Journal of the Senate

WEDNESDAY, MAY 5, 2010

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Message from the House No. 71

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 90. An act relating to representative annual meetings.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

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

S. 222. An act relating to recognition of Abenaki tribes.

And has severally concurred therein.

Report of Committee of Conference Accepted and Adopted on the Part of the Senate

H. 784.

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

To the Senate and House of Representatives:

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

An act relating to the state's transportation program.

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 by inserting in lieu thereof the following:

Sec. 1. TRANSPORTATION PROGRAM

(a) The state's proposed fiscal year 2011 transportation program appended to the agency of transportation's proposed fiscal year 2011 budget, as amended by this act, is adopted to the extent federal, state, and local funds are available.

(b) As used in this act, unless otherwise indicated:

(1) the term "agency" means the agency of transportation;

(2) the term "secretary" means the secretary of transportation;

(3) the table heading "As Proposed" means the transportation program referenced in subsection (a) of this section; the table heading "As Amended" means the amendments as made by this act; the table heading "Change" means the difference obtained by subtracting the "As Proposed" figure from the "As Amended" figure; and the term "change" or "changes" in the text refers to the project- and program-specific amendments, the aggregate sum of which equals the net "Change" in the applicable table heading;

(4) the term "ARRA funds" refers to federal funds allocated to the state by the American Recovery and Reinvestment Act of 2009;

(5) the term "TIB funds" refers to monies deposited in the transportation infrastructure bond fund in accordance with 19 V.S.A. § 11f;

(6) the term "debt service reserve" refers to funds required to be segregated under the terms of a trust agreement entered into to secure transportation infrastructure bonds issued pursuant to subchapter 4 of chapter 13 of Title 32;

(7) the column heading "TIB" in the agency's proposed fiscal year 2011 transportation program refers to TIB funds and to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 13 of this act; and

(8) the term "TIB bond" refers to the proceeds of transportation infrastructure bonds issued pursuant to Sec. 19 of this act.

Sec. 2. RAIL

The following modifications are made to the rail program:

(1) A new project is added for Albany, New York – Bennington, Vermont – Rutland, Vermont bi-state intercity rail corridor track 3 planning with the following spending authority:

FY11	As Proposed	As Amended	Change
Other	0	1,000,000	1,000,000
Total	0	1,000,000	1,000,000
Source of funds			
State	0	250,000	250,000
Federal	0	500,000	500,000
Local	0	250,000	250,000
Total	0	1,000,000	1,000,000

The local share indicated represents the state of New York participation in the project.

(2) A new project is added for Amtrak Vermonter – New England Central Railroad track 1 improvements with the following spending authority:

FY11	As Proposed	As Amended	Change
Construction	0	26,231,846	26,231,846
Total	0	26,231,846	26,231,846
Sources of funds			
State	0	0	0
Federal	0	0	0
ARRA	0	26,231,846	26,231,846
Local	0	0	0
Total	0	26,231,846	26,231,846

Sec. 3. DEPARTMENT OF MOTOR VEHICLES

Spending authority for the department of motor vehicles is amended to read:

FY11	As Proposed	As Amended	Change
Personal Services	15,786,441	15,786,441	0
Operating Expenses	8,377,553	8,303,553	-74,000
Grants	136,476	136,476	0
Total	24,300,470	24,226,470	-74,000
Sources of funds			
State	23,096,730	23,022,730	-74,000
Federal	1,203,740	1,203,740	0
Total	24,300,470	24,226,470	-74,000

* * * Program Development * * *

Sec. 4. PROGRAM DEVELOPMENT – ROADWAY

The following modifications are made to the program development — roadway program:

(1) Authorized spending on the Waterbury FEGC F 013-4(13) project is amended to read:

FY11	As Proposed	As Amended	Change
PE	100,000	100,000	0
Construction	0	350,000	350,000
Total	100,000	450,000	350,000
Sources of funds			
State	3,000	3,000	0
TIB fund	0	10,500	10,500
Federal	95,000	427,500	332,500
Local	2,000	9,000	7,000
Total	100,000	450,000	350,000

(2) Authorized spending on the Cabot-Danville FEGC F 028-3(26)C/1 project is amended to read:

FY11	As Proposed	As Amended	Change
PE	100,000	100,000	0
Construction	500,000	447,500	-52,500
Total	600,000	547,500	-52,500
Sources of funds			
State	5,000	5,000	0
TIB fund	25,000	14,500	-10,500
Federal	570,000	528,000	-42,000
Total	600,000	547,500	-52,500

(3) The following project has received a federal earmark and is added to program development – roadway program – roadway projects candidate list as follows:

Rutland STP 3000( ) - Rutland Center Street Marketplace Improvements - $973,834.00; 100 percent federal funds.

Sec. 5. PROGRAM DEVELOPMENT – INTERSTATE BRIDGE

The following modification is made to the program development – interstate bridge program:

Authorized spending on the Littleton, NH – Waterford, VT IM 093-1( ) project (rehabilitation of I-93 bridges over CT River connecting VT and NH) is added to read:

FY11	As Proposed	As Amended	Change
Construction	0	500,000	500,000
Total	0	500,000	500,000
Sources of funds			
State	0	0	0
TIB fund	0	50,000	50,000
Federal	0	450,000	450,000
Total	0	500,000	500,000

Sec. 6. PROGRAM DEVELOPMENT – BIKE AND PEDESTRIAN FACILITIES

The following project has received a federal earmark and is added to program development – bike and pedestrian facilities – bike and pedestrian facilities candidates list:

Thetford STP 0180( ) – Thetford Village Pedestrian Improvements – $438,225.00; 100 percent federal funds.

Sec. 7. PROGRAM DEVELOPMENT – FUNDING

Spending authority in program development is modified as follows:

(1) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of $1,949,321.00 in transportation funds with the same amount in TIB funds.

(2) Among eligible projects selected in the secretary's discretion, the secretary shall replace project spending authority in the total amount of $130,000.00 in transportation funds with the same amount in federal funds via the use of federal toll credits.

* * * Aviation * * *

Sec. 8. AVIATION

The following modifications are made to the aviation program:

(1) Spending authority for the South Burlington – Burlington International AIP Program project is amended to read:

FY11	As Proposed	As Amended	Change
ROW	4,050,000	4,050,000	0
Construction	10,880,000	10,850,000	-30,000

Total	14,930,000	14,900,000	-30,000
Sources of funds			
State	218,200	447,000	228,800
Federal	14,183,500	14,155,000	-28,500
Local	528,300	298,000	-230,300
Total	14,930,000	14,900,000	-30,000

(2) Spending authority for the Berlin CAP HQ project is amended to read as follows. The agency is authorized to proceed with the Berlin CAP HQ project if a federal earmark can be secured for the project.

FY11	As Proposed	As Amended	Change
PE	100,000	0	-100,000
Construction	900,000	0	-900,000
Total	1,000,000	0	-1,000,000
Sources of funds			
State	100,000	0	-100,000
Federal	900,000	0	-900,000
Total	1,000,000	0	-1,000,000

(3) Spending authority for Statewide – Facility Improvements is amended to read:

FY11	As Proposed	As Amended	Change
Construction	322,000	263,600	-58,400
Total	322,000	263,600	-58,400
Sources of funds			
State	322,000	263,600	-58,400
Total	322,000	263,600	-58,400

* * * Vermont Local Roads * * *

Sec. 9. TOWN HIGHWAY – VERMONT LOCAL ROADS

Spending authority for the town highway – Vermont local roads program is amended to read:

FY11	As Proposed	As Amended	Change
Grants	375,000	390,000	15,000
Total	375,000	390,000	15,000
Sources of funds			
State	235,000	235,000	0
Federal	140,000	155,000	15,000
Total	375,000	390,000	15,000

* * * Public Transit * * *

Sec. 10. PUBLIC TRANSIT

The following modifications are made to the public transit program:

(1) Spending authority for the public transit program is increased by $30,000.00 in transportation funds. The agency shall allocate $30,000.00 in transportation funds for a grant to the Vermont Kidney Association to support the transportation costs of dialysis patients.

(2) From the funds allocated to the public transit general capital program, $100,000.00 in federal funds shall be held by the agency in reserve to cover shortfalls in the funding of the elders and persons with disabilities program (E&D) that occur as a result of unanticipated demand for non-Medicaid transportation services. Transit agencies that have grant agreements with the agency for the provision of E&D services shall be eligible to receive disbursements from the reserve. Disbursements from the reserve funds shall be limited to transit agencies that have administered appropriately constrained E&D programs.

* * * Personal Services Spending * * *

Sec. 11. AGENCY PERSONAL SERVICES SPENDING

Total spending authority for agency personal services is reduced by up to $686,400.00 in transportation funds to reflect fiscal year 2011 personnel pension benefit savings. The agency shall apportion the reduction among its programs and activities accordingly.

* * * ARRA Maintenance of Effort – Appropriation Transfers * * *

Sec. 12. AMERICAN RECOVERY AND REINVESTMENT ACT; TRANSPORTATION MAINTENANCE OF EFFORT

(a) The general assembly finds that the state should maximize the federal money available for transportation. It is the intent of this section to assist the state in complying with the maintenance of effort requirements in section 1201 of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5, which requires the state to certify and maintain planned levels of expenditure of state funds for the types of projects funded by ARRA during the period February 17, 2009 through September 30, 2010. Failure to maintain the certified level of effort will prohibit the state from receiving additional federal funds through the August 2011 redistribution of federal aid highway and safety programs.

(b) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 and 2011 transportation programs, the secretary, with the approval of the secretary of administration and subject to the provisions of subsection (c) of this section, may transfer transportation fund or federal fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, to redirect funding to activities eligible for inclusion in, and for the specific purpose of complying with, the maintenance of effort requirements of section 1201 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5. Any appropriations so transferred shall be expended on projects or activities within the fiscal year 2010 or 2011 transportation programs.

(c) If a contemplated transfer of an appropriation would, by itself, have the effect of significantly delaying the planned work schedule of a project which formed the basis of the project's funding in the fiscal year of the contemplated transfer, the secretary shall submit the proposed transfer for approval by the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, by the joint transportation oversight committee. In all other cases, the secretary may execute the transfer, giving prompt notice thereof to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

(d) This section shall expire on September 30, 2010.

* * * FY 2011 Transportation Infrastructure Bonds * * *

Sec. 13. AUTHORITY TO ISSUE TRANSPORTATION INFRASTRUCTURE BONDS

(a) The state treasurer is authorized to issue transportation infrastructure bonds pursuant to 32 V.S.A. § 972 for the purpose of funding the appropriations of Sec. 14 of this act and associated costs of the transportation infrastructure bonds as defined in 32 V.S.A. § 972(b) in the amount of $13,500,000.00 in fiscal year 2011.

(b) The state treasurer is authorized to increase the issue of transportation infrastructure bonds authorized in subsection (a) of this section up to a total amount of $16,500,000.00 in the event the state treasurer determines that:

(1) the creation and funding of a debt service reserve is advisable to support the successful issuance of transportation infrastructure bonds, or the cost of preparing, issuing, and marketing the bonds is likely to exceed $202,500.00; and

(2) the balance of the TIB fund as of the end of fiscal year 2010 is insufficient to fund a debt service reserve and to pay associated issuance costs of the bonds.

Sec. 14. TRANSPORTATION INFRASTRUCTURE BONDS; APPROPRIATION

The amount of up to $13,500,000.00 from the issuance of transportation infrastructure bonds is appropriated in fiscal year 2011 to the agency of transportation program development appropriation (8100001100) for use on eligible projects as defined in 32 V.S.A. § 972(c) in the state's fiscal year 2011 transportation program.

* * * Transportation Infrastructure Bond Reserves * * *

Sec. 15. FISCAL YEAR END 2010 TRANSPORTATION FUND SURPLUS

Subject to the funding of the transportation fund stabilization reserve in accordance with 32 V.S.A. § 308a and notwithstanding 32 V.S.A. § 308c (transportation fund surplus reserve), any surplus in the transportation fund as of the end of fiscal year 2010 up to a maximum amount of $3,000,000.00 shall be transferred to the TIB fund.

Sec. 16. AUTHORITY TO REDUCE FISCAL YEAR 2010 APPROPRIATIONS AND TRANSFER TRANSPORTATION FUNDS TO THE TIB FUND TO PAY FISCAL YEAR 2011 BOND OBLIGATIONS

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2010 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may reduce fiscal year 2010 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, and transfer in fiscal year 2010 the amount of the reductions from the transportation fund to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011.

(b) The secretary's authority under subsection (a) of this section to reduce appropriations is limited to appropriations, the reduction of which, by itself, will not have the effect of significantly delaying the planned fiscal year 2010 work schedule of a project which formed the basis of the project's funding in fiscal year 2010.

(c) When any appropriation is reduced pursuant to this section, the secretary shall report the reduction to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

Sec. 17. CHANGE TO CONSENSUS REVENUE FORECAST

In the event the July 2010 consensus revenue forecast of fiscal year 2011 transportation fund revenue is increased above the January 2010 forecast, the increase up to $3,000,000.00 shall be transferred to the TIB fund to provide the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act, to pay the issuance costs of such bonds, or to pay the principal and interest due on such bonds in fiscal year 2011 or fiscal year 2012.

Sec. 18. AUTHORITY TO REDUCE FISCAL YEAR 2011 APPROPRIATIONS AND TRANSFER THE BALANCE TO THE TIB FUND TO PAY FISCAL YEAR 2012 BOND OBLIGATIONS

(a) Notwithstanding 32 V.S.A. § 706 and the limits on program, project, or activity spending authority in the fiscal year 2011 transportation program, the secretary of transportation, with the approval of the secretary of administration and subject to the provisions of subsection (b) of this section, may reduce fiscal year 2011 transportation fund appropriations, other than appropriations for the town highway state aid, structures, and class 2 roadway programs, or TIB fund appropriations, and transfer in fiscal year 2011 the amount of the reductions from the transportation fund to the TIB fund for the specific purpose of providing the funds the treasurer deems likely to be needed to satisfy any debt service reserve requirement of transportation infrastructure bonds authorized by this act or to pay the principal and interest due on such bonds in fiscal year 2012.

(b) The secretary's authority under subsection (a) of this section to reduce appropriations is limited to appropriations, the reduction of which, by itself, in the context of any spending authorized for the project in the fiscal year 2011 transportation program, will not have the effect of significantly delaying the planned work schedule of the project which formed the basis of the project's funding in fiscal years 2011 and 2012.

(c) The agency shall expedite the procedures required to determine the eligibility and certification of federal toll credits with respect to potentially qualifying capital expenditures made by Vermont entities through the end of fiscal year 2010 which, subject to compliance with federal maintenance of effort requirements, would be available for use by the state in fiscal year 2012.

The fiscal year 2012 transportation program shall reserve up to $3,000,000.00 of such potentially available federal toll credits and federal formula funds and authorize the secretary to utilize the federal toll credits and federal formula funds to accomplish the objectives of this section.

(d) When any appropriation is reduced pursuant to this section, the secretary shall report the reduction to the joint fiscal office and to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee.

* * * FY 2011 Contingent Transportation Bonding Authority * * *

Sec. 19. FY 2011 CONTINGENT BONDING AUTHORITY; WESTERN CORRIDOR GRANT APPLICATION

(a) Notwithstanding 32 V.S.A. § 980 (authority to issue transportation infrastructure bonds), the state treasurer is authorized to issue transportation infrastructure bonds for fiscal year 2011 of up to $15,000,000.00 more than the amounts authorized in the preceding sections of this act, provided that the agency describes the proposed use of the funding and receives approval from the general assembly, or if the general assembly is not in session, the joint transportation oversight committee, of such issue and the proposed use of the funds.

(b) The agency is authorized to apply for a Federal Railroad Administration High-Speed Intercity Passenger Rail (HSIPR) grant to cover, in whole or in part, the cost of upgrading the state's western rail corridor for intercity passenger rail service. In applying for a grant, the agency is authorized to identify the bonds authorized by this section as a possible source of nonfederal match dollars which could be included in and would thereby strengthen the application. Upon its completion, the agency shall send an electronic copy of the grant application to the joint fiscal office.

(c) In the event transportation infrastructure bonds are issued pursuant to subsection (a) of this section for purposes other than the funding of the potential Federal Railroad Administration HSIPR grant referenced in subsection (b) of this section, the proposed spending of bond proceeds approved by the general assembly or by the joint transportation oversight committee is authorized, and the amount of the approved spending is appropriated to the programs as identified by the agency.

(d) In the event the state is awarded a Federal Railroad Administration HSIPR grant for infrastructure improvements to upgrade the state's western rail corridor for intercity passenger rail service as referenced in subsection (b) of this section:

(1) a project for the improvements covered by the grant is added to the state's transportation program;

(2) authority to spend the federal grant funds is added as follows and the specified amount of federal funds is appropriated to the rail program; and

(3) to the extent that other state funds are not available and transportation infrastructure bonds are issued pursuant to subsection (a) of this section to fund the project, authority to spend the bond proceeds on the project is added as follows and the specified amount of transportation infrastructure bond proceeds is appropriated to the rail program:

FY11	As Proposed	As Amended	Change
Other	0	7,500,000	7,500,000
Total	0	7,500,000	7,500,000
Sources of funds			
TIB bond	0	1,500,000	1,500,000
Federal	0	6,000,000	6,000,000
Total	0	7,500,000	7,500,000

* * * Central Garage * * *

Sec. 20. TRANSFER TO CENTRAL GARAGE FUND

Notwithstanding 19 V.S.A. § 13(c), in fiscal year 2011, the amount of $1,120,000.00 is transferred from the transportation fund to the central garage fund created in 19 V.S.A. § 13.

Sec. 21. REPEAL

19 V.S.A § 13(g) (report on central garage activity, equipment rental, and fleet condition) is repealed.

* * * Notification of Emergency and Safety Projects; Reporting of Expenditures and Carry Forwards * * *

Sec. 22. 19 V.S.A. § 10g is amended to read:

§ 10g. ANNUAL REPORT; TRANSPORTATION PROGRAM; ADVANCEMENTS, CANCELLATIONS, AND DELAYS

(a) The agency of transportation shall annually present to the general assembly a multiyear transportation program covering the same number of

years as the statewide transportation improvement plan (STIP), consisting of the recommended budget for all agency activities for the ensuing fiscal year and projected spending levels for all agency activities for the following fiscal years. The program shall include a description and year-by-year breakdown of recommended and projected funding of all projects proposed to be funded within the time period of the STIP and, in addition, a description of all projects which are not recommended for funding in the first fiscal year of the proposed program but which are ~~projected to be ready~~ scheduled for construction ~~at that time (shelf projects)~~ during the time period covered by the STIP. The program shall be consistent with the planning process established by No. 200 of the Acts of the 1987 Adj. Sess. (1988), as codified in ~~3 V.S.A.~~ chapter 67 of Title 3 and ~~24 V.S.A.~~ chapter 117 of Title 24, the statements of policy set forth in sections 10b-10f of this title, and the long-range systems plan, corridor studies, and project priorities developed through the capital planning process under section 10i of this title.

* * *

(e)(1) The agency's annual transportation program shall include a separate report summarizing with respect to the most recently ended fiscal year:

(A) all expenditures of funds by source; and

(B) all unexpended appropriations of transportation funds and TIB funds that have been carried forward from the previous fiscal year to the ensuing fiscal year.

(2) The summary shall identify expenditures and carry forwards for each program category included in the proposed annual transportation program as adopted for the closed fiscal year in question and such other information as the agency deems appropriate.

* * *

(g) The agency's annual transportation program shall include a separate report referencing this section describing all proposed projects in the program which would be new to the state transportation program if adopted.

(h) Should capital projects in the transportation program be delayed because of unanticipated problems with permitting, right-of-way acquisition, construction, local concern, or availability of federal or state funds, the secretary is authorized to advance projects in the approved transportation program~~, giving priority to shelf projects~~. The secretary is further authorized to undertake projects to resolve emergency or safety issues. Upon authorizing a project to resolve an emergency or safety issue, the secretary shall give prompt notice of the decision and action taken to the joint fiscal office and to

the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. Should an approved project in the current transportation program require additional funding to maintain the approved schedule, the agency is authorized to allocate the necessary resources. However, the secretary shall not delay or suspend work on approved projects to reallocate funding for other projects except when other funding options are not available. In such case, the secretary shall notify the members of the joint transportation oversight committee and the joint fiscal office. With respect to projects in the approved transportation program, the secretary shall notify, in the district affected, the regional planning commission, the municipality, legislators, ~~and~~ members of the senate and house committees on transportation, and the joint fiscal office of any significant change in design, change in construction cost estimates requiring referral to the transportation board under ~~19 V.S.A. §~~ section 10h of this title, or any change which likely will affect the fiscal year in which the project is planned to go to construction. No project shall be cancelled without the approval of the general assembly.

* * * Joint Transportation Oversight Committee; Meetings * * *

Sec. 23. 19 V.S.A. § 12b is amended to read:

§ 12b. JOINT TRANSPORTATION OVERSIGHT COMMITTEE

(a) There is created a joint transportation oversight committee composed of the chairs of the house and senate committees on appropriations, the house and senate committees on transportation, the house committee on ways and means, and the senate committee on finance. The committee shall be chaired alternately by the chairs of the house and senate committees on transportation, and the ~~two-year~~ two-year term shall run concurrently with the biennial session of the legislature. The chair of the senate committee on transportation shall chair the committee during the 2009–2010 legislative session.

(b) The committee shall meet during adjournment for official duties. Meetings shall be convened by the chair and when practicable shall be coordinated with the regular meetings of the joint fiscal committee. Members shall be entitled to compensation and reimbursement pursuant to 2 V.S.A. § 406. The committee shall have the assistance of the staff of the legislative council and the joint fiscal office.

(c) The committee shall provide legislative overview of the transportation fund revenues collection and the operation and administration of the agency of transportation construction, paving and rehabilitation programs. The secretary of transportation shall report to the oversight committee upon request.

(d)(1) In coordination with the regular meetings of the joint fiscal committee~~, the joint transportation oversight committee shall meet~~ in mid-July, mid-September, and mid-November~~. At these meetings~~, the secretary shall prepare a report on the status of the state's transportation finances and transportation programs~~, including~~. If a meeting of the committee is not convened on the scheduled dates of the joint fiscal committee meetings, the secretary in advance shall transmit the report electronically to the joint fiscal office for distribution to committee members. The report shall include a report on contract bid awards versus project estimates and a detailed report on all known or projected cost overruns, project savings and funding availability from delayed projects; and the agency's actions taken or planned to cover the cost overruns and to reallocate the project savings and delayed project funds with respect to:

(A) all paving projects other than statewide maintenance programs; and

(B) all projects in the roadway, state bridge, interstate bridge, or town bridge programs with authorized spending in the fiscal year of $500,000.00 or more with a cost overrun equal to 20 percent or more of the authorized spending or generating project savings or delayed project available funding equal to 20 percent or more of the authorized spending.

(2) In addition, ~~at~~ with respect to the July meeting of the joint ~~transportation oversight~~ fiscal committee, the ~~secretarys shall~~ secretary's report ~~to the committee on~~ shall discuss the agency's plans to adjust spending to any changes in the consensus forecast for transportation fund revenues.

* * * Vermont Bridge Maintenance Program * * *

Sec. 24. REPEAL

The following are repealed:

(1) 19 V.S.A. § 40 (Vermont bridge maintenance program).

(2) Sec. 56 of No. 80 of the Acts of 2005 (allocation of vehicle inspection change revenue).

Sec. 25. 23 V.S.A. § 1230 is amended to read:

§ 1230. CHARGE

For each inspection certificate issued by the department of motor vehicles, the commissioner shall be paid $4.00 provided that state and municipal inspection stations that inspect only state or municipally owned and registered vehicles shall not be required to pay a fee. All vehicle inspection certificate

charge revenue shall be allocated to the transportation fund with one-half reserved for bridge maintenance activities.

Sec. 26. CARRY-FORWARD AUTHORITY – BRIDGE MAINTENANCE

Notwithstanding any other provisions of law and subject to the approval of the secretary of administration, transportation fund appropriations remaining unexpended on June 30, 2010, in the transportation – bridge maintenance appropriation (8100005400) shall be carried forward, shall be designated for expenditure in the transportation – program development appropriation (8100001100), and shall be used for the purpose of bridge maintenance.

* * * Transportation Projects; Construction Claims * * *

Sec. 27. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

* * *

(4) provide appellate review, when requested in writing, regarding legal disputes in the execution of contracts awarded by the agency or by municipalities cooperating with the agency to advance projects in the state's transportation program;

* * *

* * * Transportation Contracts; Procurement Standards * * *

Sec. 28. 19 V.S.A. § 10 is amended to read:

§ 10. DUTIES

The agency shall, except where otherwise specifically provided by law:

(1) Award contracts on terms as it deems to be in the best interest of the state, for the construction, repair, or maintenance of transportation related facilities; for the use of any machinery or equipment either with or without operators or drivers; for the operation, repair, maintenance, or storage of any state-owned machinery or equipment; for professional engineering services, inspection of work or materials, diving services, mapping services, photographic services, including aerial photography or surveys, and any other services, with or without equipment, in connection with the planning, construction, and maintenance of transportation facilities. Persons rendering these services shall not be within the classified service, and the services shall not entitle the provider to rights under any state retirement system. Notwithstanding ~~3 V.S.A.~~ chapter 13 of Title 3, the agency may contract for services also provided by persons in the classified service, either at present or at some time in the past. ~~Any contract of more than $50,000.00 shall be~~

~~advertised and awarded to the lowest qualified bidder unless determined otherwise by the board.~~ The solicitation and award of contracts by the agency shall follow procurement standards approved by the secretary of administration as well as applicable federal laws and regulations.

* * *

* * * Cancellation of Locally Managed Projects * * *

Sec. 29. 19 V.S.A. § 5(d) is amended to read:

(d) The board shall:

* * *

(12) maintain the accounting functions for the duties imposed by ~~9 V.S.A.~~ chapter 108 of Title 9 separately from the accounting functions relating to its other duties;

(13) hear and determine disputes involving a determination of the agency under section 309c of this title that the municipality is responsible for repayment of federal funds required by the Federal Highway Administration.

Sec. 30. 19 V.S.A. § 309c is added to read:

§ 309c. CANCELLATION OF LOCALLY MANAGED PROJECTS

(a) Notwithstanding section 309a of this title, a municipality or other local sponsor responsible for a locally managed project through a grant agreement with the agency shall be responsible for the repayment, in whole or in part, of federal funds required by the Federal Highway Administration or other federal agency because of cancellation of the project by the municipality or other local sponsor due to circumstances or events wholly or partly within the municipality's or other local sponsor's control. Prior to any such determination that cancellation of a project was due to circumstances or events wholly or partly within a municipality's or other local sponsor's control, the agency shall consult with the municipality or other local sponsor to attempt to reach an agreement to determine the scope of the municipality's or other local sponsor's repayment obligation.

(b) Within 15 days of an agency determination under subsection (a) of this section, a municipality may petition the board for a hearing to determine if cancellation of the project was due to circumstances or events in whole or in part outside the municipality's control. The board shall hold a hearing on the petition within 30 days of its receipt and shall issue an appropriate order within 30 days thereafter. If the board determines that cancellation of the project was due in whole or in part to circumstances or events outside the municipality's

control, it shall order that the municipality's repayment obligation be reduced proportionally, in whole or in part. The municipality shall have no obligation to make a repayment under this section until the board issues its order.

* * * Filing of Transportation Deeds and Leases * * *

Sec. 31. 3 V.S.A. § 103 is amended to read:

§ 103. DOCUMENTS REQUIRED TO BE FILED

(a) All deeds, contracts of sale, leases, and other documents or copies of same conveying land or an interest therein to the state, except for ~~highway rights-of-way~~ transportation rights-of-way, leases, and conveyances, shall be filed in the office of the secretary of state.

(b) All deeds, contracts of sale, leases, and other documents conveying land or an interest in land from the state as grantor, except for transportation rights-of-way, leases, and conveyances, shall be made out in duplicate by the authorized agent of the state. The original shall be delivered to the grantee and the duplicate copy, so marked, shall be filed in the office of the secretary of state.

(c) The secretary of state shall also record the state treasurer's bonds and other documents required to be recorded in ~~his~~ the secretary of state's office and give copies of the same upon tender of ~~his~~ the secretary of state's legal fees.

* * * Transportation Board; Town Reports * * *

Sec. 32. 24 V.S.A. § 1173 is amended to read:

§ 1173. TOWN OR VILLAGE REPORTS

The clerk of a municipality shall supply annually each library in such municipality with two copies of the municipal report, upon its publication. The clerk shall also mail to the state library two copies thereof, and one copy each to the secretary of state, commissioner of taxes, ~~transportation board,~~ state board of health, commissioner for children and families, director of the office of Vermont health access, auditor of accounts, and board of education. Officers making these reports shall supply the clerk of the municipality with the printed copies necessary for him or her to comply with the provisions of this section and section 1174 of this title.

* * *

* * * Signs and Other Traffic Control Devices * * *

Sec. 33. 23 V.S.A. § 1025 is amended to read:

§ 1025. STANDARDS

(a) The United States Department of Transportation Federal Highway Administration's Manual on Uniform Traffic Control Devices (MUTCD) for streets and highways as amended shall be the standards for all traffic control signs, signals, and markings within the state. The latest revision of the MUTCD shall be adopted upon its effective date except in the case of projects beyond a preliminary state of design that are anticipated to be constructed within two years of the otherwise applicable effective date; such projects may be constructed according to the MUTCD standards applicable at the design stage. Existing signs, signals, and markings shall be valid until such time as they are replaced or reconstructed. When new traffic control devices are erected or placed or existing traffic control devices are replaced or repaired the equipment, design, method of installation, placement or repair shall conform with ~~such standards~~ the MUTCD.

(b) ~~These~~ The standards of the MUTCD shall apply for both state and local authorities as to traffic control devices under their respective jurisdiction.

* * *

* * * School Zone Warning Signs * * *

Sec. 34. 19 V.S.A. § 921 is amended to read:

§ 921. SCHOOL ZONES

(a) Municipalities shall erect or cause to be erected on all public highways near a school warning signs ~~bearing the legend "school zone." The signs shall conform~~ conforming to the standards of the manual on uniform traffic control devices as provided in 23 V.S.A. § 1025.

(b) For the purposes of this section and 23 V.S.A. § 1025, the term "school" shall include school district-operated prekindergarten program facilities owned or leased by a school district.

* * * State Airports * * *

Sec. 35. WILLIAM H. MORSE STATE AIRPORT (BENNINGTON); AUTHORIZATION TO ACCEPT DONATION OF HANGAR

(a) The secretary of transportation, as agent for the state of Vermont, is authorized to accept donation of an existing hangar building at the William H. Morse State Airport in the town of Bennington from Business Air, Inc., d/b/a Air Now. Notwithstanding 19 V.S.A. § 26a, the secretary is further authorized

to enter into an amendment of Air Now's existing lease to allow Air Now to use the hangar building rent free, subject to Air Now's continuing to do business at the airport and maintaining the building at no expense to the state. In the event that Air Now ceases to do business at the airport or requests to assign its leasehold to some other person, the requirement to pay fair market value rent pursuant to 19 V.S.A. § 26a shall resume.

(b) Upon accepting conveyance of the hangar building under subsection (a) of this section, the secretary of transportation shall notify the secretary of administration so the hangar building can be added to the inventory of state-owned buildings maintained for purposes of 32 V.S.A. §§ 3701–3707.

* * * State-owned Railroad Property * * *

Sec. 36. 5 V.S.A. § 3406(b) is amended to read:

(b) The secretary shall have authority, with the approval of the governor, to sell ~~to any person or legal entity part or all of any parcel of~~ state-owned railroad property ~~or rights therein, provided that the terms of the sale are approved by the legislature or, in the event that the general assembly is not in session, by the joint fiscal committee~~ subject to the following conditions:

(1) the property is located more than 33 feet from the centerline of main line track (or former main line track), and the secretary determines that the property no longer is needed for railroad operating purposes or for railbanking under section 3408 of this title; and

(2)(A) if the appraised value of the property is $100,000.00 or above, with the prior approval of the general assembly of the sale and its terms, or, in the event that the general assembly is not in session, with the prior approval of the joint transportation oversight committee; or

(B) if the appraised value of the property is below $100,000.00, without further approval.

Sec. 37. 5 V.S.A. § 3408 is amended to read:

§ 3408. RAILBANKING; NOTIFICATION

(a) If the secretary finds that the continued operation of any state-owned railroad property is not economically feasible under present conditions, he or she may place the line in railbanked status after giving advance notice of such planned railbanking to the house and senate committees on transportation when the general assembly is in session, and when the general assembly is not in session, to the joint transportation oversight committee. The agency, on behalf of the state, shall continue to hold the right-of-way of a railbanked line for reactivation of railroad service or for other public purposes not inconsistent

with future reactivation of railroad service. Such railbanking shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of the rights-of-way for railroad purposes.

* * *

Sec. 38. APPROVAL OF TRANSACTIONS REGARDING STATE-OWNED RAILROAD PROPERTY

(a) The secretary of transportation, as agent for the state of Vermont, is authorized to sell to New England Central Railroad, Inc., for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 137.86 and extending northerly a distance of approximately 1.26 miles to approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River.

(b) The secretary, as agent for the state of Vermont, is authorized to sell to Shelburne Limestone Corporation, for fair market value, a segment of the so-called Fonda Branch of the former Central Vermont Railway, Inc. in the town of Swanton, beginning at approximate mile post 139.12, which is the northerly abutment of the railroad bridge over the Missisquoi River, and extending northerly a distance of approximately 0.58 miles to approximate mile post 139.70, which is the southwesterly line of U.S. Route 7.

(c) In aid of the descriptions contained in this section, reference may be had to valuation plans V8/138-140 for the former Central Vermont Railway Company (dated June 30, 1917); the October 17, 1973 quit-claim deed of Central Vermont Railway, Inc. to the St. Johnsbury & Lamoille County Railroad, which is recorded at book 81, page 278 of the Swanton land records; and the December 7, 1973 quit-claim deed of the St. Johnsbury & Lamoille County Railroad to the Vermont Transportation Authority, which is recorded at book 81, page 368 of the Swanton land records.

* * * Out-of-State First Responder Vehicles * * *

Sec. 39. 23 V.S.A. § 1251 is amended to read:

§ 1251. SIRENS AND COLORED SIGNAL LAMPS; OUT OF STATE EMERGENCY AND RESCUE VEHICLES

(a) No motor vehicle shall be operated upon a highway of this state equipped with a siren or signal lamp colored other than amber unless a permit authorizing such equipment, issued by the commissioner of motor vehicles, is carried in the vehicle. The commissioner may adopt additional rules as may be

required to govern the acquisition of permits and the use pertaining to sirens and colored signal lamps.

(b) Notwithstanding the provisions of subsection (a) of this section, when responding to emergencies, law enforcement vehicles, ambulances, fire vehicles, or vehicles owned or leased by, or provided to, volunteer firefighters or rescue squad members which are registered or licensed by another state or province may use sirens and signal lamps in Vermont, and a permit shall not be required for such use, as long as the vehicle is properly permitted in its home state or province.

* * * Establishing Speed Limits * * *

Sec. 40. 23 V.S.A. § 1003(a) is amended to read:

(a) When the traffic committee constituted under 19 V.S.A. § 1(24) determines, on the basis of an engineering and traffic investigation that shall take into account, if applicable, safe speeds within school zones (or safe speeds within 200 feet of school district-operated prekindergarten program facilities owned or leased by a school district) when children are traveling to or from such schools or facilities, that a maximum speed limit established by this chapter is greater or less than is reasonable or safe under conditions found to exist at any place or upon any part of a state highway, ~~except~~ including the Dwight D. Eisenhower national system of interstate and defense highways, it may determine and declare a reasonable and safe limit which is effective when appropriate signs stating the limit are erected. This limit may be declared to be effective at all times or at times indicated upon the signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, or based on other factors, bearing on safe speeds which are effective when posted upon appropriate fixed or alterable signs.

Sec. 41. 23 V.S.A. § 1004(a) is amended to read:

(a) The traffic committee has exclusive authority to make and publish, and from time to time may alter, amend, or repeal, rules pertaining to vehicular, pedestrian, and animal traffic, ~~speed limits,~~ and the public safety on the Dwight D. Eisenhower national system of interstate and defense highways and other limited access and controlled access highways within this state. The rules and any amendments or revisions may be made by the committee only in accordance with chapter 25 of Title 3. The rules shall be consistent with accepted motor vehicle codes or standards, shall be consistent with law, and shall not be unreasonable or discriminatory in respect to persons engaged in like, similar, or competitive activities. The rules are applicable only to the extent that they are not in conflict with regulations or orders issued by any agency of the United States having jurisdiction and shall be drawn with due

consideration for the desirability of uniformity of law of the several states of the United States.

* * * Special Occasions * * *

Sec. 42. 23 V.S.A. § 1010 is amended to read:

§ 1010. SPECIAL OCCASIONS; TOWN HIGHWAY MAINTENANCE

(a) When it appears that traffic will be congested by reason of a public occasion or when a town highway is being reconstructed or maintained or where utilities are being installed, relocated, or maintained, the legislative body of a municipality may make special regulations as to the speed of motor vehicles, may exclude motor vehicles from ~~certain public~~ town highways and may make such traffic rules and regulations as the public good requires. However, signs indicating the special regulations must be conspicuously posted in and near all affected areas, giving as much notice as possible to the public so that alternative routes of travel could be considered.

* * *

* * * Replacement of Gasoline Dispensers * * *

Sec. 43. 10 V.S.A. § 583 is amended to read:

§ 583. REPEAL OF STAGE II VAPOR RECOVERY REQUIREMENTS

(a) Effective January 1, 2013, all rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities are repealed. The secretary may not issue further rules requiring such controls. For purposes of this section, "stage II vapor recovery" means a system for gasoline vapor recovery of emissions from the fueling of motor vehicles as described in 42 U.S.C. § 7511a(b)(3).

(b) Prior to January 1, 2013, stage II vapor recovery rules shall not apply to:

* * *

(4) Any existing gasoline dispensing facility that, after May 1, 2009, replaces all of its existing gasoline dispensers with ~~new~~ gasoline dispensers that support triple data encryption standard (TDES) usage or replaces one or more of its gasoline dispensers pursuant to a plan to achieve full TDES compliance, upon verification and approval by the secretary.

* * *

* * * Relinquishment of State Highway Segments to Municipalities * * *

Sec. 44. RELINQUISHMENT OF FORMER VERMONT ROUTE 109 TO TOWN OF BELVIDERE

(a) Under the authority of 19 V.S.A. § 15(2), approval is granted for the secretary to enter into an agreement with the town of Belvidere to relinquish to the town's jurisdiction a segment of former VT Route 109 beginning at a point in the northerly right-of-way boundary of the present VT Route 109, said point also being the northerly right-of-way boundary of the former VT Route 109, being 35 feet distant northerly radially from station 73+00 of the established centerline of Highway Project Belvidere S 0282(1); thence 155 feet, more or less, southeasterly, crossing the former VT Route 109, to a point in the northerly right-of-way boundary of the present VT Route 109, said point also being in the southerly right-of-way boundary of the former VT Route 109, being 45 feet distant northerly radially from station 74+55 of the centerline; thence northeasterly, easterly, and southeasterly along the southerly right-of-way boundary of the former VT Route 109 to a point in the northerly right-of-way boundary of the present VT Route 109, being 70 feet distant northerly at right angle from station 82+15 of the centerline; thence 79 feet, more or less, northeasterly crossing the former VT Route 109 to a point in the northerly right-of-way boundary of present VT Route 109, being 92 feet distant northerly at right angle from station 82+90 of the centerline; thence northwesterly, westerly, and southwesterly along the northerly right-of-way boundary of the former VT Route 109 to the point and place of beginning.

(b) The relinquishment shall include a three-rod (49.5 feet) right-of-way and slope rights within the area and is subject to the rights of utility companies under chapter 71 of Title 30 and other statutes of similar effect.

Sec. 45. RELINQUISHMENT OF U.S. ROUTE 5 AND NORWICH STATE HIGHWAY IN THE TOWN OF NORWICH

(a) Pursuant to 19 V.S.A. § 15(2), approval is granted for the secretary of transportation to enter into an agreement with the town of Norwich to relinquish to the town's jurisdiction a segment of the state highway known as VT Route 10A in the town of Norwich, beginning at the low-water mark of the Connecticut River at a point in the center of VT Route 10A and continuing 2,756 feet (approximately 0.52 miles) westerly to mile marker 1.218 where VT Route 10A intersects with U.S. Route 5 (this point also is station 78+00 on the U.S. Route 5 centerline of Highway Project Hartford-Norwich I 91-2(5)). The relinquishment shall continue 6,496 feet (approximately 1.230 miles) northerly and easterly along the center of U.S. Route 5 (Church Street) to its intersection

with the Norwich State Highway at approximately U.S. Route 5 mile marker 2.448.

(b) Control of the highways but not ownership of the lands or easements within the highway right-of-way shall be relinquished to the town of Norwich. The town of Norwich shall not sell or abandon any portion of the relinquishment areas or allow any encroachments within the relinquishment areas without written permission of the agency of transportation.

* * * Town of Bennington; Adjustments to State Highway System * * *

Sec. 46. TOWN OF BENNINGTON; ADJUSTMENTS TO STATE HIGHWAY SYSTEM

(a) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to relinquish to the town's jurisdiction approximately 1.07 miles of U.S. Route 7 (South Street) between mile marker 1.088 (near Carpenter Hill Road [TH #48]) and mile marker 2.156 (near the entrance to the Park Lawn Cemetery) to become a class 1 town highway.

(b) Under the authority of 19 V.S.A. § 15(2), the general assembly authorizes the secretary to enter into an agreement with the town of Bennington to accept as part of the state highway system approximately 1,300 feet of VT Route 9 (Main Street [TH #2]) between mile marker 5.655, near the location of a crosswalk to be constructed under the transportation project Bennington NH 019-1(51), and mile marker 5.901, which is the existing jurisdictional boundary between the state highway and the class 1 town highway. The agreement shall provide for the town of Bennington to be responsible for maintenance of sidewalks within the subject area.

* * * Short-Range Public Transit Plan * * *

Sec. 47. REPEAL

The following are repealed:

(1) 24 V.S.A. § 5088(7) (definition of "short-range public transit plan").

(2) 24 V.S.A. § 5091(f) (requirement that grantees shall be eligible for funding only if a short-range public transit plan has been completed).

* * * Study of Councils * * *

Sec. 48. RAIL, AVIATION, PUBLIC TRANSIT ADVISORY, AND SCENERY PRESERVATION COUNCILS

The agency of transportation shall examine the current functions of the Vermont Rail Advisory Council, the Vermont Aviation Advisory Council, the

public transit advisory council, and the scenery preservation council. The agency shall, in consultation with the respective council being examined, consider the structure, composition, and format of each council and shall report back to the senate and house committees on transportation with any recommendations for modifications to improve the efficiency and effectiveness of each council by January 15, 2011.

* * * Scenery Preservation Council * * *

Sec. 49. 10 V.S.A. § 425 is amended to read:

§ 425. SCENERY PRESERVATION COUNCIL

(a) The scenery preservation council shall:

(1) upon request, advise and consult with organizations, municipal planning commissions or legislative bodies, or regional planning commissions concerning byway program grants and in the designation of municipal scenic roads or byways;

(2) recommend for designation state scenic roads or byways after holding a public meeting to determine local support for designation; and

(3) encourage and assist in fostering public awareness, understanding, and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest.

(b) ~~There is created within the state planning office a scenery preservation council to advise and assist the state planning director in the performance of his duties with respect to this chapter.~~ The scenery preservation council shall consist of ~~ten~~ seven members ~~including~~: the secretary ~~of the agency~~ of natural resources~~,~~ or his or her designee; the secretary ~~of the agency~~ of transportation ~~and the director of the state planning office~~ or ~~their designees. The governor shall appoint~~ his or her designee; and five members appointed by the governor. ~~The speaker of the house shall appoint one member of the house as member and the committee on committees of the senate shall appoint one senator as member.~~ The terms of the members appointed by the governor shall be for three years, except that he or she shall appoint the first members so that the terms of the members end in one year, two years, and three years. ~~The terms of the members appointed by the speaker of the house and the committee on committees of the senate shall end on January 15 in every odd-numbered year and their successors shall be appointed at that time.~~ The governor shall designate an appointed member to serve as chairman at the governor's pleasure. Except as provided in this section, no state employee or member of any state commission ~~nor~~ or any federal employee or member of any federal commission shall be eligible for membership on the scenery preservation

council. Members of the council who are not full-time state employees~~, including members of the general assembly when the general assembly is not in session,~~ shall be entitled to a per diem ~~of $30.00~~ as provided in 32 V.S.A. § 1010(b) and their actual necessary expenses. The council shall meet no more than two times per year, and meetings may be called by the chair of the council or the secretary of transportation or his or her designee.

~~(b) The scenery preservation council shall:~~

~~(1) upon request, advise and consult with municipal planning commissions or legislative bodies and regional planning commissions in the designation of municipal scenic roads;~~

~~(2) recommend for designation state scenic roads, after consultation with regional planning commissions, pursuant to the provisions of chapter 25 of Title 19;~~

~~(3) encourage and assist in fostering public awareness, understanding and participation in the objectives and functions of scenery preservation and in stimulating public participation and interest;~~

~~(4) report biennially to the governor and the general assembly upon the effectiveness of this chapter and make continuing recommendations regarding scenic corridors, scenic areas and scenic sites. The reports shall indicate the status of all state and town designated scenic roads;~~

~~(5) prepare and recommend to the transportation board prior to January 1, 1978 aesthetic criteria to carry out the purposes of this chapter.~~

* * *

* * * Highway Condemnation Orders * * *

Sec. 50. 19 V.S.A. § 512 is amended to read:

§ 512. ORDER FIXING COMPENSATION; INVERSE CONDEMNATION; RELOCATION ASSISTANCE

(a) Within ~~45~~ 30 days after the compensation hearing, the ~~transportation~~ board shall by its order fix the compensation to be paid to each person from whom land or rights are taken~~, and~~. Within 30 days of the board's order, the agency ~~of transportation~~ shall file and record the order in the office of the clerk of the town where the land is situated, ~~and shall~~ deliver to each person ~~or persons~~ a copy of that portion of the order directly affecting the person ~~or persons,~~ and ~~shall~~ pay or tender the award to each person entitled ~~which~~. A person to whom a compensation award is paid or tendered under this subsection may ~~be accepted, retained and disposed~~ accept, retain, and dispose

of the award to his or her own use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency ~~of transportation~~ may proceed with the work for which the land is taken.

* * *

* * * Traveler Information Services * * *

Sec. 51. INTERSTATE 91 TRAVELER INFORMATION SERVICES FACILITY

(a) Pursuant to Sec. 109(b) of No. 50 of the Acts of 2009, the commissioner of buildings and general services (BGS) is authorized to negotiate and contract with businesses interested in providing travel information services near Exit 7 of Interstate 91 for the purpose of establishing a privately operated travel information center near this exit.

(b) The agency of transportation shall work with BGS and the Federal Highway Administration to implement a signage strategy to clearly direct travelers to businesses providing travel information services at any travel information center established pursuant to subsection (a) of this section.

Sec. 52. INFORMATION CENTERS; CROSS-BORDER OPPORTUNITIES

The commissioner of buildings and general services may evaluate opportunities to reach agreement with neighboring states and provinces concerning advertising at information centers or the joint operation of information centers. The commissioner shall report findings and recommendations related to any evaluation conducted pursuant to this section to the senate and house committees on transportation by January 15, 2011.

* * * Lake Champlain Bridge Facilities * * *

Sec. 53. LAKE CHAMPLAIN BRIDGE FACILITIES

(a) The secretary of transportation and the commissioner of fish and wildlife shall work together in consultation with the division for historic preservation to develop plans regarding the repair and expansion of existing fishing access facilities at the Lake Champlain bridge at Crown Point.

(b) The secretary of transportation and the commissioner of buildings and general services shall work together in consultation with the division for historic preservation in seeking federal funds for renovations to Chimney Point State Historic Site facilities and the repair and expansion of existing fishing access facilities in connection with construction of the Lake Champlain bridge at Crown Point.

* * * Official Business Directional Sign Fees * * *

Sec. 54. 10 V.S.A. § 501 is amended to read:

§ 501. FEES

Subject to the provisions of subsection 486(c) of this title, an applicant for an official business directional sign or an information plaza plaque shall pay to the travel information council an initial license fee and an annual renewal fee as established by this section.

* * *

(2) Annual renewal fees shall be as follows:

(A) for full and half-sized official business directional signs, ~~$125.00~~ $100.00 per sign;

(B) information plaza plaques, $25.00 per plaque.

* * * Rest Area Advisory Committee * * *

Sec. 55. REPEAL

19 V.S.A. § 12c (rest area advisory committee) is repealed.

* * * Low-Bed Trailer Permits * * *

Sec. 56. 23 V.S.A. § 1402(e) is amended to read:

(e) ~~Pilot project allowing annual permits for low-bed trailers.~~

(1) The commissioner may issue an annual permit to allow the transportation of a so-called "low-bed" trailer. A "low-bed" trailer is defined as a trailer manufactured for the primary purpose of carrying heavy equipment on a flat-surfaced deck, which deck is at a height equal to or lower than the top of the rear axle group.

(2) A blanket permit may be obtained for an annual fee of $275.00 per unit, provided the total vehicle length does not exceed 75 feet, does not exceed a loaded width of 12'6", does not exceed a total weight of 108,000 lbs., and has a height not exceeding 14 feet.

(3) Warning signs and flags shall be required if the vehicle exceeds 75 feet in length, or exceeds 8'6" in width.

(4) ~~This subsection shall expire on June 30, 2010. No later than January 15, 2010, the department of motor vehicles, after consultation with the agency of transportation, Vermont League of Cities and Towns, and Vermont Truck and Bus Association, shall report to the house and senate committees on transportation on the results of this two-year pilot project. The report shall~~

~~include recommendations on extending this provision on low-bed trailers, as well as other recommendations relating to longer vehicle lengths.~~ [Repealed.]

* * * Limited Access Facility Sign Restriction; Exemption * * *

Sec. 57. ON-PREMISE SIGN ON LIMITED ACCESS FACILITY

Notwithstanding the restriction on on-premise signs located as to be readable primarily from a limited access facility set forth in 10 V.S.A. § 495(b) and the requirement set forth in 10 V.S.A. § 493(1) that on-premise signs be erected no more than 1,500 feet from a main entrance from the highway to the activity or premises advertised, an on-premise sign directing traffic to the facilities of a postsecondary educational institution may be erected at the intersection of U.S. Route 4 Western Bypass and U.S. Route 7 in the city of Rutland.

* * * Effective Dates * * *

Sec. 58. EFFECTIVE DATES

(a) This section and the following sections of this act shall take effect on passage:

(1) Sec. 12 (ARRA maintenance of effort – appropriation transfers).

(2) Sec. 13 (FY11 transportation infrastructure bonds).

(3) Sec. 15 (end FY10 transportation fund surplus).

(4) Sec. 16 (authority to reduce FY10 appropriations).

(5) Sec. 40 (speed limits).

(6) Sec. 41 (traffic committee rulemaking).

(7) Sec. 43 (replacement of gasoline dispensers). Notwithstanding 1 V.S.A. § 214, Sec. 43 shall apply retroactively to gasoline dispensers installed at an existing gasoline dispensing facility after May 1, 2009.

(8) Sec. 56 (low-bed trailer permits).

(b) All other sections of this act not specifically enumerated in subsection (a) of this section shall take effect on July 1, 2010.

RICHARD T. MAZZA
PHILIP B. SCOTT
M. JANE KITCHEL

Committee on the part of the Senate

PATRICK M. BRENNAN
DAVID E. POTTER
TIMOTHY R. CORCORAN

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.

Proposal of Amendment; Third Reading Ordered

H. 709.

Senator Doyle, for the Committee on Education, to which was referred House bill entitled:

An act relating to creating a prekindergarten–16 council.

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:

Sec. 1. POLICY

It is the policy of the state of Vermont to encourage and enable all Vermonters to acquire the postsecondary education and training necessary for the state to develop and maintain a skilled, highly educated, and engaged citizenry and a competitive workforce.

Sec. 2. 16 V.S.A. § 2905 is added to read:

§ 2905. PREKINDERGARTEN–16 COUNCIL

(a) A prekindergarten–16 council (the "council") is created to help coordinate and better align the efforts of the prekindergarten–12 educational system with the higher education community in order to increase:

(1) postsecondary aspirations;

(2) the enrollment of Vermont high school graduates in higher education programs;

(3) the postsecondary degree completion rates of Vermonters; and

(4) public awareness of the economic, intellectual, and societal benefits of higher education.

(b) The council shall be composed of:

(1) the commissioner of education or designee;

(2) the commissioner of labor or designee;

(3) the president of the University of Vermont or designee;

(4) the chancellor of the Vermont State Colleges or designee;

(5) the president of the Vermont Student Assistance Corporation or designee;

(6) the president of the Association of Vermont Independent Colleges or designee;

(7) a principal of a secondary school selected by the Vermont Principals' Association;

(8) a superintendent selected by the Vermont Superintendents Association;

(9) a teacher selected by the Vermont-National Education Association;

(10) a member of the Building Bright Futures Council or designee;

(11) a technical education director selected by the Vermont Association of Career and Technical Center Directors;

(12) a representative from the business and industry community selected by the Vermont Business Roundtable;

(13) an advocate for low income children selected by Voices for Vermont's Children;

(14) a member of the house of representatives, who shall be selected by the speaker and shall serve until the beginning of the biennium immediately after the one in which the member is appointed;

(15) a member of the senate, who shall be selected by the committee on committees and shall serve until the beginning of the biennium immediately after the one in which the member is appointed; and

(16) A member of the faculty of the Vermont State Colleges, the University of Vermont, or a Vermont independent college selected by United Professions AFT Vermont, Inc.

(c) The council shall develop and regularly update a statewide plan to increase aspirations for and the successful completion of postsecondary education among students of all ages and otherwise advance the purposes for which the council is created, which shall include strategies to:

(1) ensure that every high school graduate in Vermont is prepared to succeed in postsecondary education without remedial assistance;

(2) increase the percentage of Vermonters who earn an associate's or higher level degree or a postsecondary certification;

(3) identify and address areas of educator preparation that could benefit from improved collaboration between the prekindergarten–12 educational system and the higher education community;

(4) promote early career awareness and nurture postsecondary aspirations;

(5) develop programs that guarantee college admission and financial aid for low income students who successfully complete early commitment requirements;

(6) enhance student engagement in secondary school, ensuring that learning opportunities are relevant, rigorous, and personalized and that all students aspire to and prepare for success in postsecondary learning opportunities;

(7) expand access to dual enrollment programs in order to serve students of varying interests and abilities, including those who are likely to attend college, those who are from groups that attend college at disproportionately low rates, and those who are prepared for a postsecondary curriculum prior to graduation from secondary school;

(8) develop proposals for statewide college and career readiness standards and assessments;

(9) create incentives for adults to begin or continue their postsecondary education; and

(10) ensure implementation of a prekindergarten–16 longitudinal data system, which it shall use to assess the success of the plan required by this subsection.

(d) Together with the secretary of administration or the secretary's designee, a higher education subcommittee of the council shall perform any statutory duties required of it in connection with the higher education endowment trust fund. The following members of the council shall be the members of the higher education subcommittee: the president of the University of Vermont, the chancellor of the Vermont State Colleges, the president of the Vermont Student Assistance Corporation, the president of the Association of Vermont Independent Colleges, the representative from the business and industry community, the member of the house of representatives, and the member of the senate.

(e) The legislative and higher education staff shall provide support to the council as appropriate to accomplish its tasks. Primary administrative support shall be provided by the legislative council.

(f) The council shall annually elect one of its members to be chair.

(g) The council shall meet at least quarterly.

(h) The council shall report on its activities to the house and senate committees on education and to the state board of education each year in January.

Sec. 3. 16 V.S.A. § 2885 is amended to read:

§ 2885. VERMONT HIGHER EDUCATION ENDOWMENT TRUST FUND

* * *

(d) During the first quarter of each fiscal year, ~~beginning in the year 2000,~~ the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee of the prekindergarten–16 council created in section 2905 of this title may authorize the state treasurer to make an amount equal to up to two percent of the assets available to Vermont public institutions for the purpose of creating or increasing a permanent endowment. In this subsection, "assets" means the average of the fund's market values at the end of each quarter for the most recent 12 quarters, or all quarters of operation, whichever is less. Therefore, up to two percent of the fund assets are hereby annually allocated pursuant to this section, provided that the amount allocated shall not exceed an amount which would bring the fund balance below the initial funding made in fiscal year 2000 plus any additional contributions to the principal. One-half of the amount allocated shall be available to the University of Vermont and one-half shall be available to the Vermont ~~state colleges~~ State Colleges. The University of Vermont or Vermont ~~state colleges~~ State Colleges may withdraw funds upon certification by the withdrawing institution to the commissioner of finance and management that it has received private donations which are double the amount it plans to withdraw.

(e) Annually, by September 30, the state treasurer shall render a financial report on the receipts, disbursements and earnings of the fund for the preceding fiscal year to the ~~commission on higher education funding~~ secretary of administration or the secretary's designee and the higher education subcommittee.

(f) All balances in the fund at the end of any fiscal year shall be carried forward and used only for the purposes set forth in this section. Earnings of

the fund which are not withdrawn pursuant to this section shall remain in the fund.

(g) The University of Vermont, the Vermont State Colleges, and the Vermont Student Assistance Corporation shall review expenditures made from the fund, evaluate the impact of the expenditures on higher education in Vermont, and report this information to the state treasurer each year in January.

Sec. 4. REPEAL

16 V.S.A. § 2886 (commission on higher education funding) is repealed, and the commission shall cease to exist on the effective date of this act.

Sec. 5. IMPLEMENTATION

(a) All members of the prekindergarten–16 council created in Sec. 2 of this act shall be selected before August 1, 2010.

(b) The commissioner of education shall convene the first meeting of the prekindergarten–16 council before September 1, 2010.

(c) The strategies developed by the prekindergarten–16 council pursuant to subdivision 2(c)(1) of this act shall include the goal of ensuring that at least 60 percent of the adult population will have earned an associate's or higher-level degree by 2020.

Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

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

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the Senate propose to the House to amend the bill as recommended by Committee on Education?, Senator Starr moved that the Senate propose to the House that the bill be amended as recommended by the Committee on Education with the following amendments thereto:

In Sec. 2, 16 V.S.A. § 2905, in subsection (d), in the first sentence, as follows:

First: after the word "statutory" by inserting the words or other

Second: after the words "required of it" by inserting the following: , including duties

Which was agreed to.

Thereupon, the pending question, Shall the Senate propose to the House to amend the bill as recommended by the Committee on Education, as amended?, was agreed to.

Thereupon, third reading of the bill was ordered.

House Proposals of Amendment Concurred In

S. 278.

House proposals of amendment to Senate bill entitled:

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

Were taken up.

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

First: By adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. 8 V.S.A. § 2201(c) is amended to read:

(c) A person licensed pursuant to subdivision (a)(1) of this section may engage in mortgage brokerage and sales finance if such person informs the commissioner in advance that he or she intends to engage in sales finance and mortgage brokerage. Such person shall inform the commissioner of his or her intention on the original license application under section 2202 of this title, any renewal application under section 2209 of this title, or pursuant to section 2208 of this title, and shall pay the applicable fees required by subsection 2202(b) of this title for a mortgage broker license or sales finance company license.

Second: By adding a new section to be numbered Sec. 1b to read as follows:

Sec. 1b. 8 V.S.A. § 2500(2) is amended to read:

(2) "Authorized delegate" means a person located in this state that a licensee designates to provide money services on behalf of the licensee.

Third: In Sec. 4, subdivision (b)(3), by striking out the word "serves" and by inserting in lieu thereof the word served

Fourth: By adding a new section to be numbered Sec. 4a to read as follows:

Sec. 4a. 8 V.S.A. § 3577 is amended to read:

§ 3577. REQUIREMENTS FOR ACTUARIAL OPINIONS

(a) Each licensed insurance company shall include on or attached to its annual statement submitted under section 3561 of this title a statement of a

qualified actuary, entitled "statement of actuarial opinion," setting forth an opinion on life and health policy and claim reserves and an opinion on property and casualty loss and loss adjustment expenses reserves.

(b) The "statement of actuarial opinion" shall be treated as a public document and shall conform to the Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries, the standards of the Casualty Actuarial Society, and such additional standards as the commissioner may establish by rule. The commissioner by rule shall establish minimum standards applicable to the valuation of health disability, sickness and accident plans.

(c) Opinions required by this section shall apply to all business in force, and shall be stated in form and in substance acceptable to the commissioner as prescribed by rule.

(1) In the case of property and casualty insurance companies domiciled in this state, every company that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate Property and Casualty Annual Statement Instructions of the National Association of Insurance Commissioners (NAIC) and shall be considered as a document supporting the actuarial opinion required in subsection (a) of this section. A property and casualty insurance company licensed but not domiciled in this state shall provide the actuarial opinion summary upon request.

(2) In the case of property and casualty insurance companies, an actuarial report and underlying work papers, as required by the appropriate Property and Casualty Annual Statement Instructions of the NAIC, shall be prepared to support each actuarial opinion. If the property and casualty insurance company fails to provide a supporting actuarial report or work papers at the request of the commissioner or if the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(3) In the case of property and casualty insurance companies, the appointed actuary shall not be liable for damages to any person other than the insurance company and the commissioner for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

* * *

(l) Actuarial reports, actuarial opinion summaries, work papers, and any other documents, information, or materials provided to the department in connection with the actuarial report, work papers, or actuarial opinion summary shall be confidential by law and privileged, shall not be subject to inspection and copying under 1 V.S.A. § 316, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private litigation.

(1) This subsection shall not be construed to limit the commissioner's authority to release documents to the Actuarial Board for Counseling and Discipline, provided the material is required for the purpose of professional disciplinary proceedings and further provided that procedures satisfactory to the commissioner are established for preserving the confidentiality of the documents, nor shall this subsection be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) Neither the commissioner nor any person who receives documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information under this subsection.

(3) In order to assist in the performance of the commissioner's duties, the commissioner may:

(A) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (d) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality.

(B) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged

under the laws of the jurisdiction that is the source of the document, material, or information.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of the disclosure to the commissioner under this section or as a result of sharing as authorized by subdivision (3) of this subsection.

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

Sec. 7. 8 V.S.A. § 3810a(c) is added to read:

(c) The lives of individuals insured under a group policy authorized by this subchapter may continue to be insured following termination of employment, membership, or other affiliation of the individual with the group under a portability group approved by the commissioner, provided that the group policy complies with all the applicable requirements of this subchapter.

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

Sec. 7a. 8 V.S.A. § 4153 is amended to read:

§ 4153. SCOPE

(a) This subchapter shall provide coverage for the policies and contracts specified in subsection (b) of this section:

(1) ~~to~~ To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts and except for payees and beneficiaries of structured settlement annuities as specified in subdivision (3) of this subsection), are the beneficiaries, assignees, or payees of the persons covered under subdivision (2) of this subsection~~, and~~.

(2) ~~to~~ To persons who are owners of or certificate holders under such policies or contracts or, in the case of unallocated annuity contracts, to the persons who are the contract holders; and who

(A) are residents of this state, or

(B) are not residents of this state, but only if all of the following conditions are met:

(i) the insurers which issued such policies or contracts are domiciled in this state;

(ii) such insurers never held a license or certificate of authority in the states in which such persons reside;

(iii) such states have associations similar to the association created by this subchapter; and

(iv) such persons are not eligible for coverage by such associations.

(3) To persons who are a payees under structured settlement annuities, or beneficiaries of such deceased payees, but only if the payees:

(A) are residents of this state, regardless of where the contract owners reside; or

(B) are not residents of this state, but only if both of the following conditions are met:

(i)(I) the contract owners of such structured settlement annuities are residents of this state; or

(II) the contract owners of such structured settlement annuities are not residents of this state, but only if:

(aa) the insurers which issued such structured settlement annuities are domiciled in this state; and

(bb) the states in which such contract owners reside have associations similar to the association created by this subchapter; and

(ii) Neither the payees, beneficiaries, nor the contract owners are eligible for coverage by the associations of the states in which such payees or contract owners reside.

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

Sec. 7b. 8 V.S.A. § 4153(b)(2) is amended to read:

(2) This subchapter shall not provide coverage for:

* * *

(C) any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

* * *

(G) any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; ~~and~~

* * *

(I) any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; and

(J) any policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant Medicare Part C or Part D of subchapter XVIII, Chapter 7 of Title 42 of the United States Code, or any regulations issued pursuant thereto.

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

Sec. 7c. 8 V.S.A. § 4155 is amended to read:

§ 4155. DEFINITIONS

* * *

(7) "Impaired insurer" means~~:~~

~~(A) an insurer which after April 27, 1972, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction, or~~

~~(B) an insurer determined by the commissioner after April 27, 1972 to be unable or potentially unable to fulfill its contractual obligations~~ a member insurer which, after the effective date of this subchapter, is not an insolvent insurer and who is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(8) "Insolvent insurer" means a member insurer which, after the effective date of this subchapter, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

~~(8)~~(9) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this subchapter applies under section 4153 of this title.

~~(9)~~(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 4153(b) of this title except that assessable premium shall not be reduced on account of subdivisions 4153(b)(2)(C), relating to interest limitations, and 4158(8) of this title relating to limitations with respect to any one individual, any one participant and any one contract holder; provided that "premiums" shall not include any premiums in excess of ~~one million dollars~~ $5,000,000.00 on any unallocated annuity contract not issued under a governmental retirement plan established under section 401, subsection 403(b) or section 457 of the United States Internal Revenue Code.

(11)~~(10)~~ "Person" means any individual, corporation, partnership, association or voluntary organization.

~~(11)~~(12) "Resident" means any person who resides in this state ~~at the time the impairment is determined~~ on the date of entry of a court order that determines a member insurer to be an impaired insurer or of a court order that determines a member insurer to be an insolvent insurer, and to whom contractual obligations are owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.

~~(12)~~(13) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

~~(13)~~(14) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

~~(14)~~(15) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate and shall include guaranteed investment contracts, guaranteed interest contracts, guaranteed accumulation contracts, deposit administration contracts, and unallocated funding agreements.

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

Sec. 7d. 8 V.S.A. § 4158 is amended to read as follows:

§ 4158. POWERS AND DUTIES OF THE ASSOCIATION

In addition to the powers and duties enumerated in other sections of this subchapter:

(1) If a ~~domestic insurer is an impaired insurer, the association,~~

~~(A) may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer and approved by the impaired insurer and the commissioner: or~~

~~(B) shall, after entry of an order of liquidation or rehabilitation, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer, and shall make or cause to be made prompt payment of the contractual obligations of the impaired insurer~~ member insurer is an impaired insurer, the association, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner, may:

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; and

(B) provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (A) of this subdivision (1) and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (A) of this subdivision (1).

(2) If a ~~foreign or alien insurer is an impaired insurer under an order of liquidation, rehabilitation, or conservation, the association shall, subject to any conditions imposed by the association and approved by the commissioner, guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of residents, and shall make or cause to be made prompt payment of the impaired insurer's contractual obligations to residents~~ member insurer is an insolvent insurer, the association, in its discretion, shall either:

(A)(i)(I) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(II) Assure payment of the contractual obligations of the insolvent insurer; and

(ii) Provide monies, pledges, loans, notes, guarantees, or other means reasonably necessary to discharge the association's duties; or

(B) Provide benefits and coverages in accordance with the following provisions:

(i) With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(I) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.

(II) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date (if any) under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(ii) Make diligent efforts to provide all known insureds or annuitants (for nongroup policies and contracts), or group policy owners with respect to group policies and contracts, 30 days notice of the termination, pursuant to subdivision (i) of this subdivision (B), of the benefits provided.

(iii) With respect to nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision (iv) of this subdivision (B), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(iv)(I) In providing the substitute coverage required under subdivision (iii) of this subdivision (B), the association may offer either to reissue the terminated coverage or to issue an alternative policy.

(II) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.

(III) The association may reinsure any alternative or reissued policy.

(v)(I) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(II) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.

(III) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(vi) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

(vii) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association;

(viii) When proceeding under subdivision (B) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision 4153(b)(2)(C) of this title.

* * *

(6) The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subchapter. Such standing shall extend to all matters germane to the powers and duties of the association.

(7)(A) Any person receiving benefits under this subchapter shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this subchapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this subchapter upon such person. The association shall be subrogated to these rights against the assets of any impaired or insolvent insurer.

(B) The subrogation rights of the association under this subdivision shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subchapter.

(8) The benefits for which the association may become liable shall in no event exceed the lesser of:

(A) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(B)(i) With respect to any one life, regardless of the number of policies or contracts:

(I) $300,000.00 in life insurance death benefits, but not more than $100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

(II) In health insurance benefits:

(aa) $100,000.00 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(bb) $300,000.00 for disability insurance and $300,000.00 for long-term care insurance;

(cc) $500,000.00 for basic hospital, medical, and surgical insurance, or major medical insurance; or

(III) $250,000.00 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

(ii) With respect to each individual participating in a governmental retirement plan established under Section 401, 403(b), or 457 of the U.S. Internal Revenue Code covered by an unallocated annuity contract or the

beneficiaries of each such individual if deceased, in the aggregate, $250,000.00 in present value annuity benefits, including net cash surrender and net cash withdrawal values; or

(iii) With respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased) for which coverage is provided under subdivision 4153(a)(3) of this title, $ 250,000.00 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;

(iv) With respect to any one contract holder covered by any unallocated annuity contract not included in subdivision (B)(ii) of this subdivision (8), $5,000,000.00 in benefits, irrespective of the number of such contracts held by that contract holder; and

~~(iv)~~(v) Provided, however, that in no event shall the association be liable to expend more than $300,000.00 in the aggregate with respect to any one individual under subdivisions (B)(i)(I), (B)(i)(II)(aa) and (bb), B(i)(III), (B)(ii), and (B)(iii) of this subdivision (8); and provided further, however, that in no event shall the association be liable to expend more than $500,000.00 in the aggregate with respect to any one individual under subdivision (B)(i)(II)(cc) of this subdivision (8).

* * *

(10)(A)(i) At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(ii) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings: copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and notices of any defaults under the reinsurance contacts or any

known event or condition which with the passage of time could become a default under the reinsurance contracts.

(iii) The following subdivisions (I) through (IV) shall apply to reinsurance contracts so assumed by the association:

(I) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the receiver.

(II) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(aa) The amount received by the association; and

(bb) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.

(III) Within 30 days following the association's election (the "election date"), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as

otherwise provided by law. If the receiver has received any amounts due the association pursuant to subdivision (iii)(II) of this subdivision (A), the receiver shall remit the same to the association as promptly as practicable.

(IV) If the association or receiver, on the association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association.

(B) During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until 180 days after the date of the order of liquidation):

(i)(I) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (A) of this subdivision (10), whether for periods prior to or after the date of the order of liquidation; and

(II) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records reasonably requested;

(ii) Provided that once the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (A) of this subdivision (10).

(C) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (A) of this subdivision (10), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(D) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (A) of this subdivision (10), subject to the following:

(i) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

(ii) The obligations described in subdivision (A) of this subdivision (10) shall no longer apply with respect to matters arising after the effective date of the transfer; and

(iii) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.

(E) The provisions of this subdivision (10) shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(F) Except as otherwise provided in this section, nothing in this subdivision (10) shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

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

Sec. 7e. CONFORMING AMENDMENTS

The legislative council, when codifying the amendments enacted by this act to chapter 112 of Title 8, Vermont Statutes Annotated, shall also amend chapter 112 as follows:

(1) In 8 V.S.A. §§ 4158(3), (5) and (9), 4159, 4161(1) and (4), 4164, and 4169, by striking the word "impaired" wherever it appears and inserting in lieu thereof the words "impaired or insolvent"; and

(2) In 8 V.S.A. §§ 4152, 4161(1)(C), and 4162, by striking out the word "impairment" wherever it appears and inserting in lieu thereof the words "impairment or insolvency."

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

Sec. 7f. 8 V.S.A. § 8204 is amended to read:

§ 8204. ASSUMPTION, TRANSFER AND NOTICE REQUIREMENTS

(a) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with receipt acknowledged by the policyholder. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

* * *

(j) ~~The~~ Except as provided in, and subject to subsection 8207(d) of this title, the commissioner may modify the notice requirements of this chapter if the commissioner determines that the transfer is between affiliates or that the transfer is not contemplated within the purposes of this chapter.

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

Sec. 7g. 8 V.S.A. § 8207(d) is amended to read:

(d) In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has approved or intends to approve the notice requirements and other policyholder rights with respect such policyholders, the commissioner shall defer to the decisions of such other insurance regulatory authority. In the case of policyholders who do not reside in this state, and where the insurance regulatory authority in such other state has not established an obligation to file forms used by an insurer in a transaction under this subchapter, the commissioner may modify notice requirements and other policyholder rights when in his or her judgment it appears that the interests of the policyholders and insurers are best served by the exercise of such discretion. Factors to be considered in making this determination shall include the following:

* * *

Thirteenth: By striking out Sec. 8 in its entirety and by inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. 8 V.S.A. § 4800(4) is added to read:

(4) In order to assist in the performance of the commissioner's duties under this chapter, the commissioner may:

(A) contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, and the collection of system charges related to producer licensing or to any other activities which require a license under this chapter that the commissioner and the nongovernmental entity may deem appropriate;

(B) participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry to effect the licensure and appointment of producers and other persons required to be licensed under this chapter;

(C) adopt by rule any uniform standards and procedures as are necessary to participate in a centralized registry. Such rules may include the central collection of all fees and system charges for license or appointments that are processed through the registry, and the establishment of uniform license and appointment renewal dates;

(D) require persons engaged in activities which require a license under this chapter to make any filings with the department in a digital, electronic manner approved by the commissioner for applications, renewal, amendments, notifications, reporting, appointments, terminations, the payment of fees and system charges, and such other activities relating to licensure under this chapter as the commissioner may require, subject to such hardship circumstances demonstrated by the applicant or licensee which the commissioner deems appropriate for the utilization of the central registry in a nondigital and nonelectronic manner; and

(E)(i) authorize the centralized producer license registry to collect fingerprints on behalf of the commissioner in order to receive or conduct criminal history background checks;

(ii) use the centralized producer license registry as a channeling agent for requesting information from and distributing information to the U.S. Department of Justice or any governmental agency, in order to reduce the points of contact which the Federal Bureau of Investigation (FBI) or the commissioner may have to maintain for purposes of this subsection; and

(iii) require persons engaged in activities that require a license under this chapter to submit fingerprints, and the commissioner may utilize the services of the centralized producer license registry to process the fingerprints and to submit the fingerprints to the FBI, the Vermont state police, or any equivalent state or federal law enforcement agency for the purpose of conducting a criminal history background check. The licensee or applicant

shall pay the cost of such criminal history background check, including any charges imposed by the centralized producer licensing system.

Fourteenth: By adding a new section to be numbered Sec. 9a to read as follows:

Sec. 9a. REPEAL

8 V.S.A. § 4807(b) (surplus lines broker; requirement of one year's experience) is repealed.

Fifteenth: By striking out Sec. 24 in its entirety and inserting in lieu thereof a new Sec. 24 to read as follows:

Sec. 24. 8 V.S.A. § 4081 is amended to read:

§ 4081. BLANKET HEALTH INSURANCE

(a) Blanket health insurance is hereby declared to be that form of health insurance which is supplemental to comprehensive health insurance, or which provides coverage other than the payment of all or a portion of the cost of health care services or products, and covering special groups of persons set forth as follows:

(1) Under a policy or contract issued to any common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier;

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees defined by reference to exceptional hazards incident to such employment;

(3) Under a policy or contract issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering students or teachers;

(4) Under a policy or contract issued in the name of any volunteer fire department, first aid, or other such volunteer group, which shall be deemed the policyholder, covering all of the members of such department or group in connection with their department or group activities; or

(5) Under a policy or contract issued to any other substantially similar group which, in the discretion of the commissioner and after the prior approval by the commissioner of the group, may be subject to the issuance of a blanket health policy or contract.

Sixteenth: By striking out Sec. 25 in its entirety and inserting in lieu thereof a new Sec. 25 to read as follows:

Sec. 25. 8 V.S.A. § 4082 is amended to read:

§ 4082. BLANKET INSURANCE; POLICY CONTENTS

(a) No such blanket health insurance policy shall contain any provision relative to notice of claim, proofs of loss, time of payment of claims, or time within which legal action must be brought upon the policy which, in the opinion of the commissioner, is less favorable to the persons insured than would be permitted by the provisions set forth in section 4065 of this title. An individual application shall not be required from a person covered under a blanket health policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate. All benefits under any blanket health policy shall, unless for hospital and physician service or surgical benefits, be payable to the person insured, or to his or her designated beneficiary or beneficiaries, or to his or her estate, except that if the person insured be a minor, such benefits may be made payable to his or her parent, guardian, or other person actually supporting him or her. Nothing contained in this section or section 4081 of this title shall be deemed to affect the legal liability of policyholders for the death of, or injury to, any such members of such group.

(b) No such blanket health insurance policy which provides coverage for the payment of all or a portion of the cost of health care services or products shall contain any provision not in compliance with a requirement of this title, or a rule adopted pursuant to this title applicable to health insurance, other than those requirements applicable to nongroup health insurance or small group health insurance. The commissioner may waive the application to a blanket insurance policy of one or more of the health insurance requirements of this title, or a rule adopted pursuant to this title, if such requirement is not relevant to the types of risks and duration of risks insured against in such blanket insurance policy.

Seventeenth: By adding a new section to be numbered Sec. 26a to read as follows:

Sec. 26a. Sec. 51(h) of No. 61 of the Acts of 2009 is amended to read:

(h) The summary disclosure form required by 18 V.S.A. § 9418c(b), shall be included in all contracts entered into or ~~renewed~~ renegotiated on or after July 1, 2009, and shall be provided for all other existing contracts no later than July 1, 2014.

Eighteenth: By adding a new section to be numbered Sec. 28a to read as follows:

Sec. 28a. 32 V.S.A. § 8557(b) is added to read:

(b) The executive director of the division of fire safety shall, at the end of each fiscal quarter, prepare a comprehensive written report on the status of training programs and expenditures to date. The report shall be submitted to the commissioner of public safety, the chairperson of the legislative joint fiscal committee when the legislature is not in session and the chairperson of the house appropriations committee when the legislature is in session. The department of public safety shall continue to provide budgeting, accounting and administrative support to the Vermont division of fire safety as such was originally described in Sec. 98 of Act No. 245 of the Acts of 1992.

Ninteenth: In Sec. 29, by striking out subsection (a) in its entirety and by inserting in lieu thereof the following:

(a) This act shall take effect on July 1, 2010, except that this section, Secs. 16 through 23 (captive insurance companies), 26a (fair contract standards; summary disclosure form), and 27 (health information technology assessment) shall take effect on passage.

(b) Sec. 4 (registered agent for financial institutions) shall take effect on October 1, 2010.

And by relettering the remaining subsections to be alphabetically correct.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

J.R.S. 54.

House proposal of amendment to joint Senate resolution entitled:

Joint resolution related to the payment of dairy hauling costs.

Was taken up.

The House proposes to the Senate to amend the joint resolution by striking out all after the title and inserting in lieu thereof the following:

Whereas, in the past three years, the Vermont General Assembly has carefully considered the issue of dairy hauling costs and the impact upon Vermont dairy farmers, and

Whereas, New England dairy farmers typically are responsible for the majority of the costs of hauling milk from the farm to a buyer's processing plant or similar facility, and

Whereas, dairy hauling costs are incurred by dairy farmers, regardless of the price of milk, and

Whereas, dairy hauling costs for a Vermont farm milking 200 cows can exceed $20,000.00 per year, and

Whereas, according to a recent New York study of dairy hauling costs, hauling charges paid by dairy producers range from an annual average of $0.50 to $0.57 per hundredweight of milk for all size farms, and the average hauling charge, including transportation credits, ranges from 3.1 to 4.4 percent of the gross value of the farm milk, and

Whereas, pursuant to Vermont's Act 50 (2007), the Vermont Milk Commission carefully considered the potential economic impacts of shifting responsibility for dairy hauling costs from the producer to the purchaser of milk, and

Whereas, the Vermont Milk Commission has concluded, and legislative testimony received from the Vermont agency of agriculture, food and markets, industry representatives, and dairy farmers has confirmed that shifting the payment of dairy hauling costs from producer to purchaser will increase the price of Vermont milk, making Vermont milk more expensive and less competitive than milk produced in neighboring states, and

Whereas, Vermont, or any other state which unilaterally mandates a shift in the cost of dairy hauling from producer to purchaser, will suffer a competitive disadvantage relative to neighboring producer states due to the increased cost of its milk, and

Whereas, given this reality and the economic crisis facing dairy farmers throughout New England, it is extremely unlikely that any state will elect to be the first to mandate this shift in dairy hauling costs, therefore requiring a solution that is national in scope, and

Whereas, in November 2009, United States Representatives Michael Arcuri and Chris Lee of New York introduced federal legislation (H.R. 4117) to eliminate all hauling costs for milk producers, and

Whereas, United States Secretary of Agriculture Thomas Vilsack has convened a 17-member United States Department of Agriculture Dairy Industry Advisory Committee to review the issues of farm milk price volatility and dairy farmer profitability, and to offer suggestions and ideas on how the United States Department of Agriculture can best address these issues to meet the dairy industry's needs, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the Vermont General Assembly urges United States Secretary of Agriculture Thomas Vilsack and the United States Department of Agriculture Dairy Industry Advisory Committee to pursue a national policy requiring that dairy hauling costs be borne by the marketplace rather than dairy producers as a means to address dairy farmer profitability, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to United States Secretary of Agriculture Thomas Vilsack, the Vermont Congressional Delegation, and the members of the United States Department of Agriculture Dairy Industry Advisory Committee.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Kittell, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Concurred In

S. 58.

House proposal of amendment to Senate bill entitled:

An act relating to electronic payment of wages.

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. 21 V.S.A. §§ 342 and 343 are amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(a)(1) Any person having employees ~~in his or her service~~ doing and transacting business within the state shall pay each week, in lawful money or checks, ~~each of his or her employees,~~ the wages earned by ~~such~~ each employee to a day not more than six days prior to the date of such payment.

~~(b)~~(2) After giving written notice to ~~his or her~~ the employees, any person having employees ~~in his or her service~~ doing and transacting business within the state may, notwithstanding ~~subsection (a) of this section~~ subdivision (1) of this subsection, pay bi-weekly or semi-monthly in lawful money or checks, each ~~of his or her employees,~~ employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

~~(c)(1)~~(b) An employee who ~~voluntarily~~:

(1) Voluntarily leaves ~~his~~ employment shall be paid on the last regular pay day, or if there is no regular pay day, on the following Friday.

(2) ~~An employee who is~~ Is discharged from employment shall be paid within 72 hours of ~~his~~ discharge.

(3) ~~If an employee is~~ Is absent from his or her regular place of employment on the employer's regular scheduled date of wages or salary payment ~~such employee~~ shall be entitled to ~~such~~ payment upon demand.

~~(d)~~(c) With the written authorization of an employee, an employer may pay wages due the employee by ~~deposit~~ any of the following methods:

(1) Deposit through electronic funds transfer or other direct deposit systems to a checking, savings, or other deposit account maintained by or for the employee in any financial institution within or without the state.

(2) Credit to a payroll card account directly or indirectly established by an employer in a federally insured depository institution to which electronic fund transfers of the employee's wages, salary, or other employee compensation is made on a recurring basis, other than a checking, savings, or other deposit account described in subdivision (1) of this subsection, provided all the following:

(A) The employer provides the employee written disclosure in plain language, in at least 10-point type of both the following:

(i) All the employee's wage payment options.

(ii) The terms and conditions of the payroll card account option, including a complete list of all known fees that may be deducted from the employee's payroll card account by the employer or the card issuer and whether third parties may assess fees in addition to the fees assessed by the employer or issuer.

(B) Copies of the written disclosures required by subdivisions (A) and (F) of this subsection and by subsection (d) of this section shall be provided to the employee in the employee's primary language or in a language the employee understands.

(C) The employee voluntarily consents in writing to payment of wages by payroll card account after receiving the disclosures described in subdivision (A) of this subdivision (2), and this consent is not a condition of hire or continued employment.

(D) The employer ensures that the payroll card account provides that during each pay period, the employee has at least three free withdrawals from the payroll card, one of which permits withdrawal of the full amount of the balance at a federally insured depository institution or other location convenient to the place of employment.

(E) None of the employer's costs associated with the payroll card account are passed on to the employee, and the employer shall not receive any financial remuneration for using the pay card at the employee's expense.

(F)(i) At least 21 days before any change takes effect, the employer provides the employee with written notice in plain language, in at least 10 point type, of the following:

(I) any change to any of the terms and conditions of the payroll card account, including any changes in the itemized list of fees;

(II) the employee's right to discontinue receipt of wages by a payroll card account at any time and without penalty.

(ii) The employer may not charge the employee any additional fees until the employer has notified the employee in writing of the changes.

(G) The employer provides the employee the option to discontinue receipt of wages by a payroll card account at any time and without penalty to the employee.

(H) The payroll card issued to the employee shall be a branded-type payroll card that complies with both the following:

(i) Can be used at a PIN-based or a signature-based outlet.

(ii) The payroll card agreement prevents withdrawals in excess of the account balance and to the extent possible protects against the account being overdrawn.

(I) The employer ensures that the payroll card account provides one free replacement payroll card per year at no cost to the employee before the card's expiration date. A replacement card need not be provided if the card has been inactive for a period of at least 12 months or the employee is no longer employed by the employer.

(J) A nonbranded payroll card may be issued for temporary purposes and shall be valid for no more than 60 days.

(K) The payroll card account shall not be linked to any form of credit, including a loan against future pay or a cash advance on future pay.

(L) The employer shall not charge the employee an initiation, loading, or other participatory fee to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen, or damaged payroll card.

(M) The employer shall ensure that the payroll card account provides to the employee, upon the employee's written or oral request, one free written transaction history each month which includes all deposits, withdrawals, deductions, or charges by any entity from or to the employee's payroll card account for the preceding 60 days. The employer shall also ensure that the account allows the employee to elect to receive the monthly transaction history by electronic mail.

(d)(1) If a payroll card account is established with a financial institution as an account that is individually owned by the employee, the employer's obligations and the protections afforded under subsection (c) of this section shall cease 30 days after the employer-employee relationship ends and the employee has been paid his or her final wages.

(2) Upon the termination of the relationship between the employer and the employee who owns the individual payroll card account:

(A) the employer shall notify the financial institution of any changes in the relationship between the employer and employee; and

(B) the financial institution holding the individually owned payroll card account shall provide the employee with a written statement in plain language describing a full list of the fees and obligations the employee might incur by continuing a relationship with the financial institution.

(e) The department of banking, insurance, securities, and health care administration may adopt rules to implement subsection (c) of this section.

§ 343. FORM OF PAYMENT

~~Such~~ An employer shall not pay ~~its~~ employees with any form of evidence of indebtedness, including~~, without limitation,~~ all scrip, vouchers, due bills, or store orders, unless the employer is in compliance with one or both of the following:

(1) ~~the~~ The employer is a cooperative corporation in which the employee is a stockholder~~. However, such~~ , in which case, the cooperative corporation shall, upon request of any ~~such~~ shareholding employee, pay ~~him~~ the shareholding employee as provided in section 342 of this title~~; or~~ .

(2) ~~payment~~ Payment is made by check as defined in Title 9A or by an electronic fund transfer as provided in section 342 of this title.

Sec. 2. 8 V.S.A. § 2707(6) is added to read:

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

Sec. 3. LEGISLATIVE INTENT; REPORT

The intent of this act is to provide employees with a convenient, safe, and flexible way to receive wages and to reduce employers' payroll costs by allowing for the transfer of wages to a payroll card account. The general assembly recognizes that unforeseen issues regarding the use of payroll accounts may arise. The department of banking, insurance, securities, and health care administration and the department of labor shall report to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs if they identify any problems associated with the use of payroll card accounts.

Sec. 4. EFFECTIVE DATE

This act shall take effect upon passage.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

House Proposal of Amendment Not Concurred In; Committee of Conference Requested

H. 281.

House proposal of amendment to Senate bill entitled:

An act relating to the removal of bodily remains.

Was taken up.

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

First: In Sec. 2, in subdivision (b)(2) by striking out the final sentence and inserting in lieu thereof the following: Each treatment plan shall include the following as appropriate:

Second: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c)(3) by striking out the word "decedent" and inserting in lieu thereof the word descendant

Third: In Sec. 4. 18 V.S.A. § 5217 in subdivision (c), by adding a new subdivision (4) to read as follows:

(4) The state archeologist.

Fourth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (d), in the first sentence by striking out the following: "one of the individuals listed" and by inserting in lieu thereof the following: any person listed

Fifth: In Sec. 4. 18 V.S.A. § 5217 in subdivision (h), by striking out the first sentence in its entirety and inserting in lieu thereof the following: The permit shall require that all remains, markers, and relevant funeral-related materials associated with the burial site be removed, and the permit may require that the removal be conducted or supervised by a qualified professional archeologist in compliance with standard archeological process.

Fifth: By striking out Secs. 5, 6, and 8.

Sixth: In Sec. 7. 18 V.S.A. § 5201 by striking out subsection (c) and inserting in lieu thereof the following:

* * *

Seventh: In Sec. 9 by striking out the following ", except that Sec. 8 shall take effect on January 1, 2012."

Eighth: By striking out the change of title of the bill

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Illuzzi, the Senate refused to concur in the House proposal of amendment and requested a Committee of Conference.

House Proposal of Amendment Concurred In

S. 263.

House proposal of amendment to Senate bill entitled:

An act relating to the Vermont Benefit Corporations Act.

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. 11A V.S.A. chapter 21 is added to read:

CHAPTER 21. BENEFIT CORPORATIONS

§ 21.01. SHORT TITLE

§ 21.02. LAW APPLICABLE

§ 21.03. DEFINITIONS

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

§ 21.06. MERGER AND SHARE EXCHANGE

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

§ 21.08. CORPORATE PURPOSE

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

§ 21.10. BENEFIT DIRECTOR

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

§ 21.12. BENEFIT OFFICER

§ 21.13. RIGHT OF ACTION

§ 21.14. ANNUAL BENEFIT REPORT

§ 21.01. SHORT TITLE

This chapter shall be known and may be cited as the "Vermont Benefit Corporations Act."

§ 21.02. LAW APPLICABLE

(a) This chapter shall apply only to a domestic corporation meeting the definition of a benefit corporation in subdivision 21.03(a)(1) of this title. The provisions of this title other than those set forth in this chapter shall apply to a benefit corporation in the absence of a contrary or inconsistent provision in this chapter. A corporation whose status as a benefit corporation terminates shall immediately become subject to the obligations and rights of a general corporation as provided in this title.

(b) The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a benefit corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a benefit corporation.

(c) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with any provision of this chapter.

(d) Terms that are defined in other chapters of this title shall have the same meaning when used in this chapter, except that in this chapter, "corporation" shall have the meaning set forth in section 1.40 of this title.

§ 21.03. DEFINITIONS

(a) As used in this chapter:

(1) "Benefit corporation" means a corporation as defined in section 1.40 of this title whose articles of incorporation include the statement "This corporation is a benefit corporation."

(2) "Benefit director" means a director designated as a benefit director of a benefit corporation as provided in section 21.10 of this title.

(3) "Benefit officer" means the officer of a benefit corporation, if any, designated as the benefit officer as provided in section 21.12 of this title.

(4) "General public benefit" means a material positive impact on society and the environment, as measured by a third-party standard, through activities that promote some combination of specific public benefits.

(5) "Independent" means that a person has no material relationship with a benefit corporation or any of its subsidiaries (other than the relationship of serving as the benefit director or benefit officer), either directly or as an owner or manager of an entity that has a material relationship with the benefit corporation or any of its subsidiaries. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(A) the person is, or has been within the last three years, an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(B) an immediate family member of the person is, or has been within the last three years, an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(C) the person, or an entity of which the person is a manager or in which the person owns beneficially or of record five percent or more of the equity interests, owns beneficially or of record five percent or more of the shares of the benefit corporation.

(6) "Specific public benefit" includes:

(A) providing low income or underserved individuals or communities with beneficial products or services;

(B) promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) preserving or improving the environment;

(D) improving human health;

(E) promoting the arts or sciences or the advancement of knowledge;

(F) increasing the flow of capital to entities with a public benefit purpose; and

(G) the accomplishment of any other identifiable benefit for society or the environment.

(7) "Subsidiary" of a person means an entity in which the person owns beneficially or of record 50 percent or more of the equity interests.

(8) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that:

(A) is developed by a person that is independent of the benefit corporation; and

(B) is transparent because the following information about the standard is publicly available:

(i) the factors considered when measuring the performance of a business;

(ii) the relative weightings of those factors; and

(iii) the identity of the persons who developed and control changes to the standard and the process by which those changes are made.

(b) For purposes of subdivisions (a)(5)(C) and (7), a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

§ 21.04. INCORPORATION OF A BENEFIT CORPORATION

A benefit corporation shall be formed in accordance with sections 2.01, 2.02, 2.03, and 2.05 of this title, except that its articles of incorporation shall also contain the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation.

§ 21.05. ELECTION OF EXISTING CORPORATION TO BECOME A BENEFIT CORPORATION

Any corporation organized under this title may become a benefit corporation by amending its articles of incorporation to add the statement required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the amendment shall include a statement from the board of directors of the reasons why the board is proposing the amendment and the anticipated effect on shareholders of becoming a benefit corporation; and

(2) the amendment shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.06. MERGER AND SHARE EXCHANGE

(a) A plan of merger or share exchange that if effected would terminate the benefit corporation status of a corporation shall be adopted and shall become effective in accordance with chapter 11 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing that the surviving corporation should not be a benefit corporation and the anticipated effect on the shareholders of the surviving corporation ceasing to be a benefit corporation; and

(2) the plan shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

(b) If a corporation that is not a benefit corporation is a party to a plan of merger or share exchange in which the surviving corporation is a benefit corporation, the plan of merger shall be adopted and shall become effective in accordance with chapter 11 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing that the surviving corporation should become a benefit corporation and the effect on the shareholders of the surviving corporation becoming a benefit corporation; and

(2) the plan shall be approved in the case of the corporation that is not a benefit corporation by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.07. TERMINATION OF BENEFIT CORPORATION STATUS BY AMENDMENT OF ARTICLES OF INCORPORATION; VOTE REQUIRED

A corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation to delete the provision required by subdivision 21.03(a)(1) of this title to meet the definition of a benefit corporation, in addition to the provisions required by section 2.02 of this title to be stated in the articles of incorporation of a benefit corporation. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title, except that:

(1) the notice of the meeting of shareholders that will approve the plan shall include a statement from the board of directors of the reasons why the board is proposing the amendment and the effect of terminating the status of the corporation as a benefit corporation; and

(2) the amendment shall be approved by the higher of:

(A) the vote required by the articles of incorporation; or

(B) two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.08. CORPORATE PURPOSE

(a) A benefit corporation shall have the purpose of creating general public benefit. This purpose is in addition to, and may be a limitation on, the purposes of the benefit corporation under subsection 3.01(a) of this title.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that are the purpose of the benefit corporation to create in addition to its purposes under subsection 3.01(a) of this title and subsection (a) of this section. The adoption of a specific public benefit

purpose under this subsection does not limit the obligation of a benefit corporation to create general public benefit.

(c) The creation of general and specific public benefit as provided in subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete a specific public benefit. The amendment shall be adopted and shall become effective in accordance with sections 10.01 through 10.09 of this title and shall be approved by the higher of the vote required by the articles of incorporation or by subsection (e) of this section.

(e) An amendment of the articles of incorporation of a benefit corporation to add, amend, or delete a specific public benefit in the articles of incorporation shall be adopted by a vote of at least two-thirds of the votes entitled to be cast by the outstanding shares of the corporation, provided that if any class of shares is entitled to vote as a group, approval shall also require the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the outstanding shares of each voting group.

§ 21.09. STANDARD OF CONDUCT FOR DIRECTORS

(a) Each director of a benefit corporation, in discharging his or her duties as a director, including the director's duties as a member of a committee:

(1) shall, in determining what the director reasonably believes to be in the best interests of the benefit corporation, consider the effects of any action or inaction upon:

(A) the shareholders of the benefit corporation;

(B) the employees and workforce of the benefit corporation and its subsidiaries and suppliers;

(C) the interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation;

(D) community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;

(E) the local and global environment; and

(F) the long-term and short-term interests of the benefit corporation, including the possibility that those interests may be best served by the continued independence of the benefit corporation;

(2) may consider any other pertinent factors or the interests of any other group that the director determines are appropriate to consider;

(3) shall not be required to give priority to the interests of any particular person or group referred to in subdivisions (1) or (2) of this subsection over the interests of any other person or group unless the benefit corporation has stated its intention to give priority to interests related to its specific public benefit purpose in its articles of incorporation; and

(4) shall not be subject to a different or higher standard of care when an action or inaction might affect control of the benefit corporation.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of section 8.30 of this title.

(c) A director is not liable for the failure of a benefit corporation to create general or specific public benefit.

(d) A director is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the director performed the duties of his or her office in compliance with section 8.30 of this title and with this section.

(e) A director of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. A director of a benefit corporation shall not have any fiduciary duty to a person who is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.10. BENEFIT DIRECTOR

(a) The board of directors of a benefit corporation shall include at least one director who shall be designated a "benefit director" and shall have, in addition to all of the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) A benefit director shall be elected and may be removed in the manner provided by subchapter 1 of chapter 8 of this title and shall be an individual who is independent of the benefit corporation. A benefit director may serve as the benefit officer at the same time as serving as a benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe

additional qualifications of a benefit director not inconsistent with this subsection.

(c)(1) A benefit director shall be responsible for the preparation of the annual benefit report required under section 21.14 of this title.

(2) A benefit director may retain an independent third party to audit the annual benefit report or conduct any other assessment of the benefit corporation's social and environmental performance.

(3) A benefit director shall prepare and shall include in the annual benefit report a statement whether, in the opinion of the benefit director:

(A) the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(B) the directors and officers acted in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively.

(4) If in the opinion of the benefit director the benefit corporation failed to act in accordance with its general and any specific public benefit purposes or if its directors or officers failed to act in accordance with the requirements of subsection 21.09(a) and section 21.11 of this title, respectively, then the statement of the benefit director shall include a description of the ways in which the benefit corporation or its directors or officers failed to so act.

(d) The acts and omissions of an individual in the capacity of a benefit director shall constitute for all purposes acts and omissions of that individual in the capacity of a director of the benefit corporation.

(e) If the articles of incorporation of a benefit corporation that is a close corporation dispense with a board of directors pursuant to sections 20.08 and 20.09 of this title, then the articles of incorporation shall provide that the persons who perform the duties of a board of directors shall include at least one person with the powers, duties, rights, and immunities of a benefit director.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by subdivision 2.02(b)(4) of this title, a benefit director shall not be personally liable for any act or omission taken in his or her official capacity as a benefit director unless the act or omission is not in good faith, involves intentional misconduct or a knowing violation of law, or involves a transaction from which the director directly or indirectly derived an improper personal benefit.

§ 21.11. STANDARD OF CONDUCT FOR OFFICERS

(a) An officer of a benefit corporation shall consider the interests and factors described in subsection 21.09(a) of this title in the manner provided in that subsection when:

(1) the officer has discretion in how to act or not act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on:

(A) the creation of general or specific public benefit by the benefit corporation; or

(B) any of the interests or factors referred to in section 21.09(a)(1) of this title.

(b) The consideration of interests and factors in the manner described in subsection (a) of this section shall not constitute a violation of the fiduciary duty of an officer to the benefit corporation.

(c) An officer is not liable to the benefit corporation or any person entitled to bring a benefit enforcement proceeding under section 21.13 of this title for any action or failure to take action in his or her official capacity if the officer performed the duties of the position in compliance with section 8.41 of this title and with this section.

(d) An officer is not liable for the failure of a benefit corporation to create general or specific public benefit.

(e) An officer of a benefit corporation shall have a fiduciary duty only to those persons entitled to bring a benefit enforcement proceeding against the benefit corporation under section 21.13 of this title. An officer of a benefit corporation shall not have any fiduciary duty to a person that is a beneficiary of the general or specific public benefit purposes of the benefit corporation arising only from the person's status as a beneficiary.

§ 21.12. BENEFIT OFFICER

A benefit corporation may have an officer designated the "benefit officer" who shall have the authority and shall perform the duties in the management of the benefit corporation relating to the purpose of the corporation to create public benefit as set forth with respect to the office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to the office by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of the office.

§ 21.13. RIGHT OF ACTION

(a) The duties of directors and officers under this chapter and the general and specific public benefit purposes of a benefit corporation may be enforced only in a benefit enforcement proceeding, and no person may bring such an action or claim against a benefit corporation or its directors or officers except as provided in this section.

(b) A benefit enforcement proceeding may be commenced or maintained only by:

(1) a shareholder that would otherwise be entitled to commence or maintain a proceeding in the right of the benefit corporation on any basis;

(2) a director of the corporation;

(3) a person or group of persons that owns beneficially or of record 10 percent or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(4) such other persons as may be specified in the articles of incorporation of the benefit corporation.

(c) As used in this chapter, "benefit enforcement proceeding" means a claim or action against a director or officer for:

(1) failure to pursue the general public benefit purpose of the benefit corporation or any specific public benefit purpose set forth in its articles of incorporation; or

(2) violation of a duty or standard of conduct under this chapter.

§ 21.14. ANNUAL BENEFIT REPORT

(a) A benefit corporation shall deliver to each shareholder, in a format approved by the directors, an annual benefit report, which shall include:

(1)(A) a statement of the specific goals or outcomes identified by the benefit corporation for creating general public benefit and any specific public benefit for the period of the benefit report;

(B) a description of the actions taken by the benefit corporation to attain the identified goals or outcomes and the extent to which the goals or outcomes were attained;

(C) a description of any circumstances that hindered the attainment of the identified goals or outcomes and the creation of general public benefit or any specific public benefit; and

(D) specific actions the benefit corporation can take to improve its social and environmental performance and attain the goals or outcomes identified for creating general public benefit and any specific public benefit.

(2) an assessment of the social and environmental performance of the benefit corporation prepared in accordance with a third-party standard that has been applied consistently with prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application;

(3) a statement of specific goals or outcomes identified by the benefit corporation and approved by the shareholders for creating general public benefit and any specific public benefit for the period of the next benefit report.

(4) the name of each benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed;

(5) the compensation paid by the benefit corporation during the year to each director in that capacity;

(6) the name of each person that owns beneficially or of record five percent or more of the shares of the benefit corporation; and

(7) the statement of a benefit director described in subsection 21.10(c) of this title.

(b) A benefit corporation shall annually deliver the benefit report to each shareholder within 120 days following the end of the fiscal year of the benefit corporation or at the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) After reasonable opportunity for review, the shareholders of the benefit corporation shall approve or reject the annual benefit report by majority vote at the annual meeting of shareholders or at a special meeting held for that purpose.

(d) A benefit corporation shall post its most recent benefit report endorsed by its shareholders on the public portion of its website, if any, except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted. If a benefit corporation does not have a public website, it shall deliver a copy of its most recent benefit report on demand and without charge to any person who requests a copy.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

Thereupon, the question, Shall the Senate concur in the House proposal of amendment?, was decided in the affirmative.

Consideration Resumed; Proposal of Amendment; Bill Passed in Concurrence with Proposal of Amendment

H. 769.

Consideration was resumed on House bill entitled:

An act relating to the licensing and inspection of plant and tree nurseries.

Thereupon, pending the question, Shall the bill pass in concurrence?, Senator Kittell, on behalf of the Committee on Agriculture, moved that the Senate propose to the House to amend the bill in Sec. 3, 6 V.S.A. § 4024, by adding a new subsection (d) to read as follows:

(d) A person selling $1,000.00 or less of nursery stock in a year shall be exempt from the requirement to obtain a license under this section.

Which was agreed to.

Thereupon, the pending question, Shall the bill pass in concurrence with proposal of amendment?, was agreed to.

House Proposal of Amendment; Further Proposal of Amendment; Consideration Postponed

S. 292.

House proposal of amendment to Senate bill entitled:

An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees.

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. PROBATION; LEGISLATIVE FINDINGS AND INTENT

(a) It is the intent of the general assembly that term probation be the standard, the default, for misdemeanors and nonviolent felonies and that the exception in the law that allows a court to deviate from this standard in the interest of justice should be used judiciously and sparingly.

(b) Similarly, it is the intent of the general assembly that administrative probation be the standard, the default, for qualifying offenses for which probation is ordered and that the exception in the law that allows a court to

deviate from this standard in the interest of justice should be used judiciously and sparingly.

Sec. 2. OFFENDERS WITH SERIOUS FUNCTIONAL IMPAIRMENT; LEGISLATIVE FINDING

The general assembly finds that successful community discharge for offenders with serious functional impairment requires community planning with appropriate departments of the agency of human services and community organizations, including law enforcement, designated agencies, and housing providers and that the state interagency team and local interagency teams for persons with serious functional impairment offer the best model for such planning.

Sec. 3. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

(a) Notwithstanding sections 2056a-2056e of Title 20, the department shall electronically post information on the Internet in accordance with subsection (b) of this section regarding the following sex offenders, upon their release from confinement:

(1) Sex offenders who have been convicted of:

* * *

(M) an attempt to commit any offense listed in this subdivision (a)(1).

* * *

(b) The department shall electronically post the following information on sex offenders designated in subsection (a) of this section:

* * *

(6) except as provided in subsection (l) of this section, the offender's address or, if the offender does not have a fixed address, other information about where the offender habitually lives, if:

* * *

(l) A sex offender's street address shall not be posted electronically if the offender has a developmental disability, receives funding from the department of disabilities, aging, and independent living (DAIL) for 24-hour supervision and treatment, and resides in a residence that is equipped with alarms. However, this information shall be otherwise available pursuant to this section. An agency designated pursuant to 18 V.S.A. § 8907 to provide mental health

and developmental disability services (DA), or a specialized service agency (SSA) operating under an agreement entered into pursuant to 18 V.S.A. § 8912 which is providing supervision for the offender shall immediately notify the administrator of the sex offender registry and local law enforcement if the individual's level of supervision is decreased from 24 hours or if the offender leaves his or her residence without authorization, and thereafter this subsection shall cease to apply to that offender. If after notice and hearing, the commissioner of DAIL finds that the DA or SSA has failed to notify the administrator of the sex offender registry and local law enforcement of a decrease from 24-hour supervision or absence without authorization by the offender within 24 hours of the change in status, the commissioner may impose an administrative penalty of not more than $1,000.00 for each day of the violation. A DA or SSA shall have the right to a de novo appeal of a decision under this subsection pursuant to rule 75 of the Vermont rules of civil procedure.

Sec. 4 24 V.S.A. § 290(b) is amended to read:

(b) Full-time deputy sheriffs whose primary responsibility is transportation of prisoners and mentally ill persons shall be paid by the state of Vermont. The appointment of such deputies and their salary shall be approved by the governor, or his or her designee. The executive committee of the Vermont sheriffs association and the executive director of the department of state's attorneys and sheriffs shall jointly have authority for the assignment of position locations in the counties of state-paid deputy sheriffs and shall review the county location assignments periodically for efficient use of resources.

Sec. 5. 28 V.S.A. § 301 is amended to read:

§ 301. SUMMONS OR ARREST OF PROBATIONER

* * *

(4) Detention pending hearing for probationer. Pending arraignment for any charge of violation, the probationer shall continue to be detained at a correctional facility. Thereafter, the court may release the probationer pursuant to ~~section 7554 of Title 13~~ 13 V.S.A. § 7554. There shall be no right to bail or release, unless the person is on probation for a nonviolent misdemeanor or nonviolent felony and the probation violation did not constitute a new crime. For purposes of this subdivision:

(A) "Nonviolent felony" means a felony offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(B) "Nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13 or 13 V.S.A. § 1030.

Sec. 6. 28 V.S.A. § 801(e) and (f) are added to read:

(e) Except as otherwise provided in this subsection, an offender who is admitted to a correctional facility while under the medical care of a licensed physician, a licensed advanced practice registered nurse, or a licensed nurse practitioner and who is taking medication at the time of admission pursuant to a valid prescription as verified by the inmate's pharmacy of record, primary care provider, other licensed care provider, or as verified by the Vermont prescription monitoring system or other prescription monitoring or information system shall be entitled to continue that medication and to be provided that medication by the department pending an evaluation by a licensed physician, a licensed physician's assistant, a licensed nurse practitioner, or a licensed advanced practice registered nurse. However, the department may defer provision of medication in accordance with this subsection if, in the clinical judgment of a licensed physician, a physician's assistant, a nurse practitioner, or an advanced practice registered nurse, it is not in the inmate's best interest to continue the medication at that time. The licensed practitioner who makes the clinical judgment shall enter the reason for the discontinuance into the inmate's permanent medical record. It is not the intent of the general assembly that this subsection shall create a new or additional private right of action.

(f) Any contract between the department and a provider of physical or mental health services shall establish policies and procedures for continuation and provision of medication at the time of admission and thereafter, as determined by an appropriate evaluation, which will protect the mental and physical health of inmates.

Sec. 7. 28 V.S.A. § 808(a) is amended to read:

§ 808. FURLOUGHS GRANTED TO INMATES

(a) The department may extend the limits of the place of confinement of an inmate at any correctional facility if the inmate agrees to comply with such conditions of supervision the department, in its sole discretion, deems appropriate for that inmate's furlough. The department may authorize furlough for any of the following reasons:

(1) To visit a critically ill relative~~; or~~.

(2) To attend a funeral of a relative~~; or~~.

(3) To obtain medical services~~; or~~.

(4) To contact prospective employers~~; or~~.

(5) To secure a suitable residence for use upon discharge~~; or~~.

(6) To continue the process of reintegration initiated in a correctional facility. The inmate may be placed in a program of conditional reentry status by the department upon the inmate's completion of the minimum term of sentence. While on conditional reentry status, the inmate shall be required to participate in programs and activities that hold the inmate accountable to victims and the community pursuant to section 2a of this title~~; or~~.

(7) When recommended by the department and ordered by a court.

(A) Treatment furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on furlough to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities; ~~or~~

(B)(i) Home confinement furlough. The inmate may be sentenced to serve a term of imprisonment but placed by a court on home confinement furlough that restricts the defendant to a preapproved place of residence continuously, except for authorized absences, enforced by appropriate means of supervision, including electronic monitoring and other conditions such as limitations on alcohol, visitors, and access to firearms imposed by the court or the department or both. A sentence to home confinement furlough shall not exceed a total of 180 days and shall require the defendant:

(I) to remain at a preapproved residence at all times except for scheduled and preapproved absences for work, school, treatment, attorney appointments, court appearances, and other obligations as the court may order; or

(II) to remain at a preapproved residence 24 hours a day on lock-down status except for medical appointments and court appearances.

(ii) In determining whether a home confinement furlough sentence is appropriate and whether a place of residence is suitable for such a sentence, the court shall consider:

(I) the nature of the offense with which the defendant was charged and the nature of the offense with which the defendant was convicted;

(II) the defendant's criminal history record, history of violence, medical and mental health needs, history of supervision, and risk of flight; and

(III) any risk or undue burden to other persons who reside at the proposed residence or risk to third parties or to public safety that may result from such placement.

* * *

Sec. 8. 28 V.S.A. § 808(h) is added to read:

(h) While appropriate community housing is an important consideration in release of inmates, the department of corrections shall not use lack of housing as the sole factor in denying furlough to inmates who have served at least their minimum sentence for a nonviolent misdemeanor or nonviolent felony provided that public safety and the best interests of the inmate will be served by reentering the community on furlough.

Sec. 9. Sec. 49 of No. 1 of the Acts of 2009 is amended to read:

Sec. 49. AUDIT OF THE STATE'S SEXUAL ABUSE RESPONSE SYSTEM

~~(a) On or before November 15, 2011, and every five years thereafter, the auditor of accounts shall submit to the house and senate committees on judiciary, the house committees on corrections and institutions, on appropriations, on education, and on human services, and the senate committee on health and welfare an independent audit which assesses the status of the state's sexual abuse response system, including prevention, criminal investigations, presentence investigations and sentencing of offenders, supervision and treatment of offenders, victim and family assistance and treatment, and training for those working in the system.~~

~~(b) The audit shall be conducted in consultation with the center for the prevention and treatment of sexual abuse.~~

The auditor of accounts and the Vermont network against domestic and sexual violence shall collaborate as to the best approach to conducting an audit of the state's sexual abuse response system while protecting confidentiality of victims and shall report their recommendations to the senate and house committees on judiciary no later than February 1, 2011.

Sec. 10. REINTEGRATION INTO THE COMMUNITY FROM THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS

(a) For purposes of this section:

(1) "Nonviolent felony" means a felony offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of chapter 64 of Title 13.

(2) "Nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7) an offense involving sexual exploitation of children in violation of chapter 64 of Title 13 or 13 V.S.A. § 1030.

(b) The department of corrections shall request that the court discharge from probation offenders who on July 1, 2010:

(1) have served at least two years of an unlimited term of probation for a nonviolent misdemeanor and have completed all court-ordered services or programming designed to reduce the risk of recidivism; and

(2) have less than six months of term probation remaining for a nonviolent misdemeanor or a nonviolent felony, except those who are on probation pursuant to 23 V.S.A. § 1210(d) and who have completed all court-ordered services or programming designed to reduce the risk of recidivism.

(c) During the first three months of the fiscal year, pursuant to 28 V.S.A. § 808 including subsection 808(h), the department of corrections shall release to furlough inmates who on July 1, 2010, are incarcerated for nonviolent misdemeanors and nonviolent felonies, except those who are serving a sentence pursuant to 23 V.S.A. § 1210(d) who have served at least their minimum sentence and who:

(1) have not been released because of lack of housing; and

(2) have completed or are not required to complete a program designed to ensure successful reintegration into the community.

(d) Consistent with subdivisions (1) and (3) of Sec. 29 of H.792 of 2010, a portion of the money saved through implementation of this section shall be used to provide grants to community justice centers and similar programs to support offenders who are released pursuant to subsection (c) of this section to reintegrate into the community and to community providers for transitional beds, support services, and residential treatment services for offenders reentering the community. It is the intent of the general assembly that these grants shall be paid for from the amounts appropriated to the department of corrections and prior to actually realizing the savings from the provisions of this section. Support for offenders released pursuant to subsection (c) of this section may include helping them to seek employment, pursue an education, or engage in community service while they are on furlough. As appropriate, the department shall facilitate the offenders' engagement in such meaningful endeavors by removing barriers that impede offenders' participation in these activities. This may include removing unnecessary driving restrictions and

changing workday-timed probation appointments and programs that inhibit regular employment.

(e) Offenders who are discharged from probation or released from incarceration pursuant to this section shall be eligible to continue voluntary attendance at the community high school of Vermont.

(f) In his or her monthly reports to the corrections oversight committee, the commissioner of corrections shall report on progress made in implementing subsections (b) and (c) of this section as well as in reductions in the number of detainees realized pursuant to Sec. 11 of this act.

Sec. 11. REDUCTION IN NUMBER OF PERSONS DETAINED

(a) The general assembly finds that the number of persons detained in Vermont's correctional system is rising. The average number of detainees has been reported by the department of corrections as follows:

(1) 336 for fiscal year 2008.

(2) 370 for fiscal year 2009.

(3) 402 for the first six months of fiscal year 2010.

(b) The court administrator, the administrative judge of the trial courts, the commissioner of the department of corrections, the executive director of the department of state's attorneys and sheriffs, and the defender general shall work cooperatively to reduce, to the extent possible, the average daily number of incarcerated detainees to 300 persons or less and to maintain the average daily number at this level. The group shall attempt to reach this level by January 1, 2011.

(c) Improvement in and greater implementation of existing strategies such as term probation, administrative probation, graduated sanctions, alternative sentences, home detention, and electronic monitoring shall be considered, in addition to new approaches and best practices employed in other states. Consideration shall be given to victim and community safety.

Sec. 12. STRATEGIES TO REDUCE NUMBER OF PEOPLE IN CUSTODY OF COMMISSIONER OF CORRECTIONS; REPORT

(a) The commissioner of corrections, the administrative judge of the trial courts, the court administrator, the executive director of the department of state's attorneys and sheriffs, and the defender general shall collaborate on strategies to reduce the number of people entering the custody of the commissioner of corrections and to minimize the time served of those who do enter the commissioner's custody, consistent with public safety.

(b) On or before March 15, 2011, the group described in subsection (a) of this section shall jointly report to the senate and house committees on judiciary, the senate committee on institutions, and the house committee on corrections and institutions on potential strategies including, but not limited to, the following:

(1) methods for increasing compliance with Sec. 1 of this act regarding term and administrative probation.

(2) strategies employed and success in reducing the average daily detainee population to 300 persons by January 1, 2011.

(3) a plan to coordinate efficient scheduling of court hearings and transportation of persons in the custody of the commissioner of corrections.

Sec. 13. OFFICE OF ALCOHOL AND DRUG ABUSE PROGRAMS; SUPERVISED BEDS; PUBLIC INEBRIATE SCREENING TOOL

(a) The office of alcohol and drug abuse programs shall develop a uniform screening tool which can be used to determine whether or not an inebriated person is incapacitated or in need of medical or other treatment or some combination of these. The screening tool shall be used by public inebriate screeners under contract with the office. To the extent practicable, the tool shall be based on evidence-based practices and standard emergency department policies and procedures.

(b) The office of alcohol and drug abuse programs shall develop supervised two-bed units for location of incapacitated persons taken into custody pursuant to 33 V.S.A. § 708. Units shall be developed as funding is available and placed in counties in which no bed space for incapacitated persons exists. Priority shall be based on population density and on demonstrated collaboration between stakeholders.

Sec. 14. Sec. 22(a) of No. 179 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(a) Secs. 11 and 12 of this act shall take effect on July 1, ~~2011~~ 2012.

Sec. 15. 24 V.S.A. § 1940(c) is amended to read:

(c) A specialized investigative unit grants board is created which shall be comprised of the attorney general, the secretary of administration, the executive director of the department of state's attorneys, the commissioner of the department of public safety, the commissioner of the department of children and families, a representative of the Vermont sheriffs' association, a representative of the Vermont association of chiefs of police, the executive director of the center for crime victim services, and the executive director of

the Vermont League of Cities and Towns, Inc. Specialized investigative units organized and operating under this section for the investigation of sex crimes, child abuse, elder abuse, domestic violence, or crimes against those with physical or developmental disabilities may apply to the board for a grant or grants covering the costs of salaries and employee benefits to be expended during a given year for the performance of unit duties as well as unit operating costs for rent, utilities, equipment, training, and supplies. Grants under this section shall be approved by a majority of the entire board and shall not exceed 50 percent of the yearly salary and employee benefit costs of the unit. Preference shall be given to grant applications which include the participation of the department of public safety, the department for children and families, sheriffs' departments, community victims' advocacy organizations, and municipalities within the region.

Sec. 16. COMMISSIONER OF CORRECTIONS; INMATES WHO ARE PARENTS; FAMILIES; CONTACT POLICIES

(a) The commissioner of corrections may request information about minor children from anyone entering the system who is charged with or convicted of a criminal offense. Information the commissioner may request includes: how many minor children the person has; each child's date of birth and gender; who is the primary caregiver for each minor child; if the person is the primary caregiver, how the child is being cared for in the caregiver's absence.

(b) The commissioner of corrections shall examine department of corrections policies regarding use of mail, telephone, and personal visits and revise them to promote quality relations between inmates and their families as appropriate. Specifically, the commissioner shall:

(1) Review and revise if necessary policies and practices to better promote affordable telephone contact between inmates and their families.

(2) Eliminate any existing policy which limits telephone calls and visitation with minor children as a disciplinary measure.

(c) On or before January 15, 2011, the commissioner shall report on the information gathered and actions taken under this section to the senate committee on judiciary and the house committee on corrections and institutions along with recommendations for policy and statutory change which may result in improved contact between inmates and their families.

Sec. 17. 13 V.S.A. § 7030(a) is amended to read:

(a) In determining which of the following should be ordered, the court shall consider the nature and circumstances of the crime, the history and character of

the defendant, the need for treatment, the impact on minor children if any, and the risk to self, others, and the community at large presented by the defendant:

(1) A deferred sentence pursuant to section 7041 of this title.

(2) Probation pursuant to ~~section~~ 28 V.S.A. § 205 ~~of Title 28~~.

(3) Supervised community sentence pursuant to ~~section~~ 28 V.S.A. § 352 ~~of Title 28~~.

(4) Sentence of imprisonment.

Sec. 18. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment?, on motion of Senator Shumlin consideration of the bill was postponed to the next legislative day.

Committees of Conference Appointed

H. 281.

An act relating to the removal of bodily remains.

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

Senator Illuzzi
Senator Carris
Senator Ashe

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

J.R.S. 54.

Joint Senate resolution related to the payment of dairy hauling costs.

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

Senator Starr
Senator Giard
Senator Kittell

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

Rules Suspended; Bills Messaged

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

H. 281, H. 769, H. 784.

Rules Suspended; Joint Resolution Messaged

On motion of Senator Shumlin, the rules were suspended, and the following joint resolution was ordered messaged to the House forthwith:

J.R.S. 54.

Rules Suspended; Bills Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bills were severally ordered delivered to the Governor forthwith:

S. 58, S. 263, S. 278.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until five o'clock in the afternoon.

Evening

The Senate was called to order by the President.

Message from the House No. 72

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 290. An act relating to restoring solvency to the unemployment trust fund.

And has passed the same in concurrence.

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

S. 280.

Pending entry on the Calendar for notice, on motion of Senator Shumlin, the rules were suspended and House proposal of amendment to Senate bill

entitled:

An act relating to prohibiting texting while operating on a highway.

Was taken up for immediate consideration.

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

Sec. 1. SHORT TITLE

This act shall be known as and may be cited as the "Highway Traffic Safety Act of 2010."

* * * Legislative Findings * * *

Sec. 2. LEGISLATIVE FINDINGS

The general assembly finds that:

* * * General Findings * * *

(1) In December 2006, the governor transmitted to the Division Administrator of the Federal Highway Administration the Strategic Highway Plan for Vermont that stated "The first half of 2006 was trending toward a near record-breaking year for highway deaths and incapacitating injuries." In response to this trend, the Strategic Highway Safety Plan for Vermont was created with the mission to "minimize the occurrence and severity of crashes, related human suffering, and economic losses on the Vermont transportation network."

(2) According to the governor's highway safety office, traffic crashes cost the nation about $230 billion each year in medical expenses, lost productivity, property damage, and related costs. Vermont pays $221 million of those costs. In 2008, workplace traffic crash injuries cost Vermonters more than $39 million.

(3) According to the governor's highway safety program, each highway fatality cost the state of Vermont more than $900,000.00.

(4) In recognition of the terrible toll in terms of human suffering and financial loss resulting from motor vehicle crashes, on July 6, 2006, the Vermont department of health's injury prevention program hosted the 2006 Symposium on Preventing Crashes Among Young Drivers at the Inn at Essex, Vermont. The symposium brought together key leaders in highway safety, transportation, public health, and youth development for an in-depth multidisciplinary exploration of the causes of crashes among young drivers and opportunities for prevention.

* * * Teen Driving Safety * * *

(1) The Strategic Highway Safety Plan for Vermont of 2006, signed by the governor and endorsed by state agencies, stated that "new language" should be added to the existing graduated driver license legislation to achieve:

(A) Restrictions on passengers in cars driven by young drivers.

(B) Nighttime limitations for young drivers.

(C) Primary safety belt enforcement to the age of 18.

(D) No cell phone or electronic device use by junior operators.

(2) From a public health perspective, "motor vehicle crashes are among the most serious problems facing teenagers." (Anatomy of Crashes Involving Young Drivers–Preventing Teen Motor Crashes.) According to the Centers for Disease Control and Prevention, highway injuries and deaths constitute the largest reason for youth injuries and deaths, and therefore constitute a public health risk warranting remedial action.

(3) According to these sources, the 2002 cost of crashes involving drivers ages 20 through 25 was $40.8 billion (National Center for Injury Prevention and Control, 2006).

(4) According to the Vermont Safety Education Center (VSEC), junior operator passenger restrictions are essential components of graduated licensing. Crash risks for teenage drivers increase incrementally with one, two, three, or more passengers. With three or more passengers, fatal crash risk is about three times higher than if a beginner were driving alone.

(5) According to VSEC, the presence of passengers is a major contributor to the teenage death toll. About two-thirds of all crash deaths of teens that involve 16-year-old drivers occur when the beginners were driving with teen passengers. Studies indicate that passenger restrictions can reduce this problem.

(6) According to VSEC, four out of every 10 deaths of teens in motor vehicles occur between 9:00 p.m. and 6:00 a.m. Nighttime is one of the riskiest times of day for junior operators due to DUI, darkness, and sleep deprivation in teens. Midnight to 2:00 a.m. is the most dangerous nighttime period.

* * * Cell Phones and Electronic Devices * * *

(1) The National Highway Traffic Safety Administration policy on cell phones states, "The primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell

phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."

(2) Teens, driving, and cell phones are a dangerous mix due to teens' vulnerability to distractions and accidents ("Most Wanted Transportation Safety Improvements," National Transportation Safety Board, November 2008).

(3) In 2008, the National Safety Council called for a ban on cell phones while driving, stating that "drivers talking on a cell phone are four times as likely to have an accident as drivers who are not."

* * * Safety Belts * * *

(1) States with primary enforcement average 10-percent higher usage than states with secondary enforcement.

(2) A crash involving an unrestrained person costs 55 percent more than one involving someone who was restrained.

(3) Approximately 74 percent of the costs associated with crashes are paid for by society; the victim pays the balance.

(4) Traffic crashes are not just an enforcement issue.

* * * Nighttime Restrictions * * *

Sec. 3. 23 V.S.A. § 614(c) and (d) are added to read:

(c) A person operating with a junior operator's license shall not operate a motor vehicle between midnight and 5:00 a.m. except when accompanied by a parent or guardian or when carrying the signed and dated written permission of a parent or guardian that contains the parent's or guardian's home and work addresses and telephone numbers.

(d) A person in violation of subsection (c) of this section shall be allowed to drive home, on a direct route, following issuance of a traffic ticket by a law enforcement officer.

* * * Safety Restriction on the Use of Wireless Telephones and Handheld Electronic Devices * * *

Sec. 4. 23 V.S.A. § 1095a is added to read:

§ 1095a. USE OF WIRELESS TELEPHONES AND HANDHELD ELECTRONIC DEVICES

(a)(1) For the purposes of this section, "wireless telephone" shall mean a telephone that is:

(A) capable of sending or receiving telephone communications without being physically connected to a telephone wire or cord; and

(B) used pursuant to a subscription with a commercial entity that provides wireless telephone service.

(2) "Wireless telephone" shall not be construed to include:

(A) a two-way radio that is operated by using a push-to-talk feature and does not require proximity to the ear of the user; or

(B) a communication feature of a voice-activated global positioning or navigation system that is affixed within the passenger compartment of a motor vehicle.

(b) For the purposes of this section, "hands-free use" shall refer to the use of a mobile telephone or electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone or electronic communication device, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone or device.

(c) Subject to the exceptions set forth in subsection (b) of this section, for the purposes of this section, the term "use," when referring to the utilization of a wireless telephone or handheld electronic device, shall include telephone calls, texting, and all other functions.

(d) A person under 18 years of age shall not use any wireless telephone or handheld electronic device while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

(e) A person 18 years of age or older shall not use a wireless telephone or electronic communication device while operating a moving motor vehicle on a highway. This prohibition shall not apply to:

(1) hands-free use;

(2) placement of an emergency 911 call; or

(3) use by the following persons for the purpose of and during the course of performing their official duties:

(A) law enforcement officers;

(B) firefighters;

(C) operators of authorized emergency vehicles as defined in section 4 of this title; and

(D) state or municipal employees and their contractors who are actively engaged in road maintenance activities.

Sec. 5. WIRELESS TELEPHONE AND HANDHELD ELECTRONIC DEVICE REPORT

By July 1, 2012, the Vermont League of Cities and Towns, the Vermont state firefighters association, and the Vermont department of public safety, after consulting with their constituents and other appropriate entities whether or not under their direct control, shall submit to the house committee on judiciary a report regarding their constituents' progress toward utilization of hands-free communications technology in the course of motor vehicle operation.

* * * Texting Prohibition, Penalties, and Educational Campaign * * *

Sec. 6. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, "texting" means the composing, reading, or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device. As used in this section, "portable electronic device" means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

(b) A person operating a moving motor vehicle, electric personal mobility device, or farm tractor on a highway; or operating a moving snowmobile, all-terrain vehicle (as defined in section 3501 of this title), or all-surface vehicle on or off a highway; or operating a moving motorboat (as defined in section 3302 of this title) shall not engage in texting.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of $100.00 upon adjudication of a first violation and $250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 7. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's

license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or, because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or~~, 90 days when a total of six points has been accumulated, or 90 days when an operator is ~~convicted for~~ adjudicated of a violation of section 678 of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 8. 23 V.S.A. § 2502 are amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
(MM)	§ 1099.	Texting prohibited—first offense;
~~(MM)~~(NN)	§ 1113.	Illegal backing;
~~(NN)~~(OO)	§ 1114.	Illegal riding on motorcycles;
~~(OO)~~(PP)	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
~~(PP)~~(QQ)	§ 1116.	Clinging to other vehicles;
~~(QQ)~~(RR)	§ 1117.	Illegal footrests and handlebars;

~~(RR)~~(SS)	§ 1118.	Obstructing the driver's view;
~~(SS)~~(TT)	§ 1119.	Improper opening and closing vehicle doors;
~~(TT)~~(UU)	§ 1121.	Coasting prohibited;
~~(UU)~~(VV)	§ 1122.	Following fire apparatus prohibited;
~~(VV)~~(WW)	§ 1123.	Driving over fire hose;
~~(WW)~~(XX)	§ 1124.	Position of operator;
~~(XX)~~(YY)	§ 1127.	Unsafe control in presence of horses and cattle;
~~(YY)~~(ZZ)	§ 1131.	Failure to give warning signal;
~~(ZZ)~~(AAA)	§ 1132.	Illegal driving on sidewalk;
~~(AAA)~~(BBB)	§ 1243.	Lighting requirements;
~~(BBB)~~(CCC)	§ 1256.	Motorcycle headgear;
~~(CCC)~~(DDD)	§ 1257.	Face protection;
~~(DDD)~~(EEE)	§ 800.	Operating without financial responsibility;
~~(EEE)~~(FFF)		All other moving violations which have no specified points;
		* * *

(4) Five points assessed for:

(A)	§ 1050.	Failure to yield to emergency vehicles;
(B)	§ 1075.	Illegal passing of school bus;
(C)	§ 1099.	Texting prohibited—second and subsequent offenses;
~~(C)~~(D)	§ 676.	Operating after suspension, revocation or refusal—civil violation;
		* * *

Sec. 9. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of operating while texting and the penalties that may be imposed pursuant to this act.

* * * Primary Enforcement of Safety Belt Law; Federal Funds * * *

Sec. 10. REPEAL; PRIMARY ENFORCEMENT OF SAFETY BELT LAW; ACCEPTANCE OF FEDERAL FUNDS

(a) 23 V.S.A. § 1259(e) (secondary enforcement of safety belt law) is repealed.

(b) The state is authorized to accept any additional funding available from the federal government attributable to the passage of this section.

* * * Operation by a Junior Operator after Recall is a Civil Violation * * *

Sec. 11. 23 V.S.A. § 676 is amended to read:

§ 676. OPERATION AFTER SUSPENSION, REVOCATION, ~~OR~~ REFUSAL, OR RECALL - CIVIL VIOLATION

(a) A person whose license or privilege to operate a motor vehicle has been revoked, suspended ~~or~~, refused, or recalled by the commissioner of motor vehicles for any reason other than a violation of sections 1091(b), 1094(b), 1128(b) or (c), or 1201 or a suspension under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before the license or privilege of the person to operate a motor vehicle has been reinstated by the commissioner commits a civil traffic violation.

(b) In establishing a prima facie case against a person accused of violating this section, the judicial bureau shall accept as evidence, a printout attested to by the law enforcement officer as the person's motor vehicle record showing convictions and resulting license suspensions. The admitted motor vehicle record shall establish a permissive inference that the person was under suspension or had his or her license revoked or recalled on the dates and time periods set forth in the record. The judicial bureau shall not require a certified copy of the person's motor vehicle record from the department of motor vehicles to establish the permissive inference.

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2010.

And that after passage, the title of the bill be amended to read: "An act relating to the operation of motor vehicles by junior operators, operating with wireless or handheld devices, prohibiting texting, and primary safety belt enforcement"

Thereupon, pending the question, Shall the Senate concur in the House proposal of amendment? Senator Scott, for the Committee on Transportation, submitted the following report:

The Committee on Transportation to which was referred House Bill No. S. 280, entitled "An act relating to prohibiting texting while operating on a highway"

respectfully reports that it has considered the same and recommends that the Senate concur with the House proposal of amendment with further amendment thereto by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Definition * * *

Sec. 1. 23 V.S.A. § 4(81) is added to read:

(81) "Portable electronic device" means a portable electronic or computing device including a cellular telephone, personal digital assistant (PDA), or laptop computer.

* * * Texting Ban * * *

Sec. 2. 23 V.S.A. § 1099 is added to read:

§ 1099. TEXTING PROHIBITED

(a) As used in this section, "texting" means the reading or the manual composing or sending of electronic communications including text messages, instant messages, or e-mails using a portable electronic device as defined in subdivision 4(81) of this title, but shall not be construed to include use of a global positioning or navigation system.

(b) A person shall not engage in texting while operating a moving motor vehicle on a highway.

(c) A person who violates this section commits a traffic violation as defined in section 2302 of this title and shall be subject to a penalty of $100.00 upon adjudication of a first violation and $250.00 upon adjudication of a second or subsequent violation within any two-year period.

Sec. 3. 23 V.S.A. § 607a is amended to read:

§ 607a. RECALL OF LEARNER'S PERMIT OR JUNIOR OPERATOR'S LICENSE

(a) A learner's permit or junior operator's license shall contain an admonition that it is recallable and that the later procurement of an operator's license is conditional on the establishment of a record which is satisfactory to the commissioner and showing compliance with the motor vehicle laws of this and other states. The commissioner may recall any license issued to a minor whenever he or she is satisfied, from information provided by a credible person and upon investigation, that the operator is mentally or physically unfit or,

because of his or her habits or record as to accidents or convictions, is unsafe to be trusted with the operation of motor vehicles. On recommendation of a diversion or reparative board, the commissioner may recall the learner's permit or junior operator's license of a person in a diversion or reparative program for up to 30 days. The commissioner shall also recall any learner's permit or junior operator's license for 30 days when an operator is adjudicated of a single texting violation under section 1099 of this title, 90 days following adjudication of a single speeding violation resulting in a three-point assessment ~~or~~, 90 days when a total of six points has been accumulated, or 90 days when an operator is ~~convicted for~~ adjudicated of a violation of section 678 of this title. When a learner's permit or junior operator's license is so recalled, it shall be reinstated upon expiration of a specific term, and, if required by the commissioner, when the person has passed a reexamination approved by the commissioner.

* * *

Sec. 4. 23 V.S.A. § 2502 is amended to read:

§ 2502. POINT ASSESSMENT; SCHEDULE

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

* * *

(LL)	§ 1095.	Operating with television set installed;
(MM)	§ 1099.	Texting prohibited—first offense;
~~(MM)~~(NN)	§ 1113.	Illegal backing;
~~(NN)~~(OO)	§ 1114.	Illegal riding on motorcycles;
~~(OO)~~(PP)	§ 1115.	Illegal operation of motorcycles on roadways laned for traffic;
~~(PP)~~(QQ)	§ 1116.	Clinging to other vehicles;
~~(QQ)~~(RR)	§ 1117.	Illegal footrests and handlebars;
~~(RR)~~(SS)	§ 1118.	Obstructing the driver's view;
~~(SS)~~(TT)	§ 1119.	Improper opening and closing vehicle doors;

~~(TT)~~(UU)	§ 1121.	Coasting prohibited;
~~(UU)~~(VV)	§ 1122.	Following fire apparatus prohibited;
~~(VV)~~(WW)	§ 1123.	Driving over fire hose;
~~(WW)~~(XX)	§ 1124.	Position of operator;
~~(XX)~~(YY)	§ 1127.	Unsafe control in presence of horses and cattle;
~~(YY)~~(ZZ)	§ 1131.	Failure to give warning signal;
~~(ZZ)~~(AAA)	§ 1132.	Illegal driving on sidewalk;
~~(AAA)~~(BBB)	§ 1243.	Lighting requirements;
~~(BBB)~~(CCC)	§ 1256.	Motorcycle headgear;
~~(CCC)~~(DDD)	§ 1257.	Face protection;
~~(DDD)~~(EEE)	§ 800.	Operating without financial responsibility;
~~(EEE)~~(FFF)		All other moving violations which have no specified points;

* * *

(4) Five points assessed for:

(A)	§ 1050.	Failure to yield to emergency vehicles;
(B)	§ 1075.	Illegal passing of school bus;
(C)	§ 1099.	Texting prohibited—second and subsequent offenses;
~~(C)~~(D)	§ 676.	Operating after suspension, revocation or refusal—civil violation;

* * *

Sec. 5. EDUCATIONAL CAMPAIGN

The commissioner of motor vehicles, in consultation with the commissioner of education, shall formulate a plan to educate operators as to the dangers of operating while texting and the penalties that may be imposed pursuant to sections 2–4 of this act.

* * * Primary Seatbelt Enforcement; Persons Under Age 18 * * *

Sec. 6. 23 V.S.A. § 1258 is amended to read:

§ 1258. CHILD RESTRAINT SYSTEMS; PERSONS UNDER AGE ~~16~~ 18

(a) No person shall operate a motor vehicle, other than a type I school bus, in this state upon a public highway unless every occupant under age ~~16~~ 18 is properly restrained in a federally-approved child passenger restraining system as defined in 49 C.F.R. § 571.213 (1993) or a federally-approved safety belt, as follows:

(1) all children under the age of one, and all children weighing less than 20 pounds, regardless of age, shall be restrained in a rear-facing position, properly secured in a federally-approved child passenger restraining system, which shall not be installed in front of an active air bag;

(2) a child weighing more than 20 pounds, and who is one year of age or older and under the age of eight years, shall be restrained in a child passenger restraining system; and

(3) a child eight through ~~15~~ 17 years of age shall be restrained in a safety belt system or a child passenger restraining system.

* * *

Sec. 7. 23 V.S.A. § 1259 is amended to read:

§ 1259. SAFETY BELTS; PERSONS AGE ~~16~~ 18 AND OVER

(a) The operator of a motor vehicle shall be guilty of a violation of this section if any person ~~required to be restrained under this section~~ 18 years of age and older is occupying a seating position which has been manufactured with a federally-approved safety belt system and is not restrained by the safety belt system while the motor vehicle is in motion on a public highway.

* * *

(e) This section may be enforced only if a law enforcement officer has detained the operator of a motor vehicle for a suspected violation of another traffic offense. An operator shall not be subject to the penalty established in this section unless the operator is required to pay a penalty for the primary offense.

* * *

* * * Ban on Use of Portable Electronic Devices; Junior Operators * * *

Sec. 8. 23 V.S.A. § 1095a is added to read:

§ 1095a. JUNIOR OPERATOR USE OF PORTABLE ELECTRONIC DEVICES

A person under 18 years of age shall not use any portable electronic device as defined in subdivision 4(81) of this title while operating a moving motor vehicle on a highway. This prohibition shall not apply if it is necessary to place an emergency 911 call.

* * * Effective Date * * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

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

"An act relating to prohibiting texting, prohibiting use of portable electronic devices by junior operators, and primary seatbelt enforcement for persons under 18".

Which was agreed to.

Rules Suspended; House Proposal of Amendment Concurred in With an Amendment

S. 90.

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

An act relating to representative annual meetings.

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. 17 V.S.A. § 2640a is added to read:

§ 2640a. REPRESENTATIVE ANNUAL MEETINGS

(a) A municipality with a population of 5,000 or greater may vote at a special or annual town meeting to establish a representative form of annual or special meeting.

(b)(1) A representative form of annual or special meeting is a meeting of members elected by district to exercise the powers vested in the voters of the

town to act upon articles. However, the election of officers, public questions, and all articles to be voted upon by Australian ballot as required by law or as voted under section 2680 of this title at a prior annual or special meeting, and reconsideration of articles under section 2661 of this title shall remain vested in the voters of the town.

(2) An organizational resolution to adopt a representative form of annual or special meeting may be made by the legislative body of the municipality or by petition of five percent of the voters of the municipality. An official copy of the organizational resolution shall be filed in the office of the clerk of the municipality at least 10 days before the annual or special meeting at which the vote whether to adopt the organizational resolution shall take place, and copies thereof shall be made available to members of the public upon request.

(3) An organizational resolution shall include the following:

(A) a certain number of elected members, a range of elected members, or a ratio of elected members to the number of voters. However, in no case shall the number of elected members be less than 100;

(B) a certain number of districts and the boundaries of those districts;

(C) who shall be ex officio voting members, if any, of the meeting;

(D) the procedure for conducting the representative meeting;

(E) specific action, if any, to be taken at the representative meeting; and

(F) a procedure whereby the voters of the municipality may reconsider any action taken at a representative meeting.

(c) The form of the question of whether to establish a representative form of annual or special meeting shall be substantially as follows: "Shall the [name of municipality] adopt the representative form of annual or special meeting as set forth in the organizational resolution?"

(d) A vote establishing a representative form of annual or special meeting shall remain in effect until the municipality votes to discontinue or establish a new representative form of annual or special meeting at an annual or special meeting duly warned for that purpose.

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

In Sec. 1, 17 V.S.A. § 2640a(a), by striking out the following: "5,000" and inserting in lieu thereof the following: 2,500

Which was agreed to.

Bill Recommitted

H. 528.

Senate bill entitled:

An act relating to the illegal cutting, removal, or destruction of forest products.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Judiciary, on motion of Senator Shumlin, the bill was recommitted to the Committee on Judiciary.

Rules Suspended; Bill Passed in Concurrence with Proposals of Amendment

H. 709.

Pending entry on the Calendar for action tomorrow, on motion of Senator Shumlin, the rules were suspended and House bill entitled:

An act relating to creating a prekindergarten–16 council.

Was placed on all remaining stages of its passage in concurrence with proposals of amendment forthwith.

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

Rules Suspended; Bills on Notice Calendar for Immediate Consideration

On motion of Senator Shumlin, the rules were suspended, and the following bills, appearing on the Calendar for notice, were ordered to be brought up for immediate consideration:

S. 205, H. 793

House Proposals of Amendment Concurred In

S. 205.

House proposals of amendment to Senate bill entitled:

An act relating to the Revised Uniform Anatomical Gift Act.

Were taken up.

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

First: In Sec. 1, 18 V.S.A. § 6002, by inserting a new subdivision (10) to read as follows:

(10) "Emancipated" with respect to a minor shall have the same meaning as in 12 V.S.A. § 7151.

And by renumbering the remaining subdivisions to be numerically correct.

Second: In Sec. 1, 18 V.S.A. § 6005, in subsection (a), by inserting a new subdivision (2) to read as follows:

(2) in an advance directive executed pursuant to chapter 231 of this title;

And by renumbering the remaining subdivisions in that subsection to be numerically correct.

Third: In Sec. 1, 18 V.S.A. § 6007, in subsection (a), by inserting a new subdivision (1) to read as follows:

(1) an advance directive executed pursuant to chapter 231 of this title;

And by renumbering the remaining subdivisions in that subsection to be numerically correct.

Fourth: In Sec. 1, 18 V.S.A. § 6007, in subsection (b), by striking out the following: "subdivision (a)(1)(B)" and inserting in lieu thereof the following: subdivision (a)(2)(B)

Fifth: In Sec. 1, 18 V.S.A. § 6020, in subsection (a), by striking out the words "and shall oversee the operation of the registry"

Sixth: In Sec. 1, by striking out 18 V.S.A. § 6022 in its entirety and inserting in lieu thereof the following:

§ 6022. COOPERATION BETWEEN MEDICAL EXAMINER AND PROCUREMENT ORGANIZATION

The chief medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education, except when the chief medical examiner believes such cooperation would be inconsistent with death investigation procedures or would negatively affect a death investigation.

Seventh: In Sec. 1, by striking out 18 V.S.A. § 6027 in its entirety

Eighth: By striking out Sec. 4 in its entirety and inserting in lieu thereof the following:

Sec. 4. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(3) "Anatomical gift" shall have the same meaning as provided in subdivision ~~5238(1)~~ 6002(3) of this title.

* * *

(26) "Procurement organization" shall have the same meaning as in subdivision ~~5238(10)~~ 6002(21) of this title.

* * *

Ninth: By adding a Sec. 11 to read as follows:

Sec. 11. FUNDING FOR ADULT PROTECTIVE SERVICES EVALUATION

(a) In the event that an interested party identifies sources of funding for the adult protective services evaluation authorized by Sec. 12 of this act and prepares the documents necessary to obtain the funds, the agency of human services shall cooperate with the interested party to take such steps as are needed to secure the funds.

(b) In the event that the agency of human services receives federal funds for the purposes of protecting vulnerable adults, such funds shall be used to conduct the evaluation authorized by Sec. 12 of this act, up to the full cost of the evaluation.

(c) No later than March 15 of each year, the agency of human services shall provide an update to the house committee on human services and the senate committee on health and welfare regarding the status of efforts to secure funding for the evaluation authorized by Sec. 12 of this act and the issuance of a request for proposals to conduct the evaluation.

Tenth: By adding a Sec. 12 to read as follows:

Sec. 12. ADULT PROTECTIVE SERVICES EVALUATION

(a) Upon securing appropriate funding as provided in Sec. 11 of this act, the agency of human services shall issue a request for proposals to conduct an independent evaluation of the adult protective services provided by the department of disabilities, aging, and independent living's division of licensing and protection.

(b) The evaluation shall examine:

(1) the effectiveness of the adult protective services provided;

(2) the division's responsiveness to complaints;

(3) the appropriateness of the level of investigation into complaints;

(4) the adequacy of training for adult protective services staff;

(5) the ability of vulnerable adults to access adult protective services;

(6) the division's rules, protocols, and practices for prioritizing, responding to, and investigating complaints;

(7) the sufficiency of adult protective services staffing levels in the division;

(8) the number of reports, substantiations, and reversals by the commissioner or the human services board;

(9) the role that the division does or should play in assessing and providing emergency protective services to vulnerable adults;

(10) best practices from other states that would improve the division's ability to protect vulnerable adults from abuse and exploitation;

(11) the scope and effectiveness of current adult protective services public education efforts;

(12) public perception of and satisfaction with adult protective services;

(13) the relationship between the units of survey and certification and adult protective services in the division of licensing and protection in the department of disabilities, aging, and independent living with respect to investigations of abuse, exploitation, and neglect; and

(14) such other areas as the entity conducting the evaluation deems appropriate.

(c) Upon completion of the evaluation authorized by this section but in no event later than January 15, 2015, the entity conducting the evaluation shall report its findings and recommendations to the house committee on human services and the senate committee on health and welfare.

Eleventh: By adding a Sec. 13 to read as follows:

Sec. 13. 13 V.S.A. § 4815(g) is amended to read:

(g)(1) Inpatient examination at the state hospital or a designated hospital. The court shall not order an inpatient examination unless the designated mental

health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

(2) Before ordering the inpatient examination, the court shall ~~also~~ determine what terms, if any, shall govern the defendant's release from custody under sections 7553-7554 of this title ~~once the examination has been completed~~.

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the commissioner of mental health.

(A) If a Vermont state hospital or a designated hospital psychiatrist determines that the defendant is not in need of inpatient hospitalization prior to admission, the commissioner shall release the defendant pursuant to the terms governing the defendant's release from the commissioner's custody as ordered by the court. The commissioner of mental health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont state hospital or designated hospital psychiatrist determines

that the defendant is in need of inpatient hospitalization:

(i) The commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont state hospital or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(C) The defendant shall be returned to court for further appearance within two business days after the commissioner notifies the court that the examination has been completed, unless the terms established by the court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

(4) If ~~a return to court is not ordered and~~ the defendant is to be released pursuant to subdivisions (3)(A), (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the commissioner of corrections, the defendant shall be

returned to the defendant's residence or such other appropriate place within the state of Vermont by the department of mental health at the expense of the court.

(5) If it appears that an inpatient examination cannot reasonably be completed within 30 days, the court issuing the original order, on request of the commissioner and upon good cause shown may order placement at the hospital extended for additional periods of 15 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

(6) For the purposes of this subsection, "in need of inpatient hospitalization" means an individual has been determined under clinical standards of care to require inpatient treatment.

Twelfth: By adding a Sec. 14 to read as follows:

Sec. 14. WORK GROUP ON FORENSIC EXAMINATIONS OF MENTAL HEALTH PATIENTS

(a) The commissioner of mental health shall convene a work group to address issues relating to forensic examinations of mental health patients and defendants. The work group shall consist of the same members identified to participate in the study committee established in Sec. 113d of No. 71 of the Acts of 2005, as well as the commissioner of corrections or designee and any additional members whose participation the commissioner of mental health finds to be necessary and appropriate.

(b) The department of mental health shall provide administrative support to the work group.

(c) The commissioner of mental health shall report to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary no later than January 31, 2012 and shall make recommendations regarding the following issues:

(1) disposition of defendants if it is determined at or after the time of admission that they do not meet the standards for hospitalization, including how subacute treatment needs can be met, consistent with the work of the agency of human services on interagency collaboration and the Vermont chief justice task force on criminal justice and mental health collaboration;

(2) any statutory revisions necessary to enable designated hospitals to accept referrals of defendants for inpatient forensic examinations;

(3) means to enable forensic examinations to occur during a voluntary inpatient hospitalization when that is the least restrictive setting, consistent with the requirements of 13 V.S.A. § 4815;

(4) appropriate discharge plan requirements; and

(5) the capacities that may be required to address the treatment needs of persons who were previously served with secure, subacute care at the Vermont state hospital following a forensic examination.

(d) The work group may discuss relationships between programs within the continuum of care in the department of mental health, including replacement services for the Vermont state hospital and inmates under the department of corrections who were or may have been in need of such services, within the context of the goals of interagency collaboration and best planning models. Such discussions shall be for the purposes of providing input to the agency of human services.

(e) The department of mental health shall collect data on the outcomes of patients referred for inpatient examinations at the Vermont state hospital and designated hospitals during the period from the effective date of this act through December 31, 2011 and report such information to the committees of jurisdiction no later than January 31, 2012.

Thereupon, the question, Shall the Senate concur in the House proposals of amendment?, was decided in the affirmative.

Consideration Postponed

House bill entitled:

H. 793.

An act relating to approval of amendments to the charter of the village of Essex Junction.

Was taken up.

Thereupon, without objection consideration of the bill was postponed until the next legislative day.

Rules Suspended; Bills Messaged

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

S. 90, S. 280, H. 709.

Rules Suspended; Bill Delivered

On motion of Senator Shumlin, the rules were suspended, and the following bill was ordered delivered to the Governor forthwith:

S. 205.

Message from the House No. 73

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

Mr. President:

I am directed to inform the Senate that:

The House has considered a bill originating in the Senate of the following title:

S. 218. An act relating to voyeurism.

And has passed the same in concurrence with proposal of amendment in the adoption of which the concurrence of the Senate is requested.

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on House bill of the following title:

H. 281. An act relating to the removal of bodily remains.

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

Rep. Head of South Burlington
Rep. Baker of West Rutland
Rep. Ram of Burlington

Pursuant to the request of the Senate for a Committee of Conference upon the disagreeing votes of the two Houses on Senate resolution of the following title:

J.R.S. 54. Joint resolution related to the payment of dairy hauling costs.

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

Rep. Bray of New Haven
Rep. Conquest of Newbury
Rep. McAllister of Highgate

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

H. 540. An act relating to motor vehicles passing vulnerable users on the highway and to bicycle operation.

And has adopted the same on its part.

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

H. 784. An act relating to the state's transportation program.

And has adopted the same on its part.

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

S. 282. An act relating to updating and clarifying provisions regarding commercial driver licenses and commercial motor vehicles.

And has adopted the same on its part.

Adjournment

On motion of Senator Shumlin, the Senate adjourned until ten o'clock and thirty minutes in the morning.