Senate Calendar

TUESDAY, APRIL 05, 2011

SENATE CONVENES AT: 9:30 A.M.

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ORDERS OF THE DAY

ACTION CALENDAR

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 30, 2011

Third Reading

S. 53.

An act relating to the number of prekindergarten children included within a school district's average daily membership.

AMENDMENT TO S. 53 TO BE OFFERED BY SENATOR ILLUZZI BEFORE THIRD READING

Senator Illuzzi moves to amend the bill by striking out Sec. 2 in its entirety and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. EFFECTIVE DATE; FISCAL YEAR 2012 IMPACT

(a) This section shall take effect on passage.

(b) Sec. 1 of this act shall take effect on July 1, 2011.

(c) Notwithstanding 16 V.S.A. § 4010(h), this act shall be implemented so that the fiscal year 2012 equalized pupil calculation is revised to reflect the amendments in Sec. 1 of this act.

(d) Upon passage of this act, school districts may take all necessary actions to prepare to offer prekindergarten education by or through public schools as authorized under this act and 16 V.S.A. § 829.

UNFINISHED BUSINESS OF TUESDAY, MARCH 29, 2011

Third Reading

S. 77.

An act relating to water testing of private wells.

AMENDMENT TO S. 77 TO BE OFFERED BY SENATOR ILLUZZI BEFORE THIRD READING

Senator Illuzzi moves to amend the bill as follows:

First: In Sec. 2, 10 V.S.A. § 1981, by striking out subsection (c) in its entirety and inserting in lieu thereof the following:

(c) The secretary, after consultation with the department of health, the wastewater and potable water supply technical advisory committee, the Vermont association of realtors, the Vermont home inspectors' association,

private laboratories, and other interested parties, shall adopt by rule requirements regarding:

(1) when, after construction or drilling of a well, the well test required under subsection (a) of this section shall be conducted;

(2) who shall be authorized to conduct the well test required under subsection (a) of this section, provided that the rule shall include licensed well drillers among those authorized to conduct the test;

(3) how well samples will be delivered for testing, including the form and information to be submitted with the well sample;

(4) a current, nationally-recognized accreditation or approval that an in-state or out-of-state laboratory shall possess in order to conduct a well test required under subsection (a) of this section; and

(5) any other requirements necessary to implement the requirements of this section.

Second: By Striking out Sec. 5 in its entirety and inserting in lieu thereof the following:

Sec. 5. EFFECTIVE DATES

(a) This section and Secs. 1 (findings), 3 (disclosure of educational material), and 4 (department of health; education and outreach) of this act shall take effect upon passage.

(b) Sec. 2 (testing of private wells) of this act shall take effect upon passage, except that 10 V.S.A. § 1981(a) (well test requirement) and 10 V.S.A. § 1981(d) (well test reports) shall take effect on July 1, 2012.

Committee Bill for Second Reading

S. 100.

An act relating to making miscellaneous amendments to education laws.

By the Committee on Education. (Senator Doyle for the Committee.)

Reported favorably by Senator Westman for the Committee on Finance.

(Committee vote: 7-0-0)

Reported favorably by Senator Starr for the Committee on Appropriations.

(Committee vote: 6-0-1

UNFINISHED BUSINESS OF THURSDAY, MARCH 31, 2011

Favorable with Recommendation of Amendment

S. 34.

An act relating to the collection and disposal of mercury-containing lamps.

Reported favorably with recommendation of amendment by Senator McCormack for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 164A is added to read:

CHAPTER 164A. COLLECTION AND DISPOSAL OF MERCURY-CONTAINING LAMPS

§ 7151. DEFINITIONS

As used in this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Covered entity" means any person who presents 10 or fewer mercury-containing lamps for collection at a collection facility included in an approved plan.

(3) "Lamp" means an electric lamp, including mercury-containing lamps, incandescent lamps, halogen lamps, and light-emitting diode lamps.

(4) "Manufacturer" means a person who:

(A) Manufactures or manufactured a mercury-containing lamp under its own brand or label for sale in the state;

(B) Sells in the state under its own brand or label a mercury-containing lamp produced by another supplier;

(C) Owns a brand that it licenses or licensed to another person for use on a mercury-containing lamp sold in the state;

(D) Imports into the United States for sale in the state a mercury-containing lamp manufactured by a person without a presence in the United States;

(E) Manufactures a mercury-containing lamp for sale in the state without affixing a brand name; or

(F) Assumes the responsibilities, obligations, and liabilities of a manufacturer as defined under subdivisions (A) through (E) of this subdivision (4), provided that the secretary may enforce the requirements of this chapter

against a manufacturer defined under subdivisions (A) through (E) of this subdivision (4) if a person who assumes the manufacturer's responsibilities fails to comply with the requirements of this chapter.

(5) "Mercury-containing lamp" means a lamp designed for residential or commercial use to which mercury is intentionally added during the manufacturing process, including linear fluorescent, compact fluorescent, black light, high-intensity discharge, ultraviolet, and neon lamps. "Mercury-containing lamp" does not mean a lamp used for medical, disinfection, treatment, or industrial purposes.

(6) "Program year" means the period from July 1 through June 30.

(7) "Retailer" means a person who sells a mercury-containing lamp to a person in the state through any means, including a sales outlet, a catalogue, the telephone, the Internet, or any electronic means.

(8) "Secretary" means the secretary of natural resources.

(9) "Sell" or "sale" means any transfer for consideration of title or of the right to use by lease or sales contract a mercury-containing lamp to a person in the state of Vermont. "Sell" or "sale" does not include the sale, resale, lease, or transfer of a used mercury-containing lamp or a manufacturer's or a distributor's wholesale transaction with a distributor or a retailer.

§ 7152. SALE OF MERCURY-CONTAINING LAMPS

Sale prohibited. Beginning on January 1, 2012, except as set forth under section 7155 of this title, a manufacturer of a mercury-containing lamp shall not sell, offer for sale, or deliver to a retailer for subsequent sale a mercury-containing lamp unless all the following have been met:

(1) The manufacturer is implementing an approved collection plan;

(2) The manufacturer has paid its annual registration fee under section 7158 of this title;

(3) The name of the manufacturer and the manufacturer's brand are designated on the agency of natural resources' website as covered by an approved plan.

(4) The manufacturer has submitted an annual report under section 7153 of this title;

(5) The manufacturer has conducted a plan audit consistent with the requirements of subsection 7153(b) of this title; and

(6) The manufacturer has demonstrated that no alternative non-mercury energy efficient lamp is available that provides the same or better overall

performance at a cost equal to or better than the classes of lamps that the manufacturer proposes to sell.

§ 7153. ANNUAL REPORT; PLAN AUDIT

(a) Annual report. At the end of each program year, a manufacturer of a mercury-containing lamp shall submit an annual report to the secretary that contains the following:

(1) a description of the collection program;

(2) The number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected.

(3) an estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to subchapter 3 of chapter 5 of Title 1 (access to public records). Confidential information shall be redacted from any final public report.

(4) the steps that the manufacturer has taken during the past program year to improve the collection rate and life cycle performance of mercury-containing lamps.

(b) Plan audit. Two years after the initial plan approval and every two years thereafter, the manufacturer shall hire an independent third party to audit the plan and plan implementation. The auditor shall examine the effectiveness of the program in collecting and disposing of mercury-containing lamps. The auditor shall examine the cost-effectiveness of the program and compare it to that of collection programs for mercury-containing lamps in other jurisdictions. The auditor shall make recommendations to the secretary on ways to increase program efficacy and cost-effectiveness.

§ 7154. COLLECTION PLANS

(a) Collection plan required. Prior to October 1, 2011, a manufacturer shall submit a collection plan to the secretary for review. The collection plan shall include a collection program that meets the following requirements:

(1) Free collection of mercury-containing lamps. The collection program shall provide for free collection of mercury-containing lamps from covered entities. A manufacturer shall accept all mercury-containing lamps collected from a covered entity and shall not refuse the collection of a mercury-containing lamp based on the brand or manufacturer of the mercury-containing lamp. The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler.

(2) Convenient collection location. The manufacturer shall develop a collection program that:

(A) allows all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility; and

(B) at a minimum, has not less than two collection facilities in each county.

(3) Public education and outreach. The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public educational efforts. At a minimum, the education and outreach program shall notify the public of the following:

(A) that there is a free collection program for mercury-containing lamps;

(B) the location of collection points and how a covered entity can access this collection program; and

(C) the special handling considerations associated with mercury-containing lamps.

(4) Compliance with appropriate environmental standards. In implementing a collection plan, a manufacturer shall comply with all applicable laws related to the collection, transportation, and disposal of mercury-containing lamps. A manufacturer shall comply with any special handling or disposal standards established by the secretary for a mercury-containing lamp or for the collection plan of the manufacturer.

(b) Term of collection plan. A collection plan approved by the secretary under section 7156 of this title shall have a term not to exceed five years, provided that the manufacturer remains in compliance with the requirements of this chapter and the terms of the approved plan.

§ 7155. STEWARDSHIP ORGANIZATIONS

(a) Participation in a stewardship organization. A manufacturer may meet the requirements of this chapter by participating in a stewardship organization that undertakes the manufacturer's responsibilities under sections 7152, 7153, and 7154 of this title.

(b) Qualifications for a stewardship organization. To qualify as a stewardship organization under this chapter, an organization shall:

(1) Commit to assume the responsibilities, obligations, and liabilities of all manufacturers participating in the stewardship organization;

(2) Represent at least 45 percent of the market share of mercury-containing lamps sold in the state;

(3) Not create unreasonable barriers for participation in the stewardship organization; and

(4) Maintain a public website that lists all manufacturers and manufacturers' brands covered by the stewardship organization's approved collection plan.

(c) Exemption from antitrust provisions. A stewardship organization and manufacturers participating in a stewardship organization subject to the requirements of this chapter may engage in anticompetitive conduct to the extent necessary to develop and implement the collection plan required by this chapter. A stewardship organization or a manufacturer participating within a stewardship organization that is engaged in anticompetitive conduct under this subsection shall be immune from liability for conduct under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce if the stewardship organization is exercising due diligence to comply with the requirements of this chapter.

§ 7156. AGENCY RESPONSIBILITIES

(a) Review and approve collection plans. The secretary shall review and approve or deny collection plans submitted under section 7154 of this title. The secretary shall approve a collection plan if the secretary finds that the plan:

(1) complies with the requirements of subsection 7154(a) of this title.

(2) provides adequate notice to the public of the collection opportunities available for mercury-containing lamps.

(3) ensures that collection of mercury-containing lamps will occur in an environmentally sound fashion that is consistent with the law or with any special handling requirements adopted by the secretary.

(4) promotes the collection and disposal of mercury-containing lamps.

(b) Plan amendment. The secretary, in his or her discretion or at the request of a manufacturer or a stewardship organization, may require a manufacturer or a stewardship organization to amend an approved plan. Plan amendments shall be subject to the public input provisions of subsection (c) of this section.

(c) Public input. The agency shall establish a process under which a collection plan for a mercury-containing lamp is, prior to plan approval or amendment, available for public review and comment for 30 days. In establishing such a process, the agency shall consult with interested persons,

including manufacturers, environmental groups, wholesalers, retailers, municipalities, and solid waste districts.

(d) Special handling requirements. The secretary may adopt, by rule, special handling requirements for the collection, transport, and disposal of mercury-containing lamps.

(e) Approved plans; Internet posting. The secretary shall post on the agency website all manufacturers and manufacturers' brands that are covered under an approved plan. For stewardship organizations, the agency may link to the list of manufacturers and manufacturers' brands on the stewardship organization's website.

§ 7157. RETAILER OBLIGATIONS

(a) Sale prohibited. No retailer shall sell or offer for sale a mercury-containing lamp unless the retailer has reviewed the agency website required in subsection 7156(e) of this title to determine that the manufacturer of the mercury-containing lamp is implementing an approved collection plan or is a member of a stewardship organization.

(b) Expiration or revocation of manufacturer registration. A retailer shall not be responsible for an unlawful sale of a mercury-containing lamp under this subsection if:

(1) the manufacturer's collection plan expired or was revoked; and

(2) the retailer took possession of the mercury-containing lamp prior to the expiration or revocation of the manufacturer's collection plan, and the unlawful sale occurred within six months of the expiration or revocation of the collection plan.

§ 7158. FEES

A manufacturer or stewardship organization shall pay $10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

§ 7159. RULEMAKING; MERCURY CONTENT STANDARDS

(a) Mercury and lead content standards for lamps. The secretary may adopt rules to implement the requirements of this chapter. The secretary shall adopt rules establishing mercury content standards for lamps. Rules governing mercury content in lamps under this section shall rely upon content standards established in other states, including the standards set by the states of California and Maine. If one or more categories of lamps are not covered by the mercury content standards adopted by the state of California or of Maine, the secretary may adopt rules minimizing the mercury content of lamps within

such categories, including adoption of mercury-free standards when mercury-free alternatives are available at comparable cost and with comparable performance. The secretary may adopt, by rule, exemptions from the mercury content standards adopted under this section.

(b) Certificate of compliance.

(1) Within 90 days of adoption of rules under subsection (a) of this section, the secretary may request a manufacturer of lamps to submit a certification, supported by technical information, that the manufacturer's lamps that are sold or offered for sale in the state comply with rules adopted under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 28 days of the secretary's request. If a manufacturer fails to provide a requested certification within 28 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamps comply with the rules adopted under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 28 days of the retailer's request. The certification must specify that the lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (b)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

§ 7160. OTHER DISPOSAL PROGRAMS

A municipality or other public agency may not require covered entities to use public facilities to dispose of mercury-containing lamps to the exclusion of other lawful programs available. A municipality and other public agencies are encouraged to work with manufacturers to assist them in meeting their collection and disposal obligations under this chapter. Nothing in this chapter prohibits or restricts the operation of any program collecting and disposing of mercury-containing lamps in addition to those provided by manufacturers or prohibits or restricts any persons from receiving, collecting, transporting, or disposing mercury-containing lamps, provided that all other applicable laws are met.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2011.

(Committee vote: 4-1-0)

Reported favorably by Senator McCormack for the Committee on Finance.

(Committee vote: 6-0-1)

AMENDMENT TO S. 34 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves to amend the bill as follows

First: In Sec. 1, 10 V.S.A. § 7151, by inserting a new subdivision (10) to read as follows:

(10) "Stewardship organization" means an organization, association, or entity that has developed a system, method, or other mechanism which assumes the responsibilities, obligations, and liabilities under this chapter of multiple manufacturers of mercury-containing lamps.

Second: In Sec. 1, 10 V.S.A. § 7154(a), by striking the first full sentence and inserting in lieu thereof the following:

Prior to October 1, 2011, a manufacturer, individually or as a participant in a stewardship organization, shall submit a collection plan to the secretary for review.

AMENDMENT TO S. 34 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves to amend the bill as follows:

First: By adding a new Sec. 1 to read:

Sec. 1. FINDINGS

The general assembly finds and declares that:

(1) Extended producer responsibility programs are an effective method of managing certain types of potentially hazardous waste, such as mercury-containing lamps;

(2) In implementing extended producer responsibility programs, states are often faced with the issue of how to regulate products sold in the state by a manufacturer with no corporate presence in Vermont or the United States.

(3) Under *Huey v. Bates*, 135 Vt. 160 (1977), *Northern Aircraft, Inc. v. Reed*, 154 Vt. 36 (1990), and *Hedges Western Auto Supply Co.*, 161 Vt. 614 (1994), a clear intention by a manufacturer or a distributor to participate in the Vermont market through the sale or purposeful utilization of an in-state distribution system is sufficient to provide the state with jurisdiction over the manufacturer or distributor.

(4) Thus, an extended producer responsibility program for the collection and disposal of mercury containing lamps may regulate a manufacturer or distributor that purposefully and intentionally sells or distributes mercury-containing lamps in Vermont.

and by renumbering the subsequent sections to be numerically correct

Second: In Sec. 1, by striking out 10 V.S.A. § 7159 in its entirety and inserting in lieu thereof the following:

§ 7159. MERCURY CONTENT STANDARDS

(a) Mercury content standards for lamps. Beginning January 1, 2012, a mercury-containing lamp sold in this state shall satisfy the mercury-content standard for lamps set by California.

(b) Rulemaking; implementation. The agency of natural resources may adopt rules to implement the requirements of this chapter, including exemptions from the mercury content standards established under subsection (a) of this section.

(c) Certificate of compliance.

(1) Beginning April 1, 2012, the secretary may request a manufacturer of a lamp or lamps to submit a certification, supported by technical information, that the manufacturer's lamp or lamps that are sold or offered for sale in the state comply with the standard established under subsection (a) of this section. A manufacturer shall submit a certificate of compliance within 30 days of the secretary's request. If a manufacturer fails to provide a requested certification within 30 days of the request, the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

(2) Upon request of a retailer or other person selling a manufacturer's lamps, a manufacturer shall provide a certification that the manufacturer's lamp or lamps comply with the standard established under subsection (a) of this section. A manufacturer shall provide a certificate of compliance within 30 days of the retailer's request. The certification must specify that the lamp or lamps are not prohibited from sale in the state. If a manufacturer fails to provide a certification under this subdivision (c)(2), the manufacturer shall be prohibited from selling lamps or offering lamps for sale in the state.

AMENDMENT TO S. 34 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves to amend the bill in Sec. 1. 10 V.S.A. by striking out § 7158 in its entirety and inserting in lieu thereof a new § 7158 to read as follows:

§ 7158. FEES; DISPOSITION

(a) A manufacturer or stewardship organization shall pay $10,000.00 for each collection plan submitted to the agency for review under section 7154 of this title.

(b) Of the fees collected under subsection (a) of this section, no more than $20,000.00 shall be retained by the agency annually for the performance of its responsibilities under section 7156 of this title. All fees collected by the agency in a year under subsection (a) of this section in excess of $20,000.00 a year shall be deposited in the general fund.

UNFINISHED BUSINESS OF THURSDAY, MARCH 24, 2011

Committee Bill for Second Reading

S. 52.

An act relating to protect employees from abuse at work.

Reported favorably with recommendation of amendment by Senator Doyle for the Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Some studies have concluded that over one-third of American workers have been the targets of malicious or abusive treatment by supervisors or coworkers which is wholly unrelated to legitimate workplace goals or acceptable business practices.

(2) Some studies have concluded that 45 percent of bullied employees suffer stress-related health problems, including debilitating anxiety, panic attacks, clinical depression, and post-traumatic stress.

(3) Abusive behavior occurs even in the absence of any motive to discriminate on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual. Such nondiscriminatory abuse is often referred to as "workplace bullying."

(4) The Vermont office of attorney general's civil rights unit reports that of the 1,200 to 1,300 requests for assistance it receives each year, a substantial number involve allegations of severe workplace bullying that cannot be addressed by current state or federal law or common law tort claims. Similarly, the Vermont human rights commission, which has jurisdiction in employment discrimination claims against the state, reports that it must refuse complaints of workplace bullying because the inappropriate behaviors are not motivated by the targeted employee's membership in a category protected by antidiscrimination laws.

(5) Sweden enacted the first workplace bullying law in 1993, and since then several countries have taken a variety of approaches to the problem, including the creation of private legal remedies and the prohibition of workplace bullying through occupational safety and health laws.

(6) The general assembly recognizes that there is a need to strike a balance between affording Vermont workers relief from bullying and unduly interfering with the operation of workplaces.

(7) However, given the limited duration of the legislative session, the potential impact on existing labor contracts and personnel policies, and the various options available to address this issue, a considered approach should be presented for consideration by the 2011 adjourned session of the general assembly.

Sec. 2. STUDY

(a) A committee is established to study the issue of workplace bullying in Vermont and to make recommendations to address the manner in which workplace bullying should be addressed by the state, by employers, and by affected employees. The committee shall examine:

(1) A definition of "workplace bullying" or "abusive conduct" in the workplace not addressed by existing law.

(2) Whether there is a need for additional laws regarding workplace bullying.

(3) Different models for remedying workplace bullying, including:

(A) Creating a private right of action that would include the recovery of damages.

(B) Creating a mechanism for injunctive relief similar to those relating to stalking, hate crimes, or relief-from-abuse orders.

(C) State enforcement similar to the employment discrimination law.

(D) State enforcement by the Vermont occupational safety and health administration.

(E) Any other issues relevant to workplace bullying.

(b) The committee established by subsection (a) of this section shall also recommend any measures, including proposed legislation, to address bullying in the workplace.

(c) The committee established by subsection (a) of this section shall consist of the following members:

(1) The attorney general or designee.

(2) The executive director of the human rights commission or designee.

(3) The commissioner of the department of labor or designee.

(4) The commissioner of the department of human resources or designee.

(5) The state coordinator of the Vermont healthy workplace advocates.

(6) Two representatives from the business community, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(7) Two representatives from labor organizations, one to be appointed by the speaker of the house and one to be appointed by the committee on committees.

(8) The executive director of the American Civil Liberties Union of Vermont or designee.

(9) The executive director of the Vermont Bar Association or designee.

(d) The committee shall convene its first meeting no later than July 15, 2011. The commissioner of labor shall be designated as the chair of the commission, and shall convene the first and subsequent meetings.

(e) The committee shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs, and the house committee on commerce and economic development on or before January 15, 2012. The report shall include any recommended legislation to address the issue of workplace bullying.

(f) The committee shall cease to function upon transmitting its report.

and that after passage the title of the bill be amended to read: "An act relating to workplace bullying".

(Committee vote: 5-0-0)

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 30, 2011

Second Reading

Favorable

H. 85.

An act relating to recognition of the Nulhegan Band of the Coosuk Abenaki Nation as a Native American Indian tribe.

Reported favorably by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

H. 86.

An act relating to recognition of the Elnu Abenaki tribe as a Native American Indian tribe.

Reported favorably by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

UNFINISHED BUSINESS OF FRIDAY, MARCH 25, 2011

Second Reading

Favorable with Recommendation of Amendment

S. 15.

An act relating to insurance coverage for midwifery services and home births.

Reported favorably with recommendation of amendment by Senator Miller for the Committee on Health and Welfare.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4099d is added to read:

§ 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

(a) A health insurance plan or health benefit plan providing maternity benefits shall also provide coverage for services rendered by a midwife licensed pursuant to chapter 85 of Title 26 or an advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife for services within the licensed midwife's or certified nurse midwife's scope of practice and provided in a hospital or other health care facility or at home.

(b) Coverage for services provided by a licensed midwife or certified nurse midwife shall not be subject to any greater co-payment, deductible, or coinsurance than is applicable to any other similar benefits provided by the plan.

Sec. 2. DATA SUBMISSION

Each midwife licensed pursuant to chapter 85 of Title 26 and each advanced practice registered nurse licensed pursuant to chapter 28 of Title 26 who is certified as a nurse midwife shall submit data to the database maintained by the Division of Research of the Midwives Alliance of North America regarding each home birth in Vermont for which he or she is the attending midwife.

Sec. 3. DEPARTMENT OF HEALTH; REPORTING REQUIREMENT

(a) The department of health shall access the database maintained by the Division of Research of the Midwives Alliance of North America to obtain information relating to care provided in Vermont by midwives licensed pursuant to chapter 85 of Title 26 and by advanced practice registered nurses licensed pursuant to chapter 28 of Title 26 who are certified as nurse midwives.

(b) No later than March 15 of each year from 2012 through 2016, inclusive, the commissioner of health or designee shall provide testimony to the house committee on health care and the senate committee on health and welfare regarding the activities of licensed midwives and certified nurse midwives performing home births and providing prenatal and postnatal care in a nonmedical environment during the preceding year. The testimony shall include the number of home births in Vermont, the number of hospital transports associated with home births, the treatment of high-risk patients, and other relevant data, as well as the level of compliance of the licensed midwives and certified nurse midwives with the laws and rules governing their scope of practice.

Sec. 4. EFFECTIVE DATES

(a) Sec. 1 of this act shall take effect on October 1, 2011, and shall apply to all health insurance plans and health benefit plans on and after October 1, 2011, on such date as a health insurer issues, offers, or renews the plan, but in no event later than October 1, 2012.

(b) The remaining sections of this act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Fox for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Health and Welfare, with the following amendment thereto:

In Sec. 1. 8 VSA §4099d by adding a subsection (c) to read as follows:

(c) As used in this section, "health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term shall not include policies or plans providing coverage for specific disease or other limited benefit coverage.

(Committee vote: 6-1-0)

Reported favorably by Senator Miller for the Committee on Appropriations.

(Committee vote: 6-0-1)

UNFINISHED BUSINESS OF WEDNESDAY, MARCH 30, 2011

Second Reading

Favorable with Proposal of Amendment

H. 236.

An act relating to limitation of prosecutions for sexual abuse of a vulnerable adult.

Reported favorably with recommendation of proposal of amendment by Senator Snelling for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill that after passage the title of the bill be amended to read: "An act relating to extending the limitation of prosecutions for sexual abuse of a vulnerable adult"

(Committee vote: 5-0-0)

(No House amendments)

NEW BUSINESS

Senate Resolution For Action

S.R. 8.

Senate resolution expressing support for the collective bargaining rights of public employees.

(For text of resolution, see Senate Journal of April 1, 2011, page 315.)

NOTICE CALENDAR

Second Reading

Favorable with Recommendation of Amendment

S. 17.

An act relating to medical marijuana dispensaries.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 86, subchapter 2 is amended to read:

Subchapter 2. Marijuana for Medical Symptom Use by Persons with Severe Illness

§ 4472. DEFINITIONS

For the purposes of this subchapter:

(1) "Bona fide ~~physician-patient~~ health care professional–patient relationship" means a treating or consulting relationship of not less than six months duration, in the course of which a physician has completed a full assessment of the registered patient's medical history and current medical condition, including a personal physical examination.

(2) "Clone" means a plant section from a female marijuana plant not yet root-bound, growing in a water solution, which is capable of developing into a new plant.

(3) "Criminal history record" means all information documenting an individual's contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(4) "Debilitating medical condition," provided that, in the context of the specific disease or condition described in subdivision (A) or (B) of this subdivision ~~(2)~~(4), reasonable medical efforts have been made over a reasonable amount of time without success to relieve the symptoms, means:

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

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

(5) "Dispensary" means a nonprofit entity registered under section 4474e of this title which acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells, or dispenses marijuana, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her center, and to his or her registered caregiver, for the registered patient's medical use. Notwithstanding the ability of a dispensary to deliver marijuana for therapeutic purposes to registered patients, a dispensary may provide marijuana for therapeutic purposes to registered patients at only one facility or location, but may have a second location associated with the dispensary where the marijuana is cultivated. Both locations are considered to be part of the same dispensary.

(6) "Health care professional" means an individual licensed to practice medicine under chapter 23 or 33 of Title 26, an individual certified as a physician's assistant under chapter 31 of Title 26, or an individual licensed to practice nursing under chapter 28 of Title 26, and who is authorized to prescribe regulated drugs. This definition includes individuals who are professionally licensed and authorized to prescribe regulated drugs under comparable provisions in New Hampshire, Massachusetts, or New York.

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

~~(3)~~(8) "Marijuana" shall have the same meaning as provided in subdivision 4201(15) of this title.

~~(4) "Physician" means a person who is:~~

~~(A) licensed under chapter 23 or chapter 33 of Title 26, and is licensed with authority to prescribe drugs under Title 26; or~~

~~(B) a physician, surgeon, or osteopathic physician licensed to practice medicine and prescribe drugs under comparable provisions in New Hampshire, Massachusetts, or New York.~~

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

~~(5)~~(10) "Possession limit" means the amount of marijuana collectively possessed between the registered patient and the patient's registered caregiver

which is no more than two mature marijuana plants, seven immature plants, and two ounces of usable marijuana.

~~(6)~~(11) "Registered caregiver" means a person who is at least 21 years old who has never been convicted of a drug-related crime and who has agreed to undertake responsibility for managing the well-being of a registered patient with respect to the use of marijuana for symptom relief.

~~(7)~~(12) "Registered patient" means a person who has been issued a registration card by the department of public safety identifying the person as having a debilitating medical condition pursuant to the provisions of this subchapter.

~~(8)~~(13) "Secure indoor facility" means a building or room equipped with locks or other security devices that permit access only by a registered caregiver ~~or~~, registered patient, or a principal officer or employee of a dispensary.

~~(9)~~(14) "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

~~(10)~~(15) "Use for symptom relief" means the acquisition, possession, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a registered patient's debilitating medical condition which is in compliance with all the limitations and restrictions of this subchapter. For the purposes of this definition, "transfer" is limited to the transfer of marijuana and paraphernalia between a registered caregiver and a registered patient.

§ 4473. REGISTERED PATIENTS; QUALIFICATION STANDARDS AND PROCEDURES

(a) To become a registered patient, a person must be diagnosed with a debilitating medical condition by a ~~physician~~ health care professional in the course of a bona fide ~~physician-patient~~ health care professional–patient relationship.

(b) The department of public safety shall review applications to become a registered patient using the following procedures:

(1) A patient with a debilitating medical condition shall submit, under oath, a signed application for registration to the department. If the patient is under the age of 18, the application must be signed by both the patient and a parent or guardian. The application shall require identification and contact information for the patient and the patient's registered caregiver applying for authorization under section 4474 of this title, if any, and the patient's designated dispensary under section 4474e of this title, if any. The applicant

shall attach to the application a medical verification form developed by the department pursuant to subdivision (2) of this subsection.

(2) The department of public safety shall develop a medical verification form to be completed by a ~~physician~~ health care professional and submitted by a patient applying for registration in the program. The form shall include:

(A) A cover sheet which includes the following:

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

(ii) Definitions of the following statutory terms:

(I) "Bona fide physician-patient relationship" as defined in subdivision 4472(1) of this title.

(II) "Debilitating medical condition" as defined in subdivision ~~4472(2)~~ 4472(4) of this title.

(III) "~~Physician~~ Health care professional" as defined in subdivision ~~4472(4)~~ 4472(6) of this title.

(B) A verification sheet which includes the following:

(i) A statement that a bona fide ~~physician-patient~~ health care professional–patient relationship exists under subdivision 4472(1) of this title, or that under subdivision (3)(A) of this subsection (b), the debilitating medical condition is of recent or sudden onset, and the patient has not had a previous physician who is able to verify the nature of the disease and its symptoms.

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

(iii) A statement that the patient has a debilitating medical condition as defined in subdivision ~~4472(2)~~ 4472(4) of this title, including the specific disease or condition which the patient has and whether the patient meets the criteria under subdivision ~~4472(2)(A) or (B)~~ 4472(4).

(iv) A signature line which provides in substantial part: "I certify that I meet the definition of ~~"physician' under 18 V.S.A. § 4472(4)(A) or 4472(4)(B)~~ 'health care professional' under 18 V.S.A. § 4472(6), that I am a ~~physician~~ health care professional in good standing in the state of ....., and that the facts stated above are accurate to the best of my knowledge and belief."

(v) The ~~physician's~~ health care professional's contact information.

(3)(A) The department of public safety shall transmit the completed medical verification form to the ~~physician~~ health care professional and contact him or her for purposes of confirming the accuracy of the information

contained in the form. The department may approve an application, notwithstanding the six-month requirement in subdivision 4472(1) of this title, if the department is satisfied that the medical verification form confirms that the debilitating medical condition is of recent or sudden onset, and that the patient has not had a previous ~~physician~~ health care professional who is able to verify the nature of the disease and its symptoms.

(B) If the ~~physician~~ health care professional is licensed in another state as provided by subdivision ~~4472(4)(B)~~ 4472(6) of this title, the department shall ~~contact the state's medical practice board and~~ verify that the ~~physician~~ health care professional is in good standing in that state.

(4) The department shall approve or deny the application for registration in writing within 30 days from receipt of a completed registration application. If the application is approved, the department shall issue the applicant a registration card which shall include the registered patient's name and photograph, ~~as well as~~ the registered patient's designated dispensary, if any, and a unique identifier for law enforcement verification purposes under section 4474d of this title.

(5)(A) A review board is established. The medical practice board shall appoint three physicians licensed in Vermont to constitute the review board. If an application under subdivision (1) of this subsection is denied, within seven days the patient may appeal the denial to the board. Review shall be limited to information submitted by the patient under subdivision (1) of this subsection, and consultation with the patient's treating ~~physician~~ health care professional. All records relating to the appeal shall be kept confidential. An appeal shall be decided by majority vote of the members of the board.

(B) The board shall meet periodically to review studies, data, and any other information relevant to the use of marijuana for symptom relief. The board may make recommendations to the general assembly for adjustments and changes to this chapter.

(C) Members of the board shall serve for three-year terms, beginning February 1 of the year in which the appointment is made, except that the first members appointed shall serve as follows: one for a term of two years, one for a term of three years, and one for a term of four years. Members shall be entitled to per diem compensation authorized under ~~section 1010 of Title 32~~ 32 V.S.A. § 1010. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term vacated.

§ 4474. REGISTERED CAREGIVERS; QUALIFICATION STANDARDS AND PROCEDURES

(a) A person may submit a signed application to the department of public safety to become a registered patient's registered caregiver. The department shall approve or deny the application in writing within 30 days. The department shall approve a registered caregiver's application and issue the person an authorization card, including the caregiver's name, photograph, and a unique identifier, after verifying:

(1) the person will serve as the registered caregiver for one registered patient only; and

(2) the person has never been convicted of a drug-related crime.

(b) Prior to acting on an application, the department shall obtain from the Vermont criminal information center a Vermont criminal record, an out-of-state criminal record, and a criminal record from the Federal Bureau of Investigation for the applicant. For purposes of this subdivision, "criminal record" means a record of whether the person has ever been convicted of a drug-related crime. Each applicant shall consent to release of criminal records to the department on forms substantially similar to the release forms developed by the center pursuant to ~~section 2056c of Title 20~~ 20 V.S.A. § 2056c. The department shall comply with all laws regulating the release of criminal history records and the protection of individual privacy. The Vermont criminal information center shall send to the requester any record received pursuant to this section or inform the department of public safety that no record exists. If the department disapproves an application, the department shall promptly provide a copy of any record of convictions and pending criminal charges to the applicant and shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the Vermont criminal information center. No person shall confirm the existence or nonexistence of criminal record information to any person who would not be eligible to receive the information pursuant to this subchapter.

(c) A registered caregiver may serve only one registered patient at a time, and a registered patient may have only one registered caregiver at a time.

§ 4474a. REGISTRATION; FEES

(a) The department shall collect a fee of $50.00 for the application authorized by sections 4473 and 4474 of this title. The fees received by the department shall be deposited into a registration fee fund and used to offset the costs of processing applications under this subchapter.

(b) A registration card shall expire one year after the date of issue, with the option of renewal, provided the patient submits a new application which is approved by the department of public safety, pursuant to section 4473 or 4474 of this title, and pays the fee required under subsection (a) of this section.

§ 4474b. EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES; SEIZURE OF PROPERTY

(a) A person who has in his or her possession a valid registration card issued pursuant to this subchapter and who is in compliance with the requirements of this subchapter, including the possession limits in subdivision ~~4472(4)~~ 4472(10) of this title, shall be exempt from arrest or prosecution under subsection 4230(a) of this title.

(b) A physician who has participated in a patient's application process under subdivision 4473(b)(2) of this title shall not be subject to arrest, prosecution, or disciplinary action under chapter 23 of Title 26, penalized in any manner, or denied any right or privilege under state law, except for giving false information, pursuant to subsection 4474c(f) of this title.

(c) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, or any other offense for simply being in the presence or vicinity of a registered patient or registered caregiver engaged in use of marijuana for symptom relief.

(d) A law enforcement officer shall not be required to return marijuana or paraphernalia relating to its use seized from a registered patient or registered caregiver.

(e) A dispensary may donate marijuana to another dispensary in Vermont provided that no consideration is paid for the marijuana and that the recipient does not exceed the possession limits specified in this subchapter.

§ 4474c. PROHIBITIONS, RESTRICTIONS, AND LIMITATIONS REGARDING THE USE OF MARIJUANA FOR SYMPTOM RELIEF

(a) This subchapter shall not exempt any person from arrest or prosecution for:

(1) Being under the influence of marijuana while:

(A) operating a motor vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;

(B) in a workplace or place of employment; or

(C) operating heavy machinery or handling a dangerous instrumentality.

(2) The use or possession of marijuana by a registered patient or a registered caregiver:

(A) for purposes other than symptom relief as permitted by this subchapter; or

(B) in a manner that endangers the health or well-being of another person.

(3) The smoking of marijuana in any public place, including:

(A) a school bus, public bus, or other public vehicle;

(B) a workplace or place of employment;

(C) any school grounds;

(D) any correctional facility; or

(E) any public park, public beach, public recreation center, or youth center.

(b) This chapter shall not be construed to require that coverage or reimbursement for the use of marijuana for symptom relief be provided by:

(1) a health insurer as defined by ~~section 9402~~ subdivision 9402(7) of this title, or any insurance company regulated under Title 8;

(2) Medicaid, Vermont health access plan, and any other public health care assistance program;

(3) an employer; or

(4) for purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).

(c) A registered patient or registered caregiver who elects to grow marijuana to be used for symptom relief by the patient may do so only if the marijuana is cultivated in a single, secure indoor facility.

(d) A registered patient or registered caregiver may not transport marijuana in public unless it is secured in a locked container.

(e) Within 72 hours after the death of a registered patient, the patient's registered caregiver shall return to the department of public safety for disposal any marijuana or marijuana plants in the possession of the patient or registered caregiver at the time of the patient's death. If the patient did not have a registered caregiver, the patient's next of kin shall contact the department of public safety within 72 hours after the patient's death and shall ask the department to retrieve such marijuana and marijuana plants for disposal.

(f) Notwithstanding any law to the contrary, a person who knowingly gives to any law enforcement officer false information to avoid arrest or prosecution, or to assist another in avoiding arrest or prosecution, shall be imprisoned for not more than one year or fined not more than $1,000.00 or both. This penalty shall be in addition to any other penalties that may apply for the possession or use of marijuana.

§ 4474d. LAW ENFORCEMENT VERIFICATION OF INFORMATION; RULEMAKING

(a) The department of public safety shall maintain and keep confidential, except as provided in subsection (b) of this section and except for purposes of a prosecution for false swearing under 13 V.S.A. § 2904, the records of all persons registered under this subchapter or registered caregivers in a secure database accessible by authorized department of public safety ~~employee's~~ employees only.

(b) In response to a person-specific or property-specific inquiry by a law enforcement officer or agency made in the course of a bona fide investigation or prosecution, the department may verify the identities and registered property addresses of the registered patient and the patient's registered caregiver, a dispensary, and the principal officer, board members, or employees of a dispensary.

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

(d) The department of public safety shall implement the requirements of this act within 120 days of its effective date. The department may adopt rules under chapter 25 of Title 3 and shall develop forms to implement this act.

§ 4474e. DISPENSARIES; CONDITIONS OF OPERATION

(a) A dispensary registered under this section may:

(1) Acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, and dispense marijuana, marijuana-infused products, and marijuana-related supplies and educational materials for or to a registered patient who has designated it as his or her dispensary and, to his or her registered caregiver, for the registered patient's medical use.

(A) Marijuana-infused products shall include tinctures, oils, solvents, and edible or potable goods. Only the portion of any marijuana-infused

products that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient.

(B) Marijuana-related supplies shall include pipes, vaporizers, and other items classified as drug paraphernalia under chapter 69 of this title.

(2) Acquire marijuana seeds or parts of the marijuana plant capable of regeneration from registered patients or their caregivers or from the other registered Vermont dispensary.

(3) Cultivate and possess at any one time up to 28 mature marijuana plants, 98 immature marijuana plants, and 28 ounces of usable marijuana. However, if a dispensary is designated by more than 14 registered patients, the dispensary may cultivate and possess at any one time two mature marijuana plants, seven immature plants, and two ounces of usable marijuana for every registered patient for which the dispensary serves as the designated dispensary.

(b)(1) A dispensary shall be operated on a nonprofit basis for the mutual benefit of its patients, but need not be recognized as a tax-exempt organization by the Internal Revenue Service.

(2) A dispensary shall have a sliding scale fee system that takes into account a registered patient's ability to pay.

(c) A dispensary may not be located within 1,000 feet of the property line of a preexisting public or private school or licensed child care facility.

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

(2) Except as provided in subdivision (3) of this subsection, a registered patient or registered caregiver may obtain marijuana for therapeutic purposes from the dispensary facility by appointment only.

(3) A dispensary may deliver marijuana for therapeutic purposes to a registered patient or a registered caregiver. The dispensary shall take appropriate security measures to deter and prevent theft during a delivery, except that no person may possess or carry a firearm in the act of delivering or transporting marijuana for therapeutic purposes. Only employees of a dispensary may be present in a vehicle that is being used at the time of deliveries. In addition to the record keeping requirements of subdivision (1) of this subsection, records shall clearly track any marijuana that leaves the premises of a dispensary for delivery to a registered patient or a registered caregiver. A registered patient or a registered caregiver who receives a delivery from a dispensary shall present his or her identification card to the person who makes the delivery, and shall sign for the delivery.

(4) The operating documents of a dispensary shall include procedures for the oversight of the dispensary and procedures to ensure accurate record keeping.

(5) A dispensary shall submit the results of an annual financial audit to the department of public safety no later than 60 days after the end of the dispensary's fiscal year. The annual audit shall be conducted by an independent certified public accountant, and the costs of any such audit shall be borne by the dispensary. The department may also periodically require, within its discretion, the audit of a dispensary's financial records by the department.

(6) A dispensary shall destroy or dispose of marijuana, marijuana-infused products, clones, seeds, parts of marijuana that are not usable for therapeutic purposes or are beyond the possession limits provided by this subchapter, and marijuana-infused supplies only in a manner approved by rules adopted by the department of public safety.

(e) A registered patient shall not consume marijuana for therapeutic purposes on dispensary property.

(f) No person who has been convicted of a drug-related offense or who has a pending charge of a drug-related offense shall be a principal officer, board member, or employee of a dispensary unless the department of public safety has determined that the person's conviction was for the medical use of marijuana or for assisting a registered patient with the medical use of marijuana.

(g)(1) A dispensary shall notify the department of public safety within 10 days of when a principal officer, board member, or employee ceases to be associated with or work at the dispensary. His or her registry identification card shall be deemed null and void, and the person shall be liable for any other

penalties that may apply to the person's nonmedical use of marijuana.

(2) A dispensary shall notify the department of public safety in writing of the name, address, and date of birth of any proposed new principal officer, board member, or employee and shall submit a fee in an amount established by the department for a new registry identification card before a new employee begins working at the dispensary, and shall submit a complete set of fingerprints for the prospective principal officer, board member, or employee.

(h) A dispensary shall include labels on all marijuana that is dispensed. The labels shall identify the particular strain of marijuana contained therein. Cannabis strains shall be either pure breeds or hybrid varieties of cannabis and shall reflect properties of the plant.

(i) Each dispensary shall develop, implement, and maintain on the premises employee policies and procedures to address the following requirements:

(1) A job description or employment contract developed for all employees which includes duties, authority, responsibilities, qualification, and supervision; and

(2) Training in and adherence to confidentiality laws.

(j) Each dispensary shall maintain a personnel record for each employee that includes an application for employment and a record of any disciplinary action taken. Each dispensary shall provide each employee, at the time of his or her initial appointment, training in the following:

(1) The proper use of security measures and controls that have been adopted; and

(2) Specific procedural instructions on how to respond to an emergency, including robbery or violent incident.

(k)(1) A dispensary or principal officer, board member, or employee of a dispensary shall not:

(A) Acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell, or dispense marijuana for any purpose except to assist registered patients with the medical use of marijuana directly or through the qualifying patients' designated caregiver.

(B) Acquire usable marijuana or marijuana plants from any source other than registered dispensary principal officers, board members, or employees who cultivate marijuana in accordance with this subchapter.

(C) Dispense more than two ounces of usable marijuana to a registered patient directly or through the qualifying patient's registered caregiver during a 30-day period. A principal officer, board member, or

employee of a dispensary may dispense seeds or clones to a registered patient, provided that records are kept concerning the amount and the recipient.

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

(E) Dispense marijuana to a person other than a registered patient who has designated it or such patient's registered caregiver.

(2) A person found to have violated subdivision (1) of this subsection may no longer serve as a principal officer, board member, or employee of any dispensary, and such person's registry identification card shall be immediately revoked by the department of public safety.

(3) The board of a dispensary shall be required to report to the department of public safety any information regarding a person who violates this section.

(l)(1) A registered dispensary shall not be subject to the following:

(A) Prosecution for the acquisition, possession, cultivation, manufacture, delivery, transfer, transport, supply, sale, or dispensing of marijuana, marijuana-infused products, or marijuana-related supplies for medical purposes in accordance with the provisions of this subchapter and any rule adopted by the department of public safety pursuant to this subchapter.

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

(C) Seizure of marijuana, except upon valid order issued by a court or judicial officer.

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

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

§ 4474f. DISPENSARY APPLICATION, APPROVAL AND REGISTRATION

(a)(1) The department of public safety shall adopt rules on the following:

(A) The form and content of dispensary registration and renewal applications.

(B) Minimum oversight requirements for a dispensary.

(C) Minimum record-keeping requirements for a dispensary.

(D) Minimum security requirements for a dispensary, which shall include a fully operational security alarm system. This provision shall apply to each location where marijuana will be grown, cultivated, harvested, or otherwise prepared for distribution by the dispensary, or distributed by the dispensary.

(E) Procedures for suspending or terminating the registration of a dispensary that violates the provisions of this subchapter or the rules adopted pursuant to this subchapter.

(F) The ability of a dispensary to advertise in any appropriate medium or manner.

(G) Procedures to guide reasonable determinations as to whether an applicant would pose a demonstrable threat to public safety if he or she were to be associated with a dispensary.

(2) The department of public safety shall adopt such rules with the goal of protecting against diversion and theft without imposing an undue burden on a registered dispensary or compromising the confidentiality of registered patients and their registered caregivers. Any dispensing records that a registered dispensary is required to keep shall track transactions according to registered patients' and registered caregivers' registry identification numbers, rather than the names, to protect confidentiality.

(b) Within 30 days of the adoption of rules, the department shall begin accepting applications for the operation of dispensaries. Within 180 days of the effective date of this section, the department shall grant registration certificates to two dispensaries, provided at least two applicants apply and meet the requirements of this section. Any time a dispensary registration certificate is revoked, is relinquished, or expires, the department shall accept applications for a new dispensary. If at any time after one year after the effective date of this section fewer than two dispensaries hold valid registration certificates in Vermont, the department of public safety shall accept applications for a new dispensary. No more than two dispensaries may hold valid registration certificates at one time. The total number of registered

patients who have designated a dispensary shall not exceed 500 at any one time.

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

(1) A nonrefundable application fee in the amount of $250.00 paid to the department of public safety.

(2) The legal name, articles of incorporation, and bylaws of the dispensary.

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

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

(5) The name, address, and date of birth of each principal officer and board member of the dispensary, and a complete set of fingerprints for each of them.

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

(7) Proposed procedures to ensure accurate record keeping.

(d) Any time one or more dispensary registration applications are being considered, the department of public safety shall solicit input from registered patients and registered caregivers.

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

(1) Geographic convenience to patients from throughout the state of Vermont to a dispensary if the applicant were approved.

(2) The entity's ability to provide an adequate supply to the registered patients in the state.

(3) The entity's ability to demonstrate its board members' experience running a nonprofit organization or business.

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

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

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

(f) The department of public safety may deny an application for a dispensary if it determines that an applicant's criminal history record indicates that the person's association with a dispensary would pose a demonstrable threat to public safety.

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

(1) The legal name and articles of incorporation of the dispensary.

(2) The physical address of the dispensary.

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

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

(a) Except as provided in subsection (b) of this section, the department of public safety shall issue each principal officer, board member, and employee of a dispensary a registry identification card or renewal card within 30 days of receipt of the person's name, address, and date of birth and a fee of $25.00. A person shall not serve as principal officer, board member, or employee of a dispensary until that person has received a registry identification card issued under this section. Each card shall specify that the cardholder is a principal officer, board member, or employee of a dispensary and shall contain the following:

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

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

(3) A random identification number that is unique to the person.

(4) The date of issuance and the expiration date of the registry identification card.

(5) A photograph of the person.

(b) Prior to acting on an application for a registry identification card, the department of public safety shall obtain a Vermont criminal history record, an out-of-state criminal history record, and a criminal history record from the Federal Bureau of Investigation on the applicant. Each applicant shall consent to the release of criminal history records to the department on forms substantially similar to the release forms developed in accordance with 20 V.S.A. § 2056c.

(c) When the department of public safety obtains a criminal history record, the department shall promptly provide a copy of the record to the applicant and to the principal officer and board of the dispensary if the applicant is to be an employee. The department shall inform the applicant of the right to appeal the accuracy and completeness of the record pursuant to rules adopted by the department.

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

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

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

(g) A registration identification card of a principal officer, board member, or employee shall expire one year after its issuance or upon the expiration of

the registered organization's registration certificate, whichever occurs first.

§ 4474h. PATIENT DESIGNATION OF DISPENSARY

(a) A registered patient may obtain marijuana only from the patient's designated dispensary and may designate only one dispensary. The right of a registered patient to obtain marijuana for therapeutic purposes from a designated dispensary in compliance with this subchapter shall in no way limit the ability of the patient or his or her caregiver to grow marijuana for therapeutic purposes in compliance with this subchapter provided the patient or caregiver does not exceed the possession amounts provided in this subchapter. A registered patient who wishes to change his or her dispensary shall notify the department of public safety in writing on a form issued by the department and shall submit with the form a fee of $25.00. The department shall issue a new identification card to the registered patient within 30 days of receiving the notification of change in dispensary. The registered patient's previous identification card shall expire at the time the new identification card takes effect. A registered patient shall submit his or her expired identification card to the department within 30 days of expiration. A registered patient shall not change his or her designated dispensary more than once in any 90-day period.

(b) The department of public safety shall track the number of registered patients who have designated each dispensary. The department shall issue a monthly written statement to the dispensary identifying the number of registered patients who have designated that dispensary and the registry identification numbers of each patient and each patient's designated caregivers, if any.

(c) In addition to the monthly reports, the department of public safety shall provide written notice to a dispensary whenever any of the following events occurs:

(1) A qualifying patient designates the dispensary to serve his or her needs under this subchapter.

(2) An existing registered patient revokes the designation of the dispensary because he or she has designated a different dispensary.

(3) A registered patient who has designated the dispensary loses his or her status as a registered patient under this subchapter.

(d) Nothing in this subchapter shall prevent a municipality from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances.

§ 4474i. CONFIDENTIALITY OF INFORMATION REGARDING DISPENSARIES AND REGISTERED PATIENTS

The confidentiality provisions in section 4474d of this title shall apply to records of all registered patients and registered caregivers within dispensary records in the department of public safety.

§ 4474j. ANNUAL REPORT

(a)(1) There is established a marijuana for therapeutic purposes oversight committee. The committee shall be composed of the following members:

(A) one registered patient appointed by each dispensary;

(B) one registered nurse and one registered patient appointed by the governor;

(C) one physician appointed by the Vermont medical society;

(D) one member of a local zoning board appointed by the Vermont League of Cities and Towns; and

(E) the commissioner of the department of public safety or his or her designee.

(2) The oversight committee shall meet at least two times per year for the purpose of evaluating and making recommendations to the general assembly regarding:

(A) The ability of qualifying patients and registered caregivers in all areas of the state to obtain timely access to marijuana for therapeutic purposes.

(B) The effectiveness of the registered dispensaries individually and together in serving the needs of qualifying patients and registered caregivers, including the provision of educational and support services.

(C) Sufficiency of the regulatory and security safeguards contained in this subchapter and adopted by the department of public safety to ensure that access to and use of cultivated marijuana is provided only to cardholders authorized for such purposes.

(D) The definition of "qualifying medical condition."

(E) Research studies regarding health effects of marijuana for therapeutic purposes for patients.

(b) On or before January 1 of each year, beginning in 2012, the oversight committee shall provide a report to the department of public safety, the house committee on health care, the senate committee on health and welfare, the house and senate committees on judiciary, and the house and senate committees on government operations on its findings.

Sec. 2. DEPARTMENT OF PUBLIC SAFETY; IDENTIFICATION CARDS

The department of public safety shall take measures to improve the quality and security of identification cards required pursuant to chapter 86 of Title 18. The department shall consider the feasibility of a "swipe card" that could be used by law enforcement or a dispensary.

Sec. 3. SURVEY

(a) By July 1, 2011, the department of public safety shall develop a survey of patients registered to possess and use marijuana for therapeutic purposes and send the survey to such patients. The department shall request that patients return the survey by August 1, 2011.

(b) The survey shall make the following inquiries:

(1) Please describe your medical diagnosis and the "debilitating medical condition" that qualifies you to be a registered patient under Vermont law. Please describe the symptoms that are aided by your use of marijuana for therapeutic purposes.

(2) Please describe how much marijuana you typically use in one month for therapeutic purposes and the strain or strains of marijuana that you use or that are particularly helpful in alleviating symptoms of your medical condition.

(3) Would you purchase marijuana for therapeutic purposes from a state-regulated dispensary if it was available to you at an affordable price? How much do you typically spend in one month on marijuana for therapeutic purposes?

(c) The department of public safety shall clearly state on the survey that the information is being gathered solely for the purpose of assessing the needs of registered medical patients in order to facilitate a safer, more reliable means for patients to obtain marijuana for therapeutic purposes. The completed surveys will remain confidential and will not be subject to public inspection; however, summary information will be available as provided in subsection (d) of this section.

(d) The department of public safety shall summarize the survey responses in a manner that protects the identity of patients, providing information that will assist state decision-makers, the department of public safety, and potential dispensary applicants to better understand the needs of registered patients. This summary shall not be confidential and shall be provided with other information about the medical marijuana registry on the Vermont criminal information website. The department of public safety shall ensure that any patient identifiers are not included in the summary.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 1, 18 V.S.A. § 4474f(b), by striking out each of the four instances of the word "two" and inserting in lieu thereof in each instance the word four, and by striking out "500" and inserting in lieu thereof 1,000

Second: In Sec. 1, 18 V.S.A. § 4474f(c)(1), by striking out "$250.00" and inserting in lieu thereof $2,500.00

Third: In Sec. 1, 18 V.S.A. § 4474f(g), by adding a subdivision (4) to read:

(4) An annual license fee of not more than $32,000.00.

Fourth: In Sec. 1, 18 V.S.A. § 4474g(a), by striking out "$25.00" and inserting in lieu thereof $50.00

Fifth: In Sec. 1. by adding 18 V.S.A. § 4474j to read:

§ 4474j. FEES; DISPOSITION

Of the fees collected under this subchapter, no more than $156,500.00 shall be retained by the department annually for the performance of its responsibilities under this subchapter. All fees collected by the department in a year under this subchapter in excess of $156,500.00 shall be deposited in the general fund.

(Committee vote: 5-1-1)

S. 78.

An act relating to the advancement of cellular, broadband, smart grid, and other technology infrastructure in Vermont.

Reported favorably by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

(Committee vote: 5-0-0)

Reported favorably with recommendation of amendment by Senator Lyons for the Committee on Natural Resources and Energy.

The Committee recommends that the bill be amended as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivisions (12), (13) and (14) in their entirety and inserting in lieu thereof new subdivision (12), (13) and (14) to read as follows:

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board's average time for reviewing an application under section 248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines.

(13) Vermont should ensure that all telecommunications carriers in the state can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

Second: By striking out Secs. 2 (certificate of public good; communications facilities), 3 and 3a (stormwater management), 4 (Act 250; calculation of acreage), and 5 and 6 (appeals; agency of natural resource permits) in their entirety and inserting in lieu thereof six new sections to be numbered Secs. 2, 3, 3a, 4, 5 and 6 to read as follows:

* * * Telecommunications Facilities, Certificates of Public Good * * *

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application

may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) "De minimis modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, provided:

(A) The height and width of the facility or structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) The total amount of impervious surface surrounding the facility or structure is not increased by more than 300 square feet;

(C) The total height or width of the facility or structure, including equipment, antennas, and ancillary improvements, is not increased by more than 10 feet; and

(D) The additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3)(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (2)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

~~(2)~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and~~ the public health and safety, and the public's use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. This presumption may be rebutted on a showing that there is good cause to find other than as stated in the letter.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the ~~petition~~ application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its ~~petition~~ application, and provide notice and a copy of the ~~petition~~ application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. ~~The~~ At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; the commissioner of public service and its director for public advocacy; and the landowners of record of property adjoining the site or sites unless, in accordance with subdivision (j)(2)(B) (waiver standard) of this section, the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that ~~a petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Stormwater Discharge Permits; Telecommunications Facilities * * *

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 90 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF NATURAL RESOURCES; PROSPECTIVE REPEAL

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

(c) This section shall be repealed on July 1, 2014.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) No permit or permit amendment is required for the following improvements associated with the construction or installation of a communications line:

(A) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(B) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, "communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals; Agency of Natural Resource Permits * * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review ~~by the public service board~~ under, respectively, 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, "board," "plant," and "renewable energy" have the same meaning as under 30 V.S.A. § 8002, and "telecommunications facility" has the same meaning as under 30 V.S.A. § 248a.

* * *

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board's decision shall be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

* * *

Third: By striking out Sec. 9 (pole attachments; applications; dispute resolution) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act's passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state lands), in the first sentence of subsection (a), by striking out "30 V.S.A. § 8063(b)" and inserting in lieu thereof 30 V.S.A. § 248a(b)

Fifth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (b)(4), by striking out the second sentence up to the semicolon and inserting in lieu thereof:

. For the purpose of this subdivision, "natural state" does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law

Sixth: By striking out Sec. 14 (limitations on municipal bylaws) in its entirety and inserting in lieu thereof a new Secs. 14, 14a and 14b to read as follows:

* * * Local Land Use Bylaws; Exemptions * * *

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement other than an access road that does not exceed a footprint of 200 square feet and a height of 10 feet.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing pole, if the pole is not taller than 50 feet.

(ii) The replacement of an existing pole with a new pole, if the new pole is not taller than 50 feet and is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. PROSPECTIVE REPEAL

24 V.S.A § 4413(h) shall be repealed on July 1, 2014.

* * * Deployment Plans * * *

Sec. 14b. 30 V.S.A. § 202e is added to read:

§ 202e. TELECOMMUNICATIONS; BROADBAND; DEPLOYMENT PLANS

(a) No later than October 1, 2011, all persons proposing to construct or install in Vermont cables, wires, telecommunications facilities, or other equipment or apparatus shall file plans with the department of public service if the construction or installation relates to the deployment of broadband, telecommunications facilities, or advanced metering infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

(b) The purpose of filing these plans shall include allowing a geographic assessment of the locations in the state in which deployment is proposed and not proposed, the underserved and unserved areas of the state that will or will not be reached by deployment, and the areas of the state that will or will not experience deployment that is redundant with equipment, facilities, or services that are already available or are proposed.

(c) The department of public service shall keep confidential the plans submitted to it under this section. The department may aggregate data and information contained in the plans and may make such aggregated data and information publically available.

(d) In this section:

(1) "Broadband" means high speed Internet access that provides for a download speed of at least four megabytes per second and an upload speed of at least one megabyte per second.

(2) "Deployment" means deployment of broadband equipment and apparatus, telecommunications facilities, and advanced metering infrastructure.

(3) "Plans" means drawings and narrative descriptions of all construction and installation described in subsection (a) of this section that is proposed to commence before July 1, 2014. The plans shall be in sufficient detail to achieve the purpose described in subsection (b) of this subsection. The commissioner of public service shall determine the degree of detail and finality that shall govern the submission of plans under this subsection and may require inclusion in the submission of such information as the commissioner determines to be in the public good. Nothing in this section

shall require the submission of information that is designated as confidential under federal law.

(4) "Telecommunications facility" shall be as defined in subsection 248a(b) of this title.

And by renumbering all sections to be numerically correct

(Committee vote: 4-1-0)

SUBSTITUTE AMENDMENT FOR THE RECOMMENDATION OF AMENDMENT OF THE COMMITTEE ON NATURAL RESOURCES AND ENERGY TO S. 78, TO BE OFFERED BY SENATOR LYONS, ON BEHALF OF THE COMMITTEE ON NATURAL RESOURCES AND ENERGY

Senator Lyons, on behalf of the Committee on Natural Resources and Energy, moves to substitute a recommendation of amendment for the recommendation of amendment of the Committee on Natural Resources and Energy as follows:

First: In Sec. 1 (purpose and findings), in subsection (b), by striking out subdivisions (b)(12)–(14) and inserting in lieu thereof:

(12) All ARRA broadband funds must be expended within three years or they revert to the federal government. To insure federal timelines are met, a thorough and expeditious permitting process must be available for the build-out of telecommunications facilities. To this end, Vermont has adopted a process under 30 V.S.A. § 248a for issuance of certificates of public good for telecommunications facilities by the public service board. Pursuant to statute, the board in 2009 adopted a simplified process under section 248a. Under that process, the board's average time for reviewing an application under section 248a has been 44 days, and its longest period for processing such an application has been 77 days. An intent of this act is to maintain or improve these timelines and to manage a potential increase in the volume of applications.

(13) Vermont should ensure that all telecommunications carriers in the state can compete fairly.

(14) It is also imperative that Vermont pursue telecommunications infrastructure deployment in a manner consistent with the state's long-standing principles of historic and environmental stewardship. Notably, Vermont is ranked fifth in the world for "destination stewardship" by the National Geographic Society's Center for Sustainable Destination, as published in the November–December 2010 issue of National Geographic Traveler magazine.

Second: By striking out Secs. 2 (certificate of public good; communications facilities), 3 and 3a (stormwater management), 4 (Act 250; calculation of acreage), and 5 and 6 (appeals; agency of natural resource permits) in their entirety and inserting in lieu thereof:

* * * Telecommunications Facilities, Certificates of Public Good * * *

Sec. 2. 30 V.S.A. § 248a is amended to read:

§ 248a. CERTIFICATE OF PUBLIC GOOD FOR COMMUNICATIONS FACILITIES

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the public service board under this section, which the board may grant if it finds that the facilities will promote the general good of the state consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other state and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. For the purposes of this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) "De minimis modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements, other than access roads, on a telecommunications facility or existing support structure, or the reconstruction of such a facility or support structure, provided:

(A) The height and width of the facility or structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) The total amount of impervious surface surrounding the facility or structure is not increased by more than 300 square feet;

(C) The addition, modification, replacement, or reconstruction does not result in a cumulative increase since the effective date of this act, including equipment, antennas, and ancillary improvements, of more than 10

feet in the total height of the facility or structure and of more than 10 feet in the total width of the facility or structure; and

(D) The additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3)(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. However, on request of an applicant, the board may treat an application that proposes to disturb up to an acre of earth as being of limited size and scope if the board determines that the proposed disturbance does not raise a significant issue with respect to the substantive criteria of this section. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

~~(2)~~ An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the public service board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, ~~and~~ the public health and safety, and the public's use and enjoyment of the I-89 or I-91 scenic corridors or of a highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). Reiteration in this act of the requirement to make findings concerning the public's use and enjoyment of scenic corridors, highways, and byways is not intended to impose a requirement that is different from or more stringent than the requirement under prior law to make findings with respect to 10 V.S.A. § 6086(a)(8) and (9)(K).

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. This presumption may be rebutted on a showing that there is good cause to find other than as stated in the letter.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the board shall give due consideration to all conditions in an existing state or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing ~~a petition~~ an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the

communities in which the applicant proposes to construct or install facilities; the secretary of the agency of natural resources; the division for historic preservation; the commissioner of the department of public service and its director for public advocacy; the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. Upon motion or otherwise, the public service board shall direct that further public or personal notice be provided if the board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

* * *

(i) Sunset of board authority. Effective ~~July 1, 2011~~ July 1, 2014, no new applications for certificates of public good under this section may be considered by the board.

(j)(1) ~~Minor applications~~ Telecommunications facilities of limited size and scope. The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings required by any provision other than subdivision (2) of this subsection if the board finds that such facilities will be of limited size and scope, and the ~~petition~~ application does not raise a significant issue with respect to the substantive criteria of this section. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the ~~petition~~ application.

(2)(A) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its ~~petition~~ application, and provide notice and a copy of the ~~petition~~ application, proposed certificate of public good, and proposed findings of fact to the commissioner of ~~the department of~~ public service and its director for public advocacy, the secretary of the agency of natural resources, the division for historic preservation, the natural resources board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. ~~The~~ At the same time the applicant files the documents specified in this subdivision with the board, the applicant shall give written notice of the

proposed certificate to the landowners of record of property adjoining the project site or sites unless the board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the board within 21 days of the notice on the question of whether the ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section. If the board finds that a ~~petition~~ application raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(B) Any waiver or modification of notice to adjoining landowners under this subsection shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit.

(C) If the board accepts a request to consider an application under the procedures of this subsection, then unless the public service board subsequently determines that an application raises a significant issue, the board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 45 days of the date on which the clerk of the board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the public service board's rules, within 90 days of the date on which the clerk of the board notifies the applicant that the filing is complete.

* * *

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; the commissioner of public service and its director for public advocacy; and the landowners of record of property adjoining the site or sites. On request of an applicant, the board shall waive or modify the notice requirement with respect to such

adjoining landowners unless, on review of such a request, the board determines that it does not meet the standard for a waiver set out in subdivision (j)(2)(B) of this section. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the board within 21 days of this notice, a certificate of public good shall be issued. Objections may only be filed by persons entitled to notice of this proposed project pursuant to this subdivision. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the board, the board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(1) of this section.

(l) Rules. The public service board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the board shall seek to simplify the application and review process as appropriate and may by rule or order waive the requirements of this section that the board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the board that ~~a petition~~ an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

* * * Stormwater Discharge Permits; Telecommunications Facilities * * *

Sec. 3. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(j) Notwithstanding any other provision of law, if an application to discharge stormwater runoff pertains to a telecommunications facility as defined in 30 V.S.A. § 248a and is filed before July 1, 2014 and the discharge will be to a water that is not principally impaired by stormwater runoff:

(1) The secretary shall issue a decision on the application within 40 days of the date the secretary determines the application to be complete, if the application seeks authorization under a general permit.

(2) The secretary shall issue a decision on the application within 60 days of the date the secretary determines the application to be complete, if the application seeks or requires authorization under an individual permit.

Sec. 3a. STORMWATER MANAGEMENT RULE; AGENCY OF ATURAL RESOURCES; PROSPECTIVE REPEAL

(a) The general assembly finds that:

(1) As required by Sec. 43 of No. 54 of the Acts of 2009 and Sec. 15 of No. 159 of the Acts of the 2009 Adj. Sess. (2010), the agency of natural resources recently amended its rules regarding stormwater management to provide alternative guidance for permitting renewable energy projects located at high elevations.

(2) It is reasonable to apply the substance of those amendments to the installation of telecommunications facilities at high elevations to achieve a goal of broadband deployment by December 31, 2013.

(b) With respect to a stormwater discharge from a telecommunications facility as defined in 30 V.S.A. § 248a, the agency of natural resources shall apply the same provisions of its stormwater management rule, including those provisions regarding a watershed hydrology protection credit, that it applies to high elevation renewable energy projects, if the facility is located or is proposed to be located at a high elevation as defined in those provisions and the discharge is to a water that is not principally impaired by stormwater runoff.

(c) This section shall be repealed on July 1, 2014.

* * * Communications Lines; Act 250; Exemption * * *

Sec. 4. 10 V.S.A. § 6081(t) is added to read:

(t)(1) The following improvements associated with the construction or installation of a communications line shall not be considered a substantial change to a utility line cleared and in use for electrical distribution or communications lines and related facilities and shall not require a permit under subsection (a) of this section:

(A) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(B) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) In this subsection, "communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

(3) Nothing in this subsection shall be construed to expand the scope of jurisdiction under this chapter over electric distribution and communications lines as interpreted and applied prior to the effective date of this act by the district commissions and the land use panel of the natural resources board.

Sec. 4a. PROSPECTIVE REPEAL

10 V.S.A. § 6081(t) shall be repealed on July 1, 2014.

* * * Telecommunications; Appeals; Agency of Natural Resource Permits * * *

Sec. 5. 10 V.S.A. § 8501 is amended to read:

§ 8501. PURPOSE

It is the purpose of this chapter to:

* * *

(5) Consolidate appeals of decisions related to renewable energy generation plants and telecommunications facilities with review ~~by the public service board~~ under, respectively, 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, with appeals and consolidation of proceedings pertaining to telecommunications facilities occurring only while 30 V.S.A. § 248a remains in effect.

Sec. 6. 10 V.S.A. § 8506 is amended to read:

§ 8506. RENEWABLE ENERGY PLANT; TELECOMMUNICATIONS FACILITY; APPEALS

(a) Within 30 days of the date of the act or decision, any person aggrieved by an act or decision of the secretary, under the provisions of law listed in section 8503 of this title, or any party by right may appeal to the public service board if the act or decision concerns a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248 or a telecommunications facility for which the applicant has applied or has served notice under 30 V.S.A. § 248a(e) that it will apply for approval under 30 V.S.A. § 248a. This section shall not apply to a facility that is subject to section 1004 (dams before the Federal Energy Regulatory Commission) or 1006 (certification of hydroelectric projects) or chapter 43 (dams) of this title. This section shall not apply to an appeal of an act or decision of the secretary regarding a telecommunications facility made on or after July 1, 2014.

(b) For the purpose of this section, "board," "plant," and "renewable energy" have the same meaning as under 30 V.S.A. § 8002, and "telecommunications facility" has the same meaning as under 30 V.S.A. § 248a.

* * *

(d) The public service board may consolidate or coordinate appeals under this section with each other and with proceedings under 30 V.S.A. ~~§ 248~~ §§ 248 and 248a, where those appeals and proceedings all relate to the same project, unless such consolidation or coordination would be clearly unreasonable. In such a consolidated proceeding, the board's decision may be issued as a single order that includes the necessary findings of fact and conclusions of law and, if the decision is to approve the plant or facility, any and all conditions of approval. This authority to consolidate or coordinate appeals and proceedings shall not confer authority to alter the substantive standards at issue in an appeal or proceeding.

* * *

Third: By striking out Sec. 9 (pole attachments; applications; dispute resolution) and inserting in lieu thereof:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of this act's passage, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband, telecommunications, or cable television deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner and shall include notice to all potentially affected persons. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: In Sec. 12, 30 V.S.A. § 227e (leasing or licensing of state lands), in the first sentence of subsection (a), by striking out "30 V.S.A. § 8063(b)" and

inserting in lieu thereof "30 V.S.A. § 248a(b)" and by striking out subsection (b) and inserting in lieu thereof a new subsection (b) to read:

(b) Prior to entering into or renewing a lease or license, the secretary shall:

(1) Publish notice of the proposed telecommunications facility site in one daily newspaper of general circulation in the region of the proposed site and on the website maintained by the agency of administration; and

(2) Send by certified mail, return receipt requested, a written notice of the proposed lease or license or renewal to the legislative body of each municipality in which such land is located. The notice shall include a description of the land to be leased or licensed and of the proposed telecommunications facility to be sited on the land, including the facility's height and location.

Fifth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (a)(2), after the third sentence, by adding a new sentence to read as follows:

A decision by the secretary to contract or enter into or renew a lease or license for the use of a state-owned building, structure, or land for a wireless telecommunications facility shall have no presumptive or binding effect with respect to the facility's compliance with the standards or criteria used in determining whether to grant any such required approval or permit.

Sixth: In Sec. 13, 30 V.S.A. § 227b (wireless telecommunications), in subdivision (b)(4), by striking out the second sentence up to the semicolon and inserting in lieu thereof:

For the purpose of this subdivision, "natural state" does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law

Seventh: By striking out Sec. 14 (limitations on municipal bylaws) in its entirety and inserting in lieu thereof:

* * * Local Land Use Bylaws; Exemptions * * *

Sec. 14. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(h)(1) A bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement that does not exceed a footprint of 200 square feet and a height of 10 feet. This subdivision shall exempt an ancillary improvement that is an access road only if the cumulative square footage of access road constructed since the effective date of this act does not exceed 200.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(ii) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

Sec. 14a. PROSPECTIVE REPEAL

24 V.S.A § 4413(h) shall be repealed on July 1, 2014.

* * * Deployment Plans * * *

Sec. 14b. 3 V.S.A. § 2222b is added to read:

§ 2222b. TELECOMMUNICATIONS; COORDINATION AND PLANNING

(a) The secretary of administration or designee shall be responsible for the coordination of telecommunications initiatives among executive branch agencies, departments, and offices.

(b) In furtherance of the goals set forth in 30 V.S.A. § 8060(b), the secretary shall have the following duties:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to unserved areas, and develop and maintain an inventory of infrastructure necessary for provision of these services to the unserved areas;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to formulate an action plan to accomplish the goals of universal availability of broadband and mobile telecommunications services by the end of the year 2013.

(4) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(5) to support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) through the department of innovation and information, to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;

(7) to review all financial transactions, statements, and contracts of the Vermont telecommunications authority established under 30 V.S.A. § 8061; and

(8) to receive all technical and administrative assistance as deemed necessary by the secretary of administration.

(c) Deployment tracking.

(1) Not later than 30 days of the effective date of this act, all persons proposing to construct or install Vermont cables, wires, or telecommunications facilities as defined in 30 V.S.A. § 248a(b)(1) shall file plans with the secretary if the construction or installation relates to the deployment of broadband infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, or by funds granted or loaned by the state of Vermont or one of its instrumentalities.

(2) The plans filed pursuant to subdivision (1) of this subsection shall include data identifying the projected coverage area, the projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities, and shall be updated every 90 days.

(3) The secretary shall use the information provided pursuant to this subsection in performing the duties set forth in subsection (b) of this section.

(4) The secretary shall keep confidential the plans submitted to it under this subsection except that, pursuant to a nondisclosure agreement, the secretary may disclose the information to the Vermont Center for Geographic Information created under 10 V.S.A. § 122 or to some other person or entity for the purpose of aggregating the information. Information so disclosed shall remain confidential.

(5) The secretary may request voluntary disclosure of information such as that set forth in subdivision (2) of this subsection regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. The secretary may enter into a nondisclosure agreement with respect to any such voluntary disclosures and the information disclosed pursuant thereto shall remain confidential.

(6) The secretary may publicly disclose aggregated information based upon the information provided pursuant to this subsection.

(7) The confidentiality requirements of subdivisions (4) and (5) of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

and by renumbering all sections to be numerically correct

Reported favorably with recommendation of amendment by Senator Cummings for the Committee on Finance.

The Committee recommends that the bill be amended as recommended by the Committee on Natural Resources and Energy, with the following amendments thereto:

First: In Sec. 1 (purpose and findings), by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) It is the purpose of this act to establish policies and programs designed to achieve statewide cellular and broadband deployment in Vermont by the end of the year 2013. Although these technologies are deployed by private sector providers, state regulation of the telecommunications industry as well as government financial assistance can have a significant impact on private sector

decisions to invest in and deploy infrastructure, particularly in underserved and unserved areas of the state. Vermont initiatives must recognize that:

(1) the availability of high-speed Internet access will spur economic growth and job creation;

(2) cellular telephone service is increasingly becoming the telephone service of choice for consumers and at the same time can serve as a lifeline for those who choose it; and

(3) the deployment of smart grid technology may facilitate the drive to expand broadband Internet access.

Second: In Sec. 6, 10 V.S.A. § 8506 (consolidated environmental appeals), in subsection (d), in the second sentence, by striking out the word "shall" and inserting in lieu thereof the word may

Third: By striking out Sec. 9 (pole attachment applications and disputes) in its entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

Sec. 9. POLE ATTACHMENTS; APPLICATIONS; DISPUTE RESOLUTION

(a) Within 90 days of the passage of this act, the public service board by order shall institute a process for the filing of applications and the rapid and binding resolution of disputes pertaining to the attachment of a wire, cable, or other facility to an electric or communications pole for the purpose of supporting a broadband, telecommunications, or cable television deployment project, including those projects funded in whole or in part under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. No. 111-5. This process shall ensure that such projects proceed in a timely and coordinated manner and shall include notice to all potentially affected persons. In issuing this order, the board shall have full authority to establish standards and procedures for the earliest feasible filing of pole attachment applications such that pole-owning utilities are able to complete their make-ready surveys and make-ready work and to establish a dispute resolution process that uses an expedited time frame and to which the contested case procedures of 3 V.S.A. chapter 25 do not apply.

(b) The process instituted by the public service board under this section shall include a more rapid time frame for dispute resolution than is currently provided under public service board rule 3.700.

(c) This section and the process instituted under it by the board shall be repealed on July 1, 2014.

Fourth: By striking out Sec. 10, 30 V.S.A. § 8092 (access to fiber on transmission and distribution poles), in its entirety and inserting in lieu thereof a new Sec. 10 to read as follows:

Sec. 10. 30 V.S.A. § 8092 is amended to read:

§ 8092. RATES; TERMS; CONDITIONS

* * *

(h)(1) A company may limit wireline attachments on electric transmission structures exclusively carrying voltages of 110 kV or higher to fiber-optic facilities attached and maintained by the company, if the company allows communications service providers to use fiber-optic facilities installed and maintained by the company and offers to install such fiber-optic facilities on such electric transmission structures where there are not sufficient facilities for use by communications service providers. Rates, terms, and conditions for access to such company-attached and company-maintained facilities shall be made available consistent with the requirements of this section.

(2) Notwithstanding any law or rule to the contrary, a company may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

* * *

(j) A company having electric transmission or distribution structures carrying voltages of 110 kV or lower may not enter into a contract with a communications service provider that provides exclusive access to its company-attached and company-maintained fiber-optic facilities by including terms that expressly prohibit any other communications service provider from leasing or purchasing unused strands of fiber. The terms and conditions of any contract entered into under this section shall include a provision specifying that, if a communications service provider leases fiber-optic capacity that is not used within 180 days of entering the lease, the lease terms and conditions relative to that unused capacity shall terminate.

Fifth: In Sec. 12, 30 V.S.A. § 227e (leasing and licensing of state land), in subsection (a), by striking out "20" and inserting in lieu thereof 25

Sixth: In Sec. 13, 30 V.S.A. § 227b (leasing and licensing of state land for wireless telecommunications), in subdivision (a)(1), by striking out "20" and inserting in lieu thereof 25

Seventh: In Sec. 15, 30 V.S.A. § 8060 (findings and purpose related to the VTA), in subsection (a), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) Private entities have brought mobile telecommunications and broadband services to many households, businesses and locations in the state~~, but significant gaps remain~~. Nevertheless, significant gaps remain in 99 target communities for broadband service, and in community hubs and along the routes which connect them for mobile telecommunications service.

Eighth: In Sec. 15, 30 V.S.A. § 8060 (findings and purpose related to the VTA), in subsection (b), by striking out subdivision (3) in its entirety and inserting in lieu thereof a new subdivision (3) to read as follows:

(3) the investment in telecommunications infrastructure in the state ~~which will support~~ that creates or completes the network for service providers to create last-mile connection to the home or business and supports the best available and economically feasible service capabilities.

Ninth: By striking out Sec. 16, 30 V.S.A. § 8061 (establishment of the VTA and organization) in its entirety and inserting in lieu thereof a new Sec. 16 to read as follows:

Sec. 16. 30 V.S.A. § 8061 is amended to read:

§ 8061. ESTABLISHMENT OF AUTHORITY; ORGANIZATION

(a) The Vermont telecommunications authority is hereby created and established as a body corporate and politic and a public instrumentality of the state. The exercise by the authority of the powers conferred upon it in this chapter constitutes the performance of essential governmental functions.

(b) The authority shall have a board of directors of ~~11~~ nine members selected as follows:

(1) The state treasurer or his or her designee;

(2) The secretary of administration or his or her designee;

(3) ~~The manager of the Vermont economic development authority or his or her designee;~~

~~(4) Two at-large members~~ One member of the house of representatives appointed by the speaker of the house~~, who may not be members of the general assembly at the time of appointment~~;

~~(5)~~(4) ~~Two at-large members~~ One member of the senate appointed by the committee on committees of the senate~~, who may not be members of the general assembly at the time of appointment~~; and

~~(6)~~(5) ~~Two~~ Five at-large members appointed by the governor, who may not be employees or officers of the state at the time of appointment~~; and~~

~~(7) Two at-large members appointed jointly by the governor, the speaker of the house, and the president pro tem of the senate, who shall be chair and vice chair of the board of directors, and who may not be members of the general assembly or employees or officers of the state at the time of appointment~~.

(c) The authority's powers are vested in the board of directors, and a quorum shall consist of ~~six~~ five members. No action of the authority shall be considered valid unless the action is supported by a majority vote of the members present and voting and then only if at least ~~five~~ four members vote in favor of the action. The governor, the speaker of the house, and the president pro tempore of the senate shall jointly select, from among the at-large members, a chair and vice chair, who may not be members of the general assembly or employees or officers of the state at the time of the appointment.

(d) In making appointments of at-large and legislative members and the chair, the appointing authorities shall give consideration to citizens of the state with knowledge of telecommunications technology, telecommunications regulatory law, transportation rights-of-way and infrastructure, finance, and environmental permitting. However, the ~~six~~ legislative and five at-large members~~, the chair, and the vice chair~~ may not be persons with a financial interest in or owners or employees of an enterprise that provides broadband or cellular service or that is seeking in-kind or financial support from the authority. ~~The six at-large members, the chair and the vice chair shall serve terms of four years beginning July 1 of the year of appointment. However, two of the at-large members first appointed by the speaker, and two of the at-large members first appointed by the committee on committees shall serve an initial term of two years. Any vacancy occurring among the at-large members, the chair or the vice chair shall be filled by the respective appointing authority and be filled for the balance of the unexpired term~~ The conflict of interest provision in this subsection shall not be construed to disqualify a member who has ownership in a mutual fund, exchange traded fund, pension plan, or similar entity that owns shares in such enterprises as part of a broadly diversified portfolio. In addition, at least one at-large member shall represent an area of Vermont determined by the authority to be unserved by broadband at the time of his or her appointment or reappointment, and at least one at-large member shall represent an area of Vermont determined by the authority to be unserved

by mobile telecommunications at the time of his or her appointment or reappointment. The legislative and at-large members shall serve terms of two years beginning February 1 in odd-numbered years, and until their successors are appointed and qualified. However, three of the five at-large members first appointed by the governor shall serve an initial term of three years. Vacancies shall be filled by the respective appointing bodies for the balance of the unexpired term. A member may be reappointed for up to three consecutive terms.

(e) The authority shall hire and employ an executive director who shall serve as the authority's chief administrative officer and shall direct and supervise the authority's administrative affairs and technical activities in accordance with any rules, regulations, and policies set forth by the authority. In addition to any other duties, the executive director shall:

(1) Attend all meetings of the authority, act as its secretary, and keep minutes of its proceedings;

(2) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems, and allowable expenses of any employee or consultant thereof and expenses incidental to the operation of the authority;

(3) Make an annual report to the authority documenting the actions of the authority and such other reports as the authority may request;

(4) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter.

(f) Except for those members otherwise regularly employed by the state, the compensation of the authority's members shall be the same as that provided by ~~subsection~~ 32 V.S.A. § 1010(a) ~~of Title 32~~. All members of the authority, including those members otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.

Tenth: By adding Sec. 16a to read as follows:

Sec. 16a. VTA BOARD; REORGANIZATION

Upon the effective date of this act, the terms of office of the existing members of the board of directors of the Vermont telecommunications authority shall terminate, and new members, for the term commencing in 2011, shall be appointed as provided in this act.

Eleventh: By striking out Sec. 17, 30 V.S.A. § 8062 (powers and duties of the VTA) in its entirety and inserting a new Sec. 17 to read as follows:

Sec. 17. 30 V.S.A. § 8062 is amended to read:

§ 8062. PURPOSE; POWERS AND DUTIES

(a) To achieve the goals under subsection 8060(b) of this title, the authority is directed:

(1) ~~from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to areas unserved, and develop and maintain an inventory of infrastructure necessary for provision of these services to the areas unserved;~~

~~(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;~~

~~(3) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;~~

~~(4) to coordinate and establish public-private partnerships to extend availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(5) to support and facilitate local initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;~~

~~(6)~~ to provide resources to local, regional, public, and private entities in the form of ~~loans,~~ grants~~,~~ and other incentives funded through bonded capital and other resources;

~~(7) to solicit and consider input from local municipal authorities, districts designated by the federal economic development administration, regional planning commissions, and metropolitan planning organizations on specific projects the authority plans to undertake;~~

~~(8)~~(2) to inventory and assess the potential to use federal radio frequency licenses held by instrumentalities of the state to enable broadband service in unserved areas of the state; take whatever steps are consistent with the powers granted the authority under this chapter to promote the use of those licensed radio frequencies for that purpose; and recommend to the general assembly any further legislative measures with respect to ownership, management, and utilization of these licenses as would promote the general good of the state; ~~and~~

~~(9) to the extent not inconsistent with the goals of this chapter, to utilize existing buildings and structures, historic or otherwise, as sites for visually neutral placement of mobile telecommunications and wireless broadband antenna facilities~~

(3) to construct and install, or cause to be constructed and installed, fiber optic and wireless infrastructure through grants to providers and through direct investments in infrastructure to be owned by the authority, in areas needed to meet the state's objectives as determined by the secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3), provided that direct investment is not undertaken in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service; and

(4) to provide technical and such other support as the secretary of administration deems necessary.

(b) The authority shall have the following powers, which shall be exercised to further the authority's purpose, and shall have all other powers necessary to carry out the duties imposed on the authority by law:

(1) to ~~establish partnerships and~~ enter into contracts with providers of telecommunications services and related facilities to serve unserved people and areas of the state; and to provide financial and other assistance to providers who agree in return to provide mobile telecommunications or broadband services to unserved people and areas of the state; and to facilitate directly or indirectly the efforts of other entities to advance the availability of mobile voice and high speed data or broadband services.

(2) to provide financial assistance in the form of ~~loans,~~ grants~~,~~ ~~guarantees, other financial instruments,~~ or, in accordance with section 8064 of this title, to issue bonds backed by project revenues, the state~~,~~ or its political subdivisions~~,~~ or both~~,~~ for the purpose of building infrastructure capable of delivering mobile telecommunications and broadband services to all Vermonters;

(3) to consult, contract, or partner with the Vermont economic development authority and the Vermont municipal bond bank to provide financial assistance for purposes authorized by this chapter;

~~(4) to coordinate access to and pursue regional and local revolving loan funding and all state, federal, and private funding that is available for telecommunications infrastructure, including financial assistance that may be available to rural economic area partnership (REAP) zones, as designated by the U.S. Department of Agriculture and to contract with financial assistance providers;~~

~~(5)~~(4) to receive and accept grants, gifts, loans, or contributions from any source subject to the provisions of 32 V.S.A. § 5~~.~~;

~~(6)~~(5) to incorporate one or more nonprofit corporations in Vermont to fulfill the goals of this chapter. Such corporations shall be empowered to borrow money and to receive and accept gifts, grants, or contributions from any source, subject to the provisions of 32 V.S.A. § 5, subject to the limitations imposed by law on the authority. The board of directors of any nonprofit corporation created under this subsection shall be the board of directors of the authority. The corporation shall be organized and operate under the nonprofit corporation laws of the state of Vermont. The authority may contract with the corporation to provide staff and management needs of the corporation;

~~(7) to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;~~

~~(8)~~(6) to construct, install, own, acquire, sell, trade, and lease equipment, facilities, and other infrastructure that could be accessed and used by multiple service providers, the state and local governments, including fiber optic cables, towers, shelters, easements, rights of way, and wireless spectrum of frequencies; provided that any agreement by the authority to sell infrastructure that is capable of use by more than one service provider shall contain conditions that will ensure continued shared use or co-location at reasonable rates, and provided that the proposed activity will not be in areas served by existing providers with comparable levels of broadband quality and speed or mobile telecommunications service;

~~(9) in collaboration with the Vermont municipal bond bank, to act as agent and advisor for municipalities that wish to offer municipally backed financial assistance, consistent with chapter 53 of Title 24, to develop telecommunications infrastructure or services in their communities;~~

~~(10)~~(7) to apply for and obtain required permits for the construction of telecommunications infrastructure;

~~(11)~~(8) in collaboration with the agency of administration, to lead the ~~management of~~ marketing of state properties to encourage and expedite collocation of infrastructure;

~~(12)~~(9) to consult with agencies and departments on establishing charges or payments for use by wireless telecommunications and broadband service providers of state property, easements, and rights-of-way to the extent such charges or payments are required by law, and establish the criteria for waiver

of such charges or payments when providers offer to furnish comparable value to the state to meet the public good;

~~(13)~~(10) to sue and be sued in its own name and plead and be impleaded;

~~(14)~~(11) to administer its own funds and to invest or deposit funds which are not needed currently to meet the obligations of the authority; ~~and~~

~~(15)~~(12) to borrow money and give other evidence of indebtedness or obligations and security consistent with the authority's purpose and needs; and

(13) to pursue route and site identification for fiber optic and wireless infrastructure.

(c) Nothing in this chapter shall be construed to grant power to the authority to offer the sale of telecommunications services to the public.

Twelfth: By striking out Sec. 18, 30 V.S.A. § 8063 (interagency cooperation and assistance), in its entirety and inserting in lieu thereof a new Sec. 18 to read as follows:

Sec. 18. 30 V.S.A. § 8063 is amended to read:

§ 8063. INTERAGENCY COOPERATION AND ASSISTANCE

(a) Other departments and agencies of state government shall assist and cooperate with the authority and shall make available to it information and data as needed to assist the authority in carrying out its duties. The secretary of administration shall establish protocols and agreements among the authority and departments and agencies of the state for this purpose. Nothing in this section shall be construed to waive any privilege or protection otherwise afforded to the data and information under exemptions to the public records act or under other laws due solely to the fact that the information or data is shared with the authority pursuant to this section.

(b) ~~With the consent of the governor, and under terms and conditions of transfer approved by the governor, a state agency shall transfer ownership and control to the authority of the agency's interest in any telecommunications facility designated by the authority as appropriate to assist the authority in meeting its statutory purposes. "Telecommunications facility" includes antennae, towers and other support structures, wires and cables, and other equipment.~~

~~(c) To the extent that the authority issues loans, it shall consult with the Vermont economic development authority to ensure that the lending activities and programs of each are coordinated and are not in competition. The authority shall, through contract or agreement, engage the assistance of the~~

~~Vermont economic development authority in planning and administering lending activities and in evaluating credit worthiness of the borrower for purposes of this chapter.~~

~~(d) The authority shall also strive to identify, consult with, and coordinate lending programs with the administrators of local and regional revolving loan funds in order to leverage the lending capacity of the authority and the regional and local funds, and to ensure that the lending activities of the authority and the revolving loan funds are not in competition.~~

~~(e)~~ No instrumentality of the state shall sell, lease, or otherwise divest itself of ownership or control of radio frequency spectrum without prior notice to and approval of the ~~authority~~ general assembly.

Thirteenth: By striking out Sec. 19, 30 V.S.A. § 8071 (annual reports and audit), in its entirety and inserting in lieu thereof a new Sec. 19 to read as follows:

Sec. 19. 30 V.S.A. § 8071 is amended to read:

§ 8071. QUARTERLY AND ANNUAL REPORTS; AUDIT

(a) On or before the last day of January of each calendar year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. Each report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants; the cost shall be considered an expense of the authority and a copy shall be filed with the state treasurer. Audits performed by a public accountant under this section shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report on internal control over financial reporting that shall be provided to recipients of the financial statements.

(b) The auditor of accounts of the state and his or her duly authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, sinking funds, investments, and any other matters relating to its financial statements.

(c) Quarterly Reports. Within 30 days of the end of each quarter, the authority shall, in addition to any other reports required under this section, submit a report of its activities for the preceding quarter to the secretary of administration which shall include the following:

(1) A description of all authority activities to develop or facilitate development of telecommunications infrastructure that furthers the objectives of this chapter.

(2) Financial statements of the authority, a summary of expenditures by the authority since inception, and a forecast of expenditures.

(3) A summary of any financial commitments made by the authority.

(4) A list and summary of all contracts and agreements entered into by the authority, and a list and summary of any rail right-of-way agreements entered into by the authority, including any waivers of charges for comparable value to the state granted under 19 V.S.A. § 26a.

(5) A current business plan for the authority, including an explanation of significant changes subsequent to the most recent previous report.

(6) Identification of the impact of its activity on existing business providers and efforts taken by the authority to avoid direct or indirect competition with existing providers.

(d) The authority shall include in the annual report required under subsection (a) of this section a summary of all the information quarterly reported to the secretary of administration under subsection (c) of this section, as well as a summary of any and all instances in which service providers that have entered into contracts or binding commitments with the authority have materially defaulted, been unable to fulfill their commitments, or have requested or been granted relief from contractual or binding commitments.

Fourteenth: By striking out Sec. 21, 30 V.S.A. § 8078 (competitive process for proposals), in its entirety and inserting in lieu thereof a new Sec. 21 to read as follows:

Sec. 21. 30 V.S.A. § 8078 is amended to read:

§ 8078. SELECTION OF PROPOSALS TO PROVIDE COMPETITIVE PROCESS

(a) Broadband service; competitive process.

(1) For the purposes of this chapter, a premise is "served" with broadband service if it has access to mass-market broadband services meeting the minimum technical characteristics identified pursuant to section 8077 of this title. For the purposes of this chapter, with respect to broadband service, "unserved area" shall mean a contiguous geographic area of the state, without regard to municipal boundaries or size of geographic area, which contains premises that can obtain basic telephone service but are not served.

(2) ~~By not later than December 1, 2007, the authority shall identify all served and unserved areas within the state. The authority may rely on readily and publicly available information to estimate the extent of these areas.~~

~~(3)~~ The authority shall seek to enable the development of networks and telecommunications infrastructure necessary to support provision of mass-market broadband services, in all unserved areas of the state, which meet or exceed the minimum technical characteristics identified pursuant to section 8077 of this title.

~~(4)~~(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate unserved areas by the end of the year ~~2010~~ 2013 through the development of telecommunications facilities or through binding commitments from service providers to offer broadband service to all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. The authority shall solicit and accept broadband service expansion commitments in a manner that allows small locally based broadband providers a reasonable opportunity to contribute toward realization of the policy objectives of this chapter. In evaluating proposals, the authority shall consider:

(A) the proposed data transfer rates and other data transmission characteristics of services which would be available to consumers;

(B) the price to consumers of services;

(C) the proposed cost to consumers of any new construction, equipment installation service, or facility required to obtain service;

(D) whether the proposal would utilize the best available technology which is economically feasible; ~~and~~

(E) the ability to achieve the authority's objectives in the most cost-effective manner; and

(F) the availability of service of comparable quality and speed.

~~(5)~~(4) The authority may support or undertake projects that enable provision of broadband service in geographic areas currently served; provided that:

(A) such projects are the most cost-effective method for providing broadband services in nearby unserved areas; and

(B) before undertaking such projects, the authority makes reasonable effort to distinguish served areas and populations from unserved areas and populations within the geographic area that the project would serve, including recognition and consideration of known or probable service extensions or upgrades.

(b) Commercial mobile radio (cellular) service, competitive process.

(1) The authority shall seek to eliminate areas without access to commercial mobile radio service licensed by the Federal Communications Commission by ~~2010~~ the end of the year 2013 through the construction of facilities and binding commitments from commercial mobile radio service providers.

(2) The authority shall seek to expand access to all services that utilize the technical standards which are commonly in use for providing voice and data services through commercial mobile radio service.

(3) The authority shall establish and utilize an open and competitive process to solicit proposals to eliminate areas without coverage from a provider of commercial mobile radio services within the state of Vermont by ~~2010~~ the end of the year 2013 through the development of telecommunications facilities and through binding commitments from service providers to expand service, including all unserved areas in a given region. For the purposes of this process, the authority may divide the state into one or more regions. The authority shall undertake substantial efforts to complete the process of competitively soliciting proposals by ~~January 31, 2008~~ June 30, 2012. In evaluating proposals, the authority shall consider the extent to which a proposal meets coverage objectives while limiting environmental impact and providing opportunities for future development of wireless communications services.

Fifteenth: By striking out Sec. 22, 30 V.S.A. § 8079 (broadband infrastructure investment), in its entirety and inserting in lieu thereof a new Sec. 22 to read as follows:

Sec. 22. 30 V.S.A. § 8079 is amended to read:

§ 8079. BROADBAND INFRASTRUCTURE; INVESTMENT

(a) To achieve the goals established in subsection 8060(b) of this title, the authority is authorized to invest in broadband infrastructure or contract with retail providers for the purpose of making services available to ~~at least 10,000~~ households or businesses in target communities where such services are currently unavailable or to upgrade services in underserved business districts, as determined by the ~~authority. For the purposes of this section, target communities shall not be considered unserved if a broadband provider has a legally binding commitment to provide service to those locations or a provider has received a broadband stimulus grant to provide service to those locations~~ secretary of administration in the action plan developed under 3 V.S.A. § 2222b(b)(3).

(b) To accomplish the purpose of this section, the authority shall publish a request for proposals for all of the following options for the purpose of providing broadband coverage to 100 percent of Vermont households and businesses within target communities: (1) the construction of physical broadband infrastructure, to be owned by the authority; or (2) ~~initiatives by public-private partnerships or retail vendors; or (3)~~ programs that provide financial incentives to consumers~~, in the form of rebates for up to 18 months, for example, to ensure that providers have a sufficient number of subscribers~~ or providers. The authority shall select proposals for target communities that best achieve the objective stated in subsection (a) of this section, consistent with the criteria listed in subsections (c) and (d) of this section.

(c) Criteria. Any request for proposals developed under this section shall include the following requirements:

(1) The technology and infrastructure used by a telecommunications provider participating in a project pursuant to this section shall support the delivery of services with an upload speed of at least one megabit per second, and combined download and upload speeds equal to or greater than five megabits per second. However, the Vermont telecommunications authority may waive the one megabit upload speed requirement if it determines this is in the best interest of the consumers.

(2) Infrastructure owned and leased by the authority shall be available for use by as many telecommunication providers as the technology will permit to avoid the state from establishing a monopoly service territory for one provider.

(d) The authority shall review proposals and award contracts based upon the price, quality of services offered, positive experience with infrastructure maintenance, retail service delivery, and other factors determined to be in the public interest by the authority. In selecting target communities, the authority shall consider to the extent possible:

(1) the proportion of homes and businesses in those communities without access to broadband service and without access to broadband service meeting the minimum technical service characteristic objectives established under section 8077 of this title;

(2) the level of adoption of broadband service by residential and business users within the community;

(3) opportunities to leverage or support other sources of federal, state, or local funding for the expansion or adoption of broadband service;

(4) the number of potential new subscribers in each community and the total level of funding available for the program;

(5) the geographic location of selected communities and whether new target communities would further the goal of bringing broadband service to all regions of the state; ~~and~~

(6) pending grant and loan applications for the expansion of broadband service filed with the U.S. Department of Commerce and with the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, ~~which will be awarded no later than October 1, 2010~~ or any other federally funded programs that may exist to support telecommunications; and

(7) the action plan prepared by the secretary of administration under 3 V.S.A. § 2222b(b)(3).

~~(e) To the extent any funds appropriated by the general assembly are rendered unnecessary for the purpose of reaching unserved Vermonters due to a successful application to the broadband initiatives program under the Rural Utilities Service of the U.S. Department of Agriculture, such funds shall be placed in reserve by the authority to be used first to achieve 100 percent coverage pursuant to this chapter and, once that is achieved, to then deliver fiber-quality service to Vermont's public facilities, regional business hubs, and anchor businesses and institutions.~~

~~(f) Beginning July 1, 2010, the authority may invest up to $500,000.00 for upgrades in broadband services in underserved business districts, as defined by the authority.~~

Sixteenth: By adding Sec. 22a to read as follows:

Sec. 22a. 3 V.S.A. § 2222b is added to read:

§ 2222b. TELECOMMUNICATIONS; COORDINATION AND PLANNING

(a) The secretary of administration or designee shall be responsible for the coordination of telecommunications initiatives among executive branch agencies, departments, and offices.

(b) In furtherance of the goals set forth in 30 V.S.A. § 8060(b), the secretary shall have the following duties:

(1) from information reasonably available after public notice to and written requests made of mobile telecommunications and broadband service providers, to develop and maintain an inventory of locations at which mobile telecommunications and broadband services are not available within the state, develop and maintain an inventory of infrastructure that is available or reasonably likely to be available to support provision of services to unserved

areas, and develop and maintain an inventory of infrastructure necessary for provision of these services to the unserved areas;

(2) to identify the types and locations of infrastructure and services needed to accomplish the goals of this chapter;

(3) to formulate an action plan to accomplish the goals of universal availability of broadband and mobile telecommunications services by the end of the year 2013;

(4) to coordinate the agencies of the state to make public resources available to support the extension of mobile telecommunications and broadband infrastructure and services to all unserved areas;

(5) to support and facilitate initiatives to extend the availability of mobile telecommunications and broadband services, and to promote development of the infrastructure that enables the provision of these services;

(6) through the department of innovation and information, to aggregate and broker access at reduced prices to services and facilities required to provide wireless telecommunications and broadband services; and to waive or reduce state fees for access to state-owned rights-of-way in exchange for comparable value to the state, unless payment for use is otherwise required by federal law;

(7) to review all financial transactions, statements, and contracts of the Vermont telecommunications authority established under 30 V.S.A. § 8061; and

(8) to receive all technical and administrative assistance as deemed necessary by the secretary of administration.

(c) Deployment tracking.

(1) Not later than 30 days after the effective date of this act, all persons proposing to construct or install Vermont cables, wires, or telecommunications facilities as defined in 30 V.S.A. § 248a(b)(1) shall file plans with the secretary if the construction or installation relates to the deployment of broadband infrastructure and is funded in whole or in part pursuant to the American Recovery and Reinvestment Act of 2009, Pub.L. No. 111-5, or by funds granted or loaned by the state of Vermont or one of its instrumentalities.

(2) The plans filed pursuant to subdivision (1) of this subsection shall include data identifying the projected coverage area, the projected average speed of service, service type, and the anticipated date of completion in addition to identifying the location and routes of proposed cables, wires, and telecommunications facilities, and shall be updated every 90 days.

(3) The secretary shall use the information provided pursuant to this subsection in performing the duties set forth in subsection (b) of this section.

(4) The secretary shall keep confidential the plans submitted to it under this subsection except that, pursuant to a nondisclosure agreement, the secretary may disclose the information to the Vermont Center for Geographic Information created under 10 V.S.A. § 122 or to some other person or entity for the purpose of aggregating the information. Information so disclosed shall remain confidential.

(5) The secretary may request voluntary disclosure of information such as that set forth in subdivision (2) of this subsection regarding deployment of broadband, telecommunications facilities, or advanced metering infrastructure that is not publicly funded. The secretary may enter into a nondisclosure agreement with respect to any such voluntary disclosures, and the information disclosed pursuant thereto shall remain confidential.

(6) The secretary may publicly disclose aggregated information based upon the information provided pursuant to this subsection.

(7) The confidentiality requirements of subdivisions (4) and (5) of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Seventeenth: By striking out Sec. 23 (relating to a smart grid coordinator) in its entirety

Eighteenth: In Sec. 24 (relating to the satellite grant program), in subsection (c), by striking out the words "telecommunications division" in their entirety and inserting in lieu thereof Vermont telecommunications authority

Nineteenth: By striking out Sec. 25 (relating to JFC approval of VTA contracts and expenditures) in its entirety

and by renumbering the remaining sections to be numerically correct

and that after passage the title of the bill be amended to read: "An act relating to the advancement of cellular, broadband, and other technology infrastructure in Vermont"

(Committee vote: 5-2-0)

S. 86.

An act relating to requiring that postretirement adjustments to retirement allowances be made pursuant to the Northeast Region Consumer Price Index.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 470 is amended to read:

§ 470. ~~POST-RETIREMENT~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

* * *

(c) For purposes of this section, Consumer Price Index shall mean the Northeast Region Consumer Price Index for all urban consumers, designated as "CPI-U," in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

* * *

Sec. 2. 16 V.S.A. § 1949 is amended to read:

§ 1949. ~~POST-RETIREMENT~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

* * *

(c) For the purposes of this section, "consumer price index" shall mean the northeast region consumer price index for all urban consumers, designated as "CPI-U," in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

* * *

Sec. 3. 24 V.S.A. § 5067 is amended to read:

§ 5067. ~~COST OF LIVING~~ POSTRETIREMENT ADJUSTMENTS TO RETIREMENT ALLOWANCES

* * *

(b) For purposes of this section, Consumer Price Index shall mean the Northeast Region Consumer Price Index for all urban consumers, designated as "CPI-U," in the northeast region, as published by the United States Department of Labor, Bureau of Labor Statistics.

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2011, with determinations for cost-of-living adjustments as required by 3 V.S.A. § 470, 16 V.S.A. § 1949,

and 24 V.S.A. § 5067 being made on January 1, 2012 pursuant to the Northeast Region Consumer Price Index as of June 30, 2011.

(Committee vote: 5-0-0)

S. 90.

An act relating to respectful language in state statutes in referring to people with disabilities .

Reported favorably with recommendation of amendment by Senator Pollina for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. RESPECTFUL LANGUAGE STUDY

(a) The agency of human services shall convene a working group to propose guidelines for using respectful language when referring to people with disabilities. In convening the working group, the agency shall invite the participation of two representatives from the Vermont coalition for disability rights, two representatives from Green Mountain self-advocates, one representative from the Vermont center for independent living, one representative from Vermont psychiatric survivors, one representative from the human rights commission, and two people appointed by the governor, at least one of whom shall be a high school student. In preparing its recommendations, the working group shall:

(1) identify words that should not be used in Vermont statutes and suggest in their place words that reflect positive views of people with disabilities;

(2) avoid using any language that changes the meaning or intent of state statutes;

(3) identify specific statutes that should be addressed by the general assembly;

(4) select wording that does not conflict with federal law; and

(5) develop guidelines to support state government agencies and departments to use respectful language in all areas of conducting business.

(b) By November 1, 2011, the working group shall report to the house committee on government operations and the senate committee on government operations the group's findings and recommendations, including any recommended legislation to address its findings and recommendations.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

Favorable with Proposal of Amendment

H. 275.

An act relating to the recently deployed veteran tax credit.

Reported favorably with recommendation of proposal of amendment by Senator McCormack for the Committee on Finance.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out subsection (b) in its entirety, and by redesignating subsections (c)–(e) as (b)–(d)

Second: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, in redesignated (b), after the word "hire" by striking out the words ", or in the tax year following the date that the start-up business was created,"

Third: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out redesignated (c)(3)(C) in its entirety

Fourth: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out redesignated (c)(4) in its entirety

Fifth: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, in redesignated (d)(3), after the word "compliance" by striking out the words ", or in the case of a credit under subsection (b) of this section, a recently deployed veteran's compliance,"

Sixth: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, in redesignated (d), by striking out "and" at the end of subdivision (4), and by striking the period at the end of subdivision (5) and inserting in lieu thereof the following: ; and, and by adding a subdivision (6) to read as follows:

(6) engage in efforts to promote the hiring of recently deployed veterans through the hiring practices of the state of Vermont.

Seventh: By striking out Sec. 2 (Effective Date) in its entirety and inserting in lieu thereof a new Sec. 2 to read as follows:

Sec. 2. APPROPRIATION

To the extent that the July 2011 official revenue forecast is increased by up to $560,000.00, the amount of the increase up to $560,000.00 is appropriated from the general fund to the military department for the purpose of continuing

Vermont national guard outreach services in Vermont that are currently supported by funds from the United States Department of Defense.

Eighth: By adding a Sec. 3 to read as follows:

Sec. 3. ADEQUATE OUTREACH FUNDING

Prior to September 30, 2011, the adjutant general shall report to the joint fiscal committee regarding the status of federal funding for Vermont national guard outreach services in Vermont. If the adjutant general reports that federal funding for the Vermont national guard outreach services in Vermont is restored for federal fiscal year 2012 at or above the funding levels for federal fiscal year 2011 or at levels sufficient to continue the program, then notwithstanding any language in Sec. 2 of this act, all funds appropriated under Sec. 2 shall be deposited in the general fund.

Ninth: By adding a Sec. 4 to read as follows:

Sec. 4. EFFECTIVE DATES

(a) Secs. 1, 3, and this section of this act shall take effect on passage.

(b) Sec. 2 shall take effect on September 30, 2011.

(Committee vote: 7-0-0)

(For House amendments, see House Journal for March 24, 2011, page 344; March 25, 2011, 358.)

ORDERED TO LIE

S. 38.

An act relating to the Uniform Collateral Consequences of Conviction Act.

PENDING ACTION: Third Reading

H. 46.

An act relating to youth athletes with concussions participating in athletic activities.

PENDING QUESTION: Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Education?

(For text of Report of the Committee on Education, see Senate Journal for March 29, 2011, page 309)

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the

Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Kate Duffy of Williston – Commissioner of the Department of Human Resources– By Sen. Flory for the Committee on Government Operations. (1/25/11)

Jim Reardon of Essex Junction – Commissioner of the Department of Finance and Management – By Sen. White for the Committee on Government Operations. (1/28/11)

Chuck Ross of Hinesburg – Secretary of the Agency of Agriculture – By Sen. Kittell for the Committee on Agriculture. (1/28/11)

Robert D. Ide of Peacham – Commissioner of the Department of Motor Vehicles – By Sen. Kitchel for the Committee on Transportation. (1/28/11)

Jeb Spaulding of Montpelier – Secretary of the Agency of Administration – By Sen. Pollina for the Committee on Government Operations. (1/28/11)

Mary Peterson of Williston – Commissioner of the Department of Taxes – By Sen. Westman for the Committee on Finance. (1/28/11)

Steve Kimbell of Tunbridge – Commissioner of the Department of Banking, Insurance, Securities and Health Care Administration – By Sen. Cummings for the Committee on Finance. (1/28/11)

Brian Searles of Burlington – Secretary of the Agency of Transportation – By Sen. Mazza for the Committee on Transportation. (2/1/11)

Bruce Post of Essex Junction – Member of the Board of Libraries – By Sen. Baruth for the Committee on Education. (2/4/11)

Jason Gibbs of Duxbury – Member of the Community High School of Vermont Board – By Sen. Doyle for the Committee on Education. (2/15/11)

John Fitzhugh of West Berlin – Member of the Board of Libraries – By Sen. Doyle for the Committee on Education. (2/15/11)

Susan Wehry of Burlington – Commissioner of the Department of Disabilities, Aging and Independent Living – By Sen. Pollina for the Committee on Health and Welfare. (2/15/11)

Dave Yacavone of Morrisville – Commissioner of the Department of Children and Families – By Sen. Fox for the Committee on Health and

Welfare. (2/15/11)

Christine Oliver of Montpelier – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/15/11)

Doug Racine of Richmond – Secretary of the Agency of Human Services – By Sen. Ayer for the Committee on Health and Welfare. (2/15/11)

Michael Obuchowski of Montpelier – Commissioner of the Department of Buildings and General Services – By Sen. Hartwell for the Committee on Institutions. (2/17/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Susan Besio of Jericho – Commissioner of the Department of Vermont Health Access – By Sen. Miller for the Committee on Health and Welfare. (2/18/11)

Harry Chen of Mendon – Commissioner of the Department of Health – By Sen. Mullin for the Committee on Health and Welfare. (2/18/11)

Andrew Pallito of Jericho – Commissioner of the Department of Corrections – By Sen. Hartwell for the Committee on Institutions. (2/18/11)

Keith Flynn of Derby Line – Commissioner of the Department of Public Safety – By Sen. Flory for the Committee on Transportation. (2/22/11)

Elizabeth Strano of Bennington – Member of the State Board of Education – By Sen. Baruth for the Committee on Education. (2/24/11)

Amy W. Grillo of Dummerston – Member of the Community High School of Vermont Board – By Sen. Baruth for the Committee on Education. (2/24/11)

Deb Markowitz of Montpelier – Secretary of the Agency of Natural Resources – By Sen. Lyons for the Committee on Natural Resources and Energy. (3/17/11)

David Mears of Montpelier – Commissioner of the Department of Environmental Conservation – By Sen. Brock for the Committee on Natural Resources and Energy. (3/23/11)

Michael Snyder of Stowe – Commissioner of the Department of Forests, Parks and Recreation – By Sen. MacDonald for the Committee on Natural Resources and Energy. (3/23/11)

Annie Noonan of Montpelier – Commissioner of the Department of Labor –

By Sen. Doyle for the Committee on Economic Development, Housing and General Affairs. (3/28/11)

Patrick Berry of Middlebury – Commissioner of the Department of Fish and Wildlife – By Sen. McCormack for the Committee on Natural Resources and Energy. (3/28/11)

Kathryn T. Boardman of Shelburne of Shelburne – Director of the Vermont Municipal Bond Bank – By Sen. Ashe for the Committee on Finance. (3/29/11)

David R. Coates of Colchester – Director of the Vermont Municipal Bond Bank – By Sen. Fox for the Committee on Finance. (3/29/11)

Thomas Pelletier of Montpelier – Member of the Vermont Housing Finance Agency – By Sen. Cummings for the Committee on Finance. (3/29/11)

PUBLIC HEARINGS

Thursday, April 7, 2011 – Room 11 – 6:00-8:00 P.M. – Re: S. 57 – Health reform bill, business and provider hearing – Senate Committee on Health and Welfare.