to 32 V.S.A. § 9610(c).

(2) Of the remaining 98 percent of the revenues:

(A) 17 percent is deposited in the Municipal and Regional Planning Fund created in 24 V.S.A. § 4306.

(B) 50 percent is deposited in the Vermont Housing and Conservation Trust Fund created in 10 V.S.A. § 312.

(C) 33 percent is deposited in the General Fund created in 32 V.S.A. § 435.

(b) Pursuant to Sec. 4 of this act, in 32 V.S.A. § 9610(d), the first \$2,500,000.00 of revenue generated from the property transfer tax is transferred to the Vermont Housing Finance Agency to service the bonds, notes, and other obligations incurred by the Agency pursuant to 10 V.S.A. § 621(22), the proceeds of which the Vermont Housing and Conservation Board shall use to create affordable housing pursuant to 10 V.S.A. § 314.

(c) Transferring the first \$2,500,000.00 of property transfer tax revenues to the Vermont Housing Finance Agency for debt service causes a proportionate reduction in the amount of revenues available for allocation to the respective statutory recipients identified in subsection (a) of this section.

(d) To compensate for this reduction of available property transfer tax revenue, it is the intent of the General Assembly through this act to provide for the transfer of \$2,500,000.00 to the Vermont Housing and Conservation Trust Fund, as follows:

(1) Sec. D.100(a)(2) of H.518 (2017) appropriates \$11,304,840.00 in fiscal year 2018 from the Vermont Housing and Conservation Trust Fund to the Vermont Housing and Conservation Board. Upon the effective date of this act, the Board shall transfer the amount of \$1,500,000.00 back to the Fund, resulting in a fiscal year 2018 total appropriation to the Board of \$9,804,840.00. In fiscal year 2018 only, the Commissioner of Taxes shall transfer the amount of \$1,500,000.00 from the Vermont Housing and Conservation Trust Fund to the General Fund.

(2) As provided in Sec. 9 of this act, from July 1, 2017 until July 1, 2019, pursuant to 32 V.S.A. § 9602a(d), the Commissioner of Taxes shall annually transfer the first \$1,000,000.00 in revenue generated by the clean water surcharge of 0.2 percent to the Vermont Housing and Conservation Trust Fund. In fiscal year 2018 only, the Commissioner shall transfer the amount of \$1,000,000.00 from the Vermont Housing and Conservation Trust Fund to the General Fund.

(3) After July 1, 2019, pursuant to 32 V.S.A. § 9602a(d) as further amended in Sec. 10 of this act, the Commissioner of Taxes shall annually transfer the \$1,000,000.00 in total revenue generated by the clean water surcharge of 0.04 percent to the Vermont Housing and Conservation Trust Fund.

\* \* \* Clean Water Surcharge; Repeal of 2018 Sunset \* \* \*

#### Sec. 8. REPEAL; SUNSET OF CLEAN WATER SURCHARGE

2015 Acts and Resolves No. 64, Sec. 39 (sunset of clean water surcharge in 2018) is repealed.

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\* \* \* Clean Water Surcharge; Allocation of  
First \$1 Million in Revenue until 2019 \* \* \*

Sec. 9. 32 V.S.A. § 9602a is amended to read:

§ 9602a. CLEAN WATER SURCHARGE

There shall be a surcharge of 0.2 percent on the value of property subject to the property transfer tax under section 9602 of this title, except that there shall be no surcharge on the first \$100,000.00 in value of property to be used for the principal residence of the transferee or the first \$200,000.00 in value of property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont Housing and Conservation Trust Fund or which the Vermont Housing and Finance Agency or U.S. Department of Agriculture and Rural Development has committed to make or purchase. The surcharge shall be in addition to any tax assessed under section 9602 of this title. The surcharge assessed under this section shall be paid, collected, and enforced under this chapter in the same manner as the tax assessed under section 9602 of this title. The Commissioner shall deposit the surcharge collected under this section in the Clean Water Fund under 10 V.S.A. § 1388, except for the first \$1,000,000.00 of revenue generated by the surcharge, which shall be deposited in the Vermont Housing and Conservation Trust Fund created in 10 V.S.A. § 312.

\* \* \* Clean Water Surcharge; Allocation of  
Total of \$1 Million in Revenue after 2019 \* \* \*

Sec. 10. 32 V.S.A. § 9602a is amended to read:

§ 9602a. CLEAN WATER SURCHARGE

There shall be a surcharge of ~~0.2~~ 0.04 percent on the value of property subject to the property transfer tax under section 9602 of this title, except that there shall be no surcharge on the first \$100,000.00 in value of property to be used for the principal residence of the transferee or the first \$200,000.00 in value of property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont Housing and Conservation Trust Fund or which the Vermont Housing and Finance Agency or U.S. Department of Agriculture and Rural Development has committed to make or purchase. The surcharge shall be in addition to any tax assessed under section 9602 of this title. The surcharge assessed under this section shall be paid, collected, and enforced under this chapter in the same manner as the tax assessed under section 9602 of this title. The Commissioner shall deposit the surcharge collected under this section ~~in the Clean Water Fund under 10 V.S.A. § 1388, except for the first \$1,000,000.00 of revenue generated by the surcharge, which shall be deposited~~ in the Vermont Housing and Conservation Trust Fund created in 10 V.S.A. § 312.

**\* \* \* Repeal of Affordable Housing Bond Provisions After Life of Bond \* \* \***

**Sec. 11. REPEAL**

The following shall be repealed on July 1, 2039:

(1) 10 V.S.A. § 314 (Vermont Housing and Conservation Board; affordable housing bond and investments).

(2) 32 V.S.A. § 9610(d) (property transfer tax priority for affordable housing debt repayment).

(3) 10 V.S.A. § 621(22) (Vermont Housing Finance Agency (VHFA) authority to issue debt obligations secured by property transfer tax).

(4) 10 V.S.A. § 631(l) (debt obligations issued by VHFA).

(5) 32 V.S.A. § 9602a (clean water surcharge).

**Sec. 12. EFFECTIVE DATES**

This act shall take effect on July 1, 2017, except for Sec. 10 (reduction in clean water surcharge percentage), which shall take effect on July 1, 2019.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the recommendation of amendment of the Committee on Finance be amended as recommended by the Committee on Appropriations?, Senator Sirotkin moved that the report of the Committee on Finance be withdrawn.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Appropriations?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered on a roll call Yeas 28, Nays 1.

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

**Roll Call**

**Those Senators who voted in the affirmative were:** Ashe, Ayer, Balint, Baruth, Benning, Branagan, Bray, Brooks, Campion, Clarkson, Collamore, Cummings, Degree, Flory, Ingram, Kitchel, Lyons, MacDonald, Mazza, McCormack, Mullin, Nitka, Pearson, Pollina, Rodgers, Sirotkin, Starr, Westman, White.

**The Senator who voted in the negative was:** Sears.

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Thereupon, on motion of Senator Mullin, the rules were suspended and the bill was placed on all remaining stages of its passage.

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

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

### **Rules Suspended; Bill Messaged**

On motion of Senator Ashe, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

#### **S. 61.**

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

#### **H. 218.**

House bill entitled:

An act relating to the adequate shelter of dogs and cats.

Was taken up.

Thereupon, pending third reading of the bill, Senator Baruth moved to amend the Senate proposal of amendment as follows:

First: In Sec. 2, 13 V.S.A. § 365, by striking out subdivision (c)(3)(A) in its entirety and inserting in lieu thereof the following:

(3)(A) A cat over the age of two months shall be provided a minimum living space that is large enough to allow the cat, in a normal manner, to turn about freely, stand, sit, and lie down. A cat shall be presumed to have minimum living space if provided with floor space of at least eight square feet and a primary structure of at least 24 inches in height. Floor space shall be calculated to include any raised resting platforms provided.

Second: In Sec. 2, 13 V.S.A. § 365, in subdivision (c)(5), by striking out the following: “Dogs or cats that are housed in the same primary living space or enclosure shall be compatible, as determined by observation, provided that:”

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

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



**Committee of Conference Appointed****H. 515.**

An act relating to Executive Branch and Judiciary fees.

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

Senator Lyons  
Senator Cummings  
Senator Campion

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

**Recess**

On motion of Senator Ashe the Senate recessed until 4:00 P.M.

**Called to Order**

The Senate was called to order by the President.

**Message from the House No. 59**

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

Mr. President:

I am directed to inform the Senate that:

The Governor has informed the House that on the May 1, 2017, he approved and signed bills originating in the House of the following titles:

**H. 4.** An act relating to calculating time periods in court proceedings.

**H. 85.** An act relating to captive insurance companies.

**H. 152.** An act relating to the Vermont Revised Uniform Fiduciary Access to Digital Assets Act.

**Rules Suspended; Report of Committee of Conference Accepted and Adopted on the Part of the Senate****H. 74.**

Appearing on the Calendar for notice, on motion of Senator Ashe, the rules were suspended and the report of the Committee of Conference on House bill entitled:

An act relating to nonconsensual sexual conduct.

Was taken up for immediate consideration.

Senator Sears, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House bill entitled:

**H. 74.** An act relating to nonconsensual sexual conduct.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 2601a is added to read:

§ 2601a. PROHIBITED CONDUCT

(a) No person shall engage in open and gross lewdness.

(b) A person who violates this section shall:

(1) be imprisoned not more than one year or fined not more than \$300.00, or both, for a first offense; and

(2) be imprisoned not more than two years or fined not more than \$1,000.00, or both, for a second or subsequent offense.

Sec. 2. 13 V.S.A. § 2632 is amended to read:

§ 2632. PROHIBITED ACTS PROSTITUTION

\* \* \*

Sec. 3. 13 V.S.A. § 1030 is amended to read:

§ 1030. VIOLATION OF AN ABUSE PREVENTION ORDER, AN ORDER AGAINST STALKING OR SEXUAL ASSAULT, OR A PROTECTIVE ORDER CONCERNING CONTACT WITH A CHILD

(a) A person who intentionally commits an act prohibited by a court or who fails to perform an act ordered by a court, in violation of an abuse prevention order issued under 15 V.S.A. chapter 21 of Title 15 or 33 V.S.A. chapter 69 of Title 33, a protective order that concerns contact with a child and is issued under 33 V.S.A. chapter 51 of Title 33, or an order against stalking or sexual assault issued under 12 V.S.A. chapter 178 of Title 12, after the person has been served notice of the contents of the order as provided in those chapters; or in violation of a foreign abuse prevention order or an order against stalking or sexual assault issued by a court in any other state, federally recognized Indian tribe, territory or possession of the United States, the

Commonwealth of Puerto Rico, or the District of Columbia; shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who is convicted of a second or subsequent offense under this section or is convicted of an offense under this section and has previously been convicted of domestic assault under section 1042 of this title, first degree aggravated domestic assault under section 1043 of this title, or second degree aggravated domestic assault under section 1044 of this title shall be imprisoned not more than three years or fined not more than \$25,000.00, or both.

(c) Upon conviction under this section for a violation of an order issued under 15 V.S.A. chapter 21 of Title 15, the court shall, unless the circumstances indicate that it is not appropriate or not available, order the defendant to participate in domestic abuse counseling or a domestic abuse prevention program approved by the ~~department of corrections~~ Department of Corrections. The defendant may at any time request the court to approve an alternative program. The defendant shall pay all or part of the costs of the counseling or program unless the court finds that the defendant is unable to do so.

(d) Upon conviction for a violation of an order issued under 12 V.S.A. chapter 178 of Title 12, the court may order the defendant to participate in mental health counseling or sex offender treatment approved by the ~~department of corrections~~ Department of Corrections. The defendant shall pay all or part of the costs of the counseling unless the court finds that the defendant is unable to do so.

(e) Nothing in this section shall be construed to diminish the inherent authority of the courts to enforce their lawful orders through contempt proceedings.

(f) Prosecution for violation of an abuse prevention order or an order against stalking or sexual assault shall not bar prosecution for any other crime, including any crime that may have been committed at the time of the violation of the order.

Sec. 4. 13 V.S.A. § 3281 is added to read:

§ 3281. SEXUAL ASSAULT SURVIVORS' RIGHTS

(a) Short title. This section may be cited as the “Bill of Rights for Sexual Assault Survivors.”

(b) Definition. As used in this section, “sexual assault survivor” means a person who is a victim of an alleged sexual offense.

(c) Survivors' rights. When a sexual assault survivor makes a verbal or written report to a law enforcement officer, emergency department, sexual

assault nurse examiner, or victim's advocate of an alleged sexual offense, the recipient of the report shall provide written notification to the survivor that he or she has the following rights:

(1) The right to receive a medical forensic examination and any related toxicology testing at no cost to the survivor in accordance with 32 V.S.A. § 1407, irrespective of whether the survivor reports to or cooperates with law enforcement. If the survivor opts to have a medical forensic examination, he or she shall have the following additional rights:

(A) the right to have the medical forensic examination kit or its probative contents delivered to a forensics laboratory within 72 hours of collection;

(B) the right to have the sexual assault evidence collection kit or its probative contents preserved without charge for the duration of the maximum applicable statute of limitations;

(C) the right to be informed in writing of all policies governing the collection, storage, preservation, and disposal of a sexual assault evidence collection kit;

(D) the right to be informed of a DNA profile match on a kit reported to law enforcement or on a confidential kit, on a toxicology report, or on a medical record documenting a medical forensic examination, if the disclosure would not impede or compromise an ongoing investigation; and

(E) upon written request from the survivor, the right to:

(i) receive written notification from the appropriate official with custody not later than 60 days before the date of the kit's intended destruction or disposal; and

(ii) be granted further preservation of the kit or its probative contents.

(2) The right to consult with a sexual assault advocate.

(3) The right to information concerning the availability of protective orders and policies related to the enforcement of protective orders.

(4) The right to information about the availability of, and eligibility for, victim compensation and restitution.

(5) The right to information about confidentiality.

(d) Notification protocols. The Vermont Network Against Domestic and Sexual Violence and the Sexual Assault Nurse Examiner Program, in consultation with other parties referred to in this section, shall develop

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protocols and written materials to assist all responsible entities in providing notification to victims.

Sec. 5. 13 V.S.A. § 4501 is amended to read:

§ 4501. LIMITATION OF PROSECUTIONS FOR CERTAIN CRIMES

(a) Prosecutions for aggravated sexual assault, aggravated sexual assault of a child, sexual assault, human trafficking, aggravated human trafficking, murder, arson causing death, and kidnapping may be commenced at any time after the commission of the offense.

(b) Prosecutions for manslaughter, ~~sexual assault~~, lewd and lascivious conduct, ~~sexual exploitation of children under chapter 64 of this title~~, sexual abuse of a vulnerable adult, grand larceny, robbery, burglary, embezzlement, forgery, bribery offenses, false claims, fraud under 33 V.S.A. § 141(d), and felony tax offenses shall be commenced within six years after the commission of the offense, and not after.

(c) Prosecutions for any of the following offenses ~~alleged to have been committed against a child under 18 years of age~~ shall be commenced within 40 years after the commission of the offense, and not after:

(1) ~~sexual assault~~;

(2) lewd and lascivious conduct alleged to have been committed against a child under 18 years of age;

~~(3)~~(2) sexual exploitation of a minor as defined in subsection 3258(c) of this title;

~~(4)~~(3) lewd or lascivious conduct with a child; ~~and~~

~~(5)~~(4) sexual exploitation of children under chapter 64 of this title; and

(5) manslaughter alleged to have been committed against a child under 18 years of age.

(d) Prosecutions for arson shall be commenced within 11 years after the commission of the offense, and not after.

(e) Prosecutions for other felonies and for misdemeanors shall be commenced within three years after the commission of the offense, and not after.

Sec. 6. 14 V.S.A. § 315 is amended to read:

§ 315. PARENT AND CHILD RELATIONSHIP

(a) For the purpose of intestate succession, an individual is the child of his or her parents, regardless of their marital status, but a parent shall not inherit

from a child unless the parent has openly acknowledged the child and not refused to support the child.

(b) The parent and child relationship may be established in parentage proceedings under ~~subchapter 3A~~ of 15 V.S.A. chapter 5 of ~~Title 15~~, subchapter 3A.

(c) A parent shall not inherit from a child conceived of sexual assault who is the subject of a parental rights and responsibilities order issued pursuant to 15 V.S.A. § 665(f).

Sec. 7. 15 V.S.A. § 665 is amended to read:

§ 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS  
OF THE CHILD

\* \* \*

(f) The State has a compelling interest in not forcing a victim of sexual assault or sexual exploitation to continue an ongoing relationship with the perpetrator of the abuse. Such continued interaction can have traumatic psychological effects on the victim, making recovery more difficult, and negatively affect the victim's ability to parent and to provide for the best interests of the child. Additionally, the State recognizes that a perpetrator may use the threat of pursuing parental rights and responsibilities to coerce a victim into not reporting or not assisting in the prosecution of the perpetrator for the sexual assault or sexual exploitation, or to harass, intimidate, or manipulate the victim.

(1) ~~The Court~~ court may enter an order awarding sole parental rights and responsibilities to a parent and denying all parent-child contact with the other parent if the ~~Court~~ court finds by clear and convincing evidence that the nonmoving parent was convicted of sexually assaulting the moving parent and the child was conceived as a result of the sexual assault. As used in this subdivision, sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252(a), (b), (d), and (e), aggravated sexual assault as provided in 13 V.S.A. § 3253, ~~and~~ aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions.

~~(A) An order issued in accordance with this subdivision (f)(1) shall be permanent and shall not be subject to modification.~~

~~(B) Upon issuance of a rights and responsibilities order pursuant to this subdivision (f)(1), the Court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent.~~

(2) The ~~Court~~ court may enter an order awarding sole parental rights and responsibilities to one parent and denying all parent-child contact between the other parent and a child if the ~~Court~~ court finds by clear and convincing evidence that the child was conceived as a result of the nonmoving parent sexually assaulting or sexually exploiting the moving parent and the ~~Court~~ court finds by a preponderance of the evidence that such an order is in the best interest of the child. A conviction is not required under this subdivision, and the ~~Court~~ court may consider other evidence of sexual assault or sexual exploitation in making its determination.

(A) For purposes of this subdivision (f)(2):

(i)(A) sexual assault shall include sexual assault as provided in 13 V.S.A. § 3252, aggravated sexual assault as provided in 13 V.S.A. § 3253, aggravated sexual assault of a child as provided in 13 V.S.A. § 3253a, lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602, and similar offenses in other jurisdictions; and

(ii)(B) sexual exploitation shall include sexual exploitation of an inmate as provided in 13 V.S.A. § 3257, sexual exploitation of a minor as provided in 13 V.S.A. § 3258, sexual abuse of a vulnerable adult as provided in 13 V.S.A. § 1379, and similar offenses in other jurisdictions.

~~(B) Except as provided in subdivision (f)(2)(C), the Court shall not issue a parent-child contact order in a case in which a parental rights and responsibilities order has been issued pursuant to this subdivision (f)(2) and any existing parent-child contact order concerning the child and the nonmoving parent shall be terminated.~~

~~(C) A party may file a motion for modification of the order only upon a showing of extraordinary, real, substantial, and unanticipated change of circumstances.~~

(3) Issuance of an order pursuant to this subsection shall not affect the right of the custodial parent to seek child support from the noncustodial parent.

(4) Upon issuance of a rights and responsibilities order pursuant to this subsection, the court shall not issue a parent-child contact order and shall terminate any existing parent-child contact order concerning the child and the nonmoving parent. An order issued in accordance with this subdivision shall be permanent and shall not be subject to modification.

Sec. 8. 15 V.S.A. § 1103 is amended to read:

§ 1103. REQUESTS FOR RELIEF

\* \* \*

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(c)(1) The ~~Court~~ court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the ~~Court~~ court finds that the defendant has abused the plaintiff, and:

(A) there is a danger of further abuse; or

(B) the defendant is currently incarcerated and has been convicted of one of the following: murder, attempted murder, kidnapping, domestic assault, aggravated domestic assault, sexual assault, aggravated sexual assault, stalking, aggravated stalking, lewd or lascivious conduct with a child, use of a child in a sexual performance, or consenting to a sexual performance.

(2) The court order may include the following:

(A) an order that the defendant refrain from abusing the plaintiff, or his or her children, or both, and from interfering with their personal liberty, including restrictions on the defendant's ability to contact the plaintiff or the plaintiff's children in person, by phone, or by mail, or both, in any way, whether directly, indirectly, or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication, and restrictions prohibiting the defendant from coming within a fixed distance of the plaintiff, the children, the plaintiff's residence, or other designated locations where the plaintiff or the plaintiff's children are likely to spend time;

\* \* \*

Sec. 9. 15 V.S.A. § 1104 is amended to read:

§ 1104. EMERGENCY RELIEF

(a) In accordance with the Vermont Rules of Civil Procedure, temporary orders under this chapter may be issued ex parte, without notice to the defendant, upon motion and findings by the ~~Court~~ court that the defendant has abused the plaintiff or ~~his or her~~ the plaintiff's children, or both. The plaintiff shall submit an affidavit in support of the order. A minor 16 years of age or older, or a minor of any age who is in a dating relationship as defined in subdivision 1101(2) of this chapter, may seek relief on his or her own behalf. Relief under this section shall be limited as follows:

(1) Upon a finding that there is an immediate danger of further abuse, an order may be granted requiring the defendant:

(A) to refrain from abusing the plaintiff or his or her children, or both, or from cruelly treating as defined in 13 V.S.A. § 352 or 352a or killing any animal owned, possessed, leased, kept, or held as a pet by either party or by a minor child residing in the household;



(B) to refrain from interfering with the plaintiff's personal liberty, or the personal liberty of the plaintiff's children, or both; and

(C) to refrain from coming within a fixed distance of the plaintiff, the plaintiff's children, the plaintiff's residence, or the plaintiff's place of employment; and

(D) to refrain from contacting the plaintiff or the plaintiff's children, or both, in any way, whether directly, indirectly, or through a third party, with the purpose of making contact with the plaintiff, including in writing or by telephone, e-mail, or other electronic communication.

\* \* \*

#### Sec. 10. EFFECTIVE DATES

(a) This section and Secs. 1 (prohibited conduct), 6 (parent and child), 7 (rights and responsibilities order; best interests of the child), 8 (request for relief), and 9 (emergency relief) shall take effect on passage.

(b) All other sections shall take effect on July 1, 2017.

And that after passage the title of the bill be amended to read:

An act relating to domestic and sexual violence.

*RICHARD W. SEARS  
MARGARET K. FLORY  
JEANETTE K. WHITE*

*Committee on the part of the Senate*

*MAXINE JO GRAD  
RUQAIYAH K. MORRIS  
EILEEN LYNN'G. DICKINSON*

*Committee on the part of the House*

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative.

#### **Rules Suspended; Third Reading Ordered**

#### **H. 58.**

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

An act relating to awarding hunting and fishing licenses at no cost to persons 65 years of age or older.

Was taken up for immediate consideration.

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Senator Rodgers, for the Committee on Natural Resources and Energy, to which the bill was referred, reported that the bill ought to pass in concurrence.

Senator Campion, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

**Rules Suspended; Third Reading Ordered**

**H. 154.**

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

An act relating to approval of amendments to the charter of the City of Burlington and to charter amendment procedure.

Was taken up for immediate consideration.

Senator Pearson, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

**Rules Suspended; Third Reading Ordered**

**H. 522.**

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

An act relating to approval of amendments to the charter of the City of Burlington.

Was taken up for immediate consideration.

Senator Pearson, for the Committee on Government Operations, to which the bill was referred, reported that the bill ought to pass in concurrence.

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

**Rules Suspended; Proposal of Amendment; Third Reading Ordered**

**H. 495.**

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

An act relating to miscellaneous agriculture subjects.

Was taken up for immediate consideration.

Senator Collamore, for the Committee on Agriculture, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Administrative Penalty Process \* \* \*

Sec. 1. 6 V.S.A. § 13 is amended to read:

§ 13. ASSURANCES OF DISCONTINUANCE

(a) As an alternative to administrative or judicial proceedings, the ~~secretary~~ Secretary may accept an assurance of discontinuance of any violation. An assurance of discontinuance may include, ~~but need not be limited to:~~

- (1) specific actions to be taken;
- (2) abatement or mitigation schedules;
- (3) payment of a civil or administrative penalty and the costs of investigation; or
- (4) payment of an amount to be held in escrow pending the outcome of an action, or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing, and may by its terms be filed with the ~~superior court~~ Superior Court having jurisdiction over the subject matter and become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima facie proof of the violation.

(c) Any violation of an assurance of discontinuance shall constitute a separate and distinct offense of the underlying regulatory program and shall be subject to the applicable general penalties for violations of the law under that program, in addition to any other applicable penalties.

(d) Costs of investigations collected under subsection (a) of this section shall be credited to a special fund and shall be available to the ~~agency~~ Agency to offset these costs.

Sec. 2. 6 V.S.A. § 16 is amended to read:

§ 16. NOTICE AND FAIR HEARING REQUIREMENTS

(a) The ~~secretary~~ Secretary shall use the following procedures in assessing the penalty under section 15 of this title: the alleged violator shall be given an opportunity for hearing after reasonable notice and the notice shall be served by personal service or by certified mail, ~~return receipt requested~~ sent to the last address of record on file with the Agency. If the alleged violator is not an applicant for or holder of a license, permit, registration, or certification issued

by the Agency, the notice shall be served by personal service or by certified mail, return receipt requested. The notice shall include:

(1) a A statement of the legal authority and jurisdiction under which the hearing is to be held;

(2) a A statement of the matter at issue, including reference to the particular statute or administrative rule allegedly violated and a factual description of the alleged violation;

(3) ~~the~~ The amount of the proposed administrative penalty; and required corrective action, abatement, or mitigation.

(4) a A warning that the decision shall become final and the penalty shall be imposed if no hearing is requested within 15 days of ~~receipt~~ service of the notice. The notice shall specify the requirements ~~which~~ that must be met in order to avoid being deemed to have waived the right to a hearing, or the manner of payment if the person elects to pay the penalty and waive a hearing.

(b) Any person who receives notification pursuant to this section shall be deemed to have waived the right to a hearing unless, within 15 days of the receipt of the notice, the person requests a hearing in writing. If the person waives the right to a hearing, the ~~secretary~~ Secretary shall issue a final order finding the person in default and imposing the penalty and any required corrective action, abatement, or mitigation. A copy of the final default order shall be ~~sent to~~ served upon the violator by certified mail, return receipt requested, or by personal service.

(c) When an alleged violator requests a hearing in a timely fashion, the ~~secretary~~ Secretary shall hold the hearing pursuant to 3 V.S.A. chapter 25.

Sec. 3. 6 V.S.A. § 17 is amended to read:

#### § 17. COLLECTIONS

(a) The ~~secretary~~ Secretary may collect an unpaid administrative or civil penalty by filing a civil collection action in any ~~district or superior court,~~ Superior Court or through any other means available to ~~state~~ State agencies.

(b) The ~~secretary~~ Secretary may, subject to 3 V.S.A. chapter 25, suspend any license, certificate, registration, or permit issued pursuant to his or her authority for failure to pay a penalty under this chapter more than ~~60~~ 45 days after the penalty was ~~issued~~ imposed by order and served.

\* \* \* Acceptance of Gifts of Real Property \* \* \*

Sec. 4. 6 V.S.A. § 14 is amended to read:

#### § 14. ACCEPTANCE OF GIFTS OF REAL PROPERTY

The ~~secretary~~ Secretary, with the approval of the ~~governor~~ Governor, may accept gifts of the rights and interests in real property in the manner provided by 10 V.S.A. chapter 155. Rights or interests in real property acquired by the Secretary through transactions funded in whole or in part by the Vermont Housing and Conservation Board are deemed as accepted by the Governor.

\* \* \* Meat Inspection \* \* \*

Sec. 5. 6 V.S.A. § 3306(i) is amended to read:

(i) All applicants for licensure or relicensure as a commercial slaughter facility shall submit a written humane livestock handling plan or a good commercial practices plan for poultry for review and approval by the Secretary of Agriculture, Food and Markets or designee. The Secretary may suspend, revoke, or condition any commercial slaughter facility license, after notice and opportunity for hearing, for a licensee's failure to adhere to the written plan.

\* \* \* Weights and Measures \* \* \*

Sec. 6. 9 V.S.A. § 2730(c) is amended to read:

(c) Any person wishing to obtain a license to operate a weighing or measuring device shall annually apply to the Secretary, on forms provided by the Secretary, on or before January 1. Each application shall be accompanied by a fee as specified in this section. Except for new applicants, any applicant who applies for a license after January 1 shall pay ~~an additional late fee equal to 10 percent of the specified fee~~ a late fee as provided for under 6 V.S.A. § 1(a)(13).

\* \* \* Working Lands \* \* \*

Sec. 7. 6 V.S.A. § 4607(b) is amended to read:

(b) Powers. The Vermont Working Lands Enterprise Board shall have the authority:

\* \* \*

(6) to establish an application process and, eligibility criteria, and criteria for prioritizing assistance for awarding grants, loans, incentives, and other investments in agricultural and forestry enterprises and in food and forest systems, provided that the Board shall prioritize assistance under this chapter to a person engaged in farming or forestry before providing assistance to a nonprofit organization or nonprofit corporation for a project that competes with a person engaged in farming or forestry; The Board shall give first priority for awards under this subdivision to persons engaged in farming or forestry. Second priority shall be given to nonprofit organizations or nonprofit corporations that compete with persons engaged in farming or forestry.

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\* \* \*

Sec. 8. WORKING LANDS ENTERPRISE BOARD; CRITERIA FOR  
PRIORITIZING AWARDS

On or before January 15, 2018, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry the guidelines that the Working Lands Enterprise Board shall use in prioritizing awards of assistance under 10 V.S.A. § 4607(b)(6).

\* \* \* Multi-year Licensing \* \* \*

Sec. 9. 6 V.S.A. § 1 is amended to read:

§ 1. GENERAL POWERS OF AGENCY; SECRETARY OF  
AGRICULTURE, FOOD AND MARKETS

(a) The Agency of Agriculture, Food and Markets shall be administered by a Secretary of Agriculture, Food and Markets. The Secretary shall supervise and be responsible for the execution and enforcement of all laws relating to agriculture and standards of weight and measure. The Secretary may:

\* \* \*

(13) Notwithstanding any law to the contrary in this title or Title 9 or 20, issue all licenses, permits, registrations, or certificates under a program administered by the Secretary for a term of up to three years; renew and issue such licenses, permits, registrations, and certificates on any calendar cycle; collect any annual fee set by law for ~~such~~ the multiyear licensure, permit, registration, or certificate on a pro-rated basis, which shall not exceed 150 percent of the annual fee for an 18-month cycle, 200 percent of the annual fee for a two-year cycle, or 300 percent of the annual fee for a three-year cycle; and conduct inspections at regulated premises at least once every three years when inspection is required by law. The authority to mandate licenses, permits, registrations, or certificates for more than one year shall not extend to any program administered by the Secretary ~~where~~ for which the annual fee is more than ~~\$125.00~~ \$175.00. The Secretary shall only provide refunds for overpayments of \$25.00 or more on a license, permit, registration, or certificate issued by the Secretary. The Secretary may assess a late fee of \$27.00, provided that the late fee is no greater than the fee due, in which case the late fee shall equal the fee due, for any license, registration, permit, or certification renewal that is received more than 30 days past expiration, unless a higher late renewal fee is otherwise prescribed by statute.

\* \* \*

## \* \* \* Subsurface Tile Drainage \* \* \*

Sec. 10. 6 V.S.A. § 4810a(b) is amended to read:

(b) On or before December 1, 2021, and prior to prefiling of a rule under 3 V.S.A. § 837, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry draft rules amending the required agricultural practices, in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. ~~On or before January 15, 2018~~ July 1, 2022, the Secretary of Agriculture, Food and Markets shall ~~amend by rule initiate rulemaking to amend~~ the required agricultural practices, in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the RAPs for subsurface tile drainage, upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

## \* \* \* Use Value Appraisal; Agricultural Lands \* \* \*

Sec. 11. 32 V.S.A. § 3752 is amended to read:

## § 3752. DEFINITIONS

As used in this subchapter:

(1) “Agricultural land” means any land, exclusive of any housesite, in active use to grow hay or cultivated crops, pasture livestock ~~or to~~ cultivate trees bearing edible fruit, or produce an annual maple product, and ~~which that~~ is 25 acres or more in size, except as provided in this subdivision (1). Agricultural land shall include buffer zones as defined and required in the Agency of Agriculture, Food and Markets’ Required Agricultural Practices rule adopted under 6 V.S.A. chapter 215. There shall be a presumption that the land is used for agricultural purposes if:

(A) it is owned by a farmer and is part of the overall farm unit; or

(B) it is used by a farmer as part of his or her farming operation under written lease for at least three years; or

(C) it has produced an annual gross income from the sale of farm crops in one of two, or three of the five, calendar years preceding of at least:

(i) \$2,000.00 for parcels of up to 25 acres; and

(ii) \$75.00 per acre for each acre over 25, with the total income required not to exceed \$5,000.00.

(iii) Exceptions to these income requirements may be made in cases of orchard lands planted to ~~fruit-producing~~ fruit-producing trees, bushes, or vines ~~which that~~ are not yet of bearing age. As used in this section, the term “farm crops” also includes animal fiber, cider, wine, and cheese<sub>2</sub> produced on the enrolled land or on a housesite adjoining the enrolled land<sub>1</sub> from agricultural products grown on the enrolled land.

\* \* \*

(14) “Farm buildings” means all farm buildings and other farm improvements ~~which that~~ are actively used by a farmer as part of a farming operation, are owned by a farmer or leased to a farmer under a written lease for a term of three years or more, and are situated on land that is enrolled in a use value appraisal program or on a housesite adjoining enrolled land. “Farm buildings” shall include up to \$100,000.00 of the value of a farm facility processing farm crops, a minimum of 75 percent of which are produced on the farm and shall not include any dwelling<sub>2</sub> other than a dwelling in use during the ~~preceding tax year~~ prior 12 months exclusively to house one or more farm employees, as defined in 9 V.S.A. § 4469a, and their families, as a nonmonetary benefit of the farm employment. This subdivision shall not affect the application of the definition of “farming” in 10 V.S.A. § 6001(22) or the definition of “farm structure” in 24 V.S.A. § 4413(d)(1).

\* \* \*

Sec. 12. 32 V.S.A. § 3755 is amended to read:

§ 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

(a) Except as modified by subsection (b) of this section, any agricultural land, managed forestland, and farm buildings ~~which that~~ meet the criteria contained in this subchapter and in the ~~regulations~~ rules adopted by the Board shall be eligible for use value appraisal.

\* \* \*

(d) After ~~a parcel~~ of managed forestland has been removed from use value appraisal due to an adverse inspection report under subdivision 3756(i)(1) of this title, a new application for use value appraisal ~~will~~ shall not be considered for a period of five years, and then shall be approved by the Department of Forests, Parks and Recreation only if a compliance report has been filed with the new application<sub>2</sub> certifying that appropriate measures have been taken to bring the parcel into compliance with minimum acceptable standards for forest or conservation management.

\* \* \*



(f) On or before ~~September~~ November 1 of each year, the owner of agricultural land or buildings enrolled in the use value program as agricultural land or buildings shall certify in writing under oath to the Commissioner that the agricultural land or buildings enrolled by that owner continue to meet the requirements for enrollment in the use value program at the time of the certification. The form of the certification shall be made on a form specified by the Director of Property Valuation and Review.

\* \* \* Raw Milk \* \* \*

Sec. 13. 6 V.S.A. § 2776 is amended to read:

§ 2776. DEFINITIONS

In this chapter:

(1) “Consumer” means a customer who purchases, barter for, receives delivery of, or otherwise acquires unpasteurized milk according to the requirements of this chapter.

(2) “Milk” shall have the same meaning as set forth in section 2672 of this title.

(3) “Personal consumption” means the use by a consumer of unpasteurized milk for food or to create a food product made with or from unpasteurized milk that is intended to be ingested by the consumer, members of his or her household, or any nonpaying guests.

~~(3)~~(4) “Unpasteurized milk” or “unpasteurized (raw) milk” means milk that is unprocessed.

~~(4)~~(5) “Unprocessed” means milk that has not been modified from the natural state it was in as it left the animal, other than filtering, packaging, and cooling.

\* \* \* Department of Forests, Parks and Recreation;  
Water Quality Assistance \* \* \*

Sec. 14. 10 V.S.A. § 2622a is added to read:

§ 2622a. WATER QUALITY ASSISTANCE PROGRAM

(a) Creation of program. There is established the Water Quality Assistance Program under which the Commissioner of Forests, Parks and Recreation shall provide technical and financial assistance to timber harvesters and others for compliance with water quality requirements in the State. The Commissioner of Forests, Parks and Recreation shall coordinate with natural resources conservation districts in the implementation of the Program.

(b) Eligible assistance. Under the Program, the Commissioner of Forests, Parks and Recreation is authorized to expend monies for the following activities in order to facilitate compliance with water quality requirements:

(1) Award financial assistance in the form of grants to timber harvesters and others to purchase or construct skidder bridges and other equipment.

(2) Purchase premade skidder bridges and other equipment to loan or lease to timber harvesters and others.

(3) Purchase available, premade skidder bridges and other equipment and provide those bridges or equipment to cooperating processing plants for sale to timber harvesters and others at cost, subject to storage and handling fees.

(4) If premade skidder bridges are not available on the commercial market, issue in a calendar year two requests for proposal for the construction of skidder bridges for delivery to cooperating processing plants for sale to timber harvesters and others at cost, subject to storage and handling fees. The Commissioner shall issue one request for proposal for the northern part of the State and one request for proposal for the southern part of the State.

(c) Financial assistance. An applicant for a grant under this section shall pay at least 10 percent of the total cost of the equipment. The dollar amount of a State grant shall be equal to the total cost of the equipment, less 10 percent of the total as paid by the applicant. A grant awarded under this section shall be awarded in accordance with terms and conditions established by the Commissioner.

(d) Spill kit. The Commissioner shall provide a person who purchases, constructs, or loans out a skidder bridge under subsection (b) of this section with a spill kit for containing or absorbing fluids released during timber harvesting activities.

#### Sec. 15. APPROPRIATIONS

Of the capital funds appropriated to the Agency of Natural Resources in FY 2018 for ecosystem restoration and protection, up to \$50,000.00 shall be used by the Department of Forests, Parks and Recreation for implementation of the Water Quality Assistance Program under 10 V.S.A. § 2622a.

\* \* \* Forestry Equipment; Sales Tax; Gasoline Tax; Diesel Tax \* \* \*

Sec. 16. 23 V.S.A. chapter 28, subchapter 1 is amended to read:

Subchapter 1: General Gasoline Tax

#### § 3101. DEFINITIONS

As used in this chapter:

\* \* \*

(3) As used in this subchapter, “gasoline or other motor fuel” or “motor fuel” shall not include the following: kerosene, diesel oil clear or undyed diesel “fuel” as defined in section 3002 of this title, “railroad fuel” as defined in section 3002 of this title, aircraft jet fuel, or natural gas in any form. Except for “railroad fuel” taxed under section 3003 of this title, the taxation or exemption from taxation of dyed diesel fuel is not addressed under this title.

\* \* \*

Sec. 17. 32 V.S.A. § 9741 is amended to read:

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

\* \* \*

(7)(A) Sales Except as provided in subdivision (B) of this subdivision (7), sales of:

- (i) motor fuels taxed or exempted under 23 V.S.A. chapter 28;
- (ii) dyed diesel used to power machinery described in subdivision (51) of this section; and
- (iii) dyed diesel used to propel a vehicle off the highways of the State.

(B) provided, however, that aviation Aviation jet fuel and natural gas used to propel a motor vehicle shall be taxed under this chapter with the proceeds to be allocated to the transportation fund Transportation Fund in accordance with 19 V.S.A. § 11.

\* \* \*

(51) The following machinery, including repair parts, used for timber cutting, timber removal, and processing of timber or other solid wood forest products intended to be sold ultimately at retail: skidders with grapple and cable, feller bunchers, cut-to-length processors, forwarders, delimiters, loader slashers, log loaders, whole-tree chippers, stationary screening systems, and firewood processors, elevators, and screens. The Department of Taxes shall publish guidance relating to the application of this exemption.

Sec. 18. 32 V.S.A. § 9706 is amended to read:

§ 9706. STATUTORY PURPOSES

\* \* \*

(d) The statutory purpose of the exemption for fuels for railroads and boats, to propel vehicles, and to power machinery used in the timber industry, in subdivision 9741(7) of this title is to avoid the taxation of fuels;

(1) for the types of transportation for which public expenditure on infrastructure is unnecessary;

(2) that are already subject to taxation under 23 V.S.A. chapter 27 or 28 in support of public expenditure on infrastructure or are specifically exempt from taxation under either of those chapters; and

(3) in order to promote Vermont's commercial timber and forest products economy.

\* \* \*

(kk) The statutory purpose of the exemption for timber cutting, removal, and processing machinery in subdivision 9741(51) of this title is to promote Vermont's commercial timber and forest products economy.

\* \* \* Effective Dates \* \* \*

#### Sec. 19. EFFECTIVE DATES

(a) This section and Secs. 13 (raw milk) and 14 (Forestry Water Quality Assistance Program) shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2017.

And that when so amended the bill ought to pass.

Senator Pollina, for the Committee on Finance, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as recommended by the Committee on Agriculture with the following amendment thereto:

By striking out Sec. 10 (subsurface tile drainage) in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

\* \* \* Subsurface Tile Drainage \* \* \*

Sec. 10. 6 V.S.A. § 4810a(b) is amended to read:

(b)(1) On or before December 1, 2019, and prior to prefilng a rule under 3 V.S.A. § 837, the Secretary of Agriculture, Food and Markets shall submit to the Senate Committee on Agriculture and the House Committee on Agriculture and Forestry draft rules amending the required agricultural practices, in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. On or before ~~January 15, 2018~~ July 1,

2020, the Secretary of Agriculture, Food and Markets shall amend by rule initiate rulemaking to amend the required agricultural practices, in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. Upon adoption of requirements for subsurface tile drainage, the Secretary may require an existing subsurface tile drain to comply with the requirements of the RAPs for subsurface tile drainage, upon a determination that compliance is necessary to reduce adverse impacts to water quality from the subsurface tile drain.

(2)(A) Beginning on July 1, 2017, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture, Food and Markets, shall establish a program to map the location of subsurface tile drainage on farms in the State and to monitor, to the extent possible, the water quality effects of subsurface tile drainage on State waters. Beginning on January 1, 2018, and annually thereafter, the Secretary of Natural Resources shall submit to the Senate Committees on Natural Resources and Energy and on Agriculture and the House Committees on Natural Resources, Fish and Wildlife and on Agriculture and Forestry a report that includes:

(i) a map of identified subsurface tile drainage in the State; and

(ii) a list of the specific response or enforcement actions taken by the Agency of Natural Resources or the Agency of Agriculture, Food and Markets to address the effects of subsurface tile drainage on the waters of the State.

(B) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

And that when so amended the bill ought to pass.

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the Senate propose to the House to amend the bill as recommended by the Committee on Agriculture with the following amendment thereto:

By striking out Sec. 7 in its entirety and inserting in lieu a new Sec. 7 to read as follows:

Sec. 7. 6 V.S.A. § 4607(b) is amended to read:

(b) Powers. The Vermont Working Lands Enterprise Board shall have the authority:

\* \* \*

(6) to establish an application process and, eligibility criteria, and criteria for prioritizing assistance for awarding grants, loans, incentives, and

~~other investments in agricultural and forestry enterprises and in food and forest systems, provided that the Board shall prioritize assistance under this chapter to a person engaged in farming or forestry before providing assistance to a nonprofit organization or nonprofit corporation for a project that competes with a person engaged in farming or forestry;~~

\* \* \*

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the proposal of amendment of the Committee on Agriculture be amended as recommended by the Committee on Finance?, Senator Benning moved to amend the report of the Committee on Finance in Sec. 10, 6 V.S.A. § 4810(b)2(A) by striking out the following: "January 1, 2018" and inserting in lieu thereof the following: January 1, 2022

Which was disagreed to.

Thereupon, the question, Shall the recommendation of proposal of amendment of the Committee on Agriculture be amended as recommended by the Committee on Finance, was agreed to.

Thereupon, the proposal of amendment recommended by the Committee on Agriculture, as amended, was amended as recommended by the Committee on Appropriations.

Thereupon, the proposal of amendment recommended by the Committee on Agriculture, as amended, was agreed to and third reading of the bill was ordered.

### **Rules Suspended; Bill Messaged**

On motion of Senator Ashe, the rules were suspended, and the following bill was ordered messaged to the House forthwith:

**H. 74.**

### **Adjournment**

On motion of Senator Ashe, the Senate adjourned until ten o'clock in the morning.