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ACTION CALENDAR

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Third Reading

H. 275.

An act relating to the recently deployed veteran tax credit.

AMENDMENT TO H. 275 TO BE OFFERED BY SENATOR GALBRAITH BEFORE THIRD READING

Senator Galbraith moves to amend the bill as follows

First: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read:

(a) A recently deployed veteran shall be eligible for a refundable credit against the income tax liability imposed under this chapter in an amount up to $2,000.00 for unreimbursed expenses related to education or job-related training received from an accredited postsecondary school, a postsecondary school licensed or approved by a Vermont occupational licensing board, or a non-degree-granting or non-credit-granting postsecondary vocational school approved or recognized by the department of labor; provided, however, that to be eligible for the credit, the expense shall be incurred after the date of enactment of this act but before December 31, 2012.

Second: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, subsection (b), by striking out the words "new full-time employee's date of hire and may be carried forward one year" and inserting in lieu thereof the words date the expense was incurred

Third: In Sec. 1, 32 V.S.A. chapter 151, subchapter 11N, § 5930nn, by striking out subsection (c) in its entirety and inserting in lieu thereof a new subsection (c) to read:

(c) "Recently deployed veteran" means an individual who:

(1)(A) was a resident of Vermont at the time of entry into military service; or

(B) was mobilized to active federal military service while a member of the Vermont National Guard or other reserve unit located in Vermont, regardless of the resident's home of record;

(2) received an honorable or general discharge from active federal military service within the two-year period preceding the date of incurring the expense related to the credit; and

(3) at the time of incurring the expense related to the credit:

(A) is collecting or eligible to collect unemployment benefits; or

(B) has exhausted his or her unemployment benefits.

UNFINISHED BUSINESS OF MONDAY, APRIL 18, 2011

Committee Bill for Second Reading

S. 98.

An act relating to authorizing owner-financed property sales.

By the Committee on Economic Development, Housing and General Affairs.

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 6-0-1)

AMENDMENT TO S. 98 TO BE OFFERED BY SENATOR ILLUZZI

Senator Illuzzi moves to amend the bill by adding a new Sec. 1 to read as follows:

Sec. 1. FINDINGS AND PURPOSE

(1) During the 2009 legislative session Vermont enacted Act 29 to bring Vermont law and the License Lender Statue (8 VSA Chapter 73) into compliance with the mandates of the federal Secure and Fair Enforcement for Mortgage Licensing Act (the "SAFE Act"). The SAFE Act addressed issues related to residential mortgage loans.

(2) The general assembly finds that there remains confusion and misunderstanding regarding seller financing of property other than residential real estate. Act 29 did not alter Chapter 73 as it relates to seller financing of property other than residential real estate. This act clarifies that a seller of real estate, other than residential real estate, may finance the sale of his or her real estate without obtaining a license under Chapter 73. The financing of residential real estate, however, remains subject to the licensing requirements and the limited exemptions found in Chapter 73.

(3) The general assembly finds that there remains confusion and misunderstanding about the exemption for loans between immediate family members. Act 29 provided an exemption from licensing for residential mortgage loans between immediate family members. It appears that some

have interpreted Chapter 73 to only permit "residential mortgage loans" between immediate family members. This act clarifies that any loan between immediate family members, regardless of whether it is a residential mortgage loan, car loan, school loan, or any other type of loan, is exempt from the licensing requirements of Chapter 73.

(4) The general assembly finds that it is appropriate to expand the definition of "immediate family member" to include former spouses, step-grandparents, and step-grandchildren. The general assembly finds that the distinction between "spouse" and "former spouse" in a divorce proceeding and property settlement may simply be a matter of timing. Thus, it is appropriate to exempt licensing requirements for loans between former spouses in order to facilitate property settlements in divorce proceedings. The general assembly also finds that including "step-grandparents" and "step-grandchildren" in the definition of "immediate family member" is consistent with the current definition that already includes "stepparents", "stepchildren", and stepsiblings" and completes the step-family relationship.

(5) The general assembly believes that this act is consistent with the mandates of the SAFE Act and with the current interpretive guidance issued by the U.S. Department of Housing and Urban Development ("HUD"). The general assembly understands that HUD has been given interpretive authority for the SAFE Act and that HUD is in the process of publishing SAFE Act rules. In the event any of the provisions of this act are inconsistent with HUD's final SAFE Act rules, the general assembly understands that it will have a reasonable period of time to review the final SAFE Act rules and to amend Chapter 73 accordingly.

And by renumbering the remaining sections to be numerically correct.

S. 104.

An act relating to modifications to the ban on gifts by manufacturers of prescribed products.

(By the Committee on Health and Welfare)

Reported favorably by Senator Fox for the committee on Finance.

(Committee vote: 6-0-1)

Second Reading

Favorable

H. 11.

An act relating to the discharge of pharmaceutical waste to state waters.

Reported favorably by Senator Benning for the Committee on Natural Resources and Energy.

(Committee vote: 5-0-0)

(For House amendments, see House Journal of March 16, 2011, page 403.)

UNFINISHED BUSINESS OF WEDNESDAY, APRIL 13, 2011

Favorable with Proposal of Amendment

H. 26.

An act relating to limiting the application of fertilizer containing phosphorus or nitrogen to nonagricultural turf.

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

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

Sec. 1. 10 V.S.A. § 1266b is added to read:

§ 1266b. APPLICATION OF PHOSPHORUS FERTILIZER

(a) Definitions. As used in this section:

(1) "Compost" means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(2) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363(5).

(3) "Impervious surface" means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(4) "Manipulated animal or vegetable manure" means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) "Phosphorus fertilizer" means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that "phosphorus fertilizer" shall not include compost or manipulated animal or vegetable manure.

(6)(A) "Turf" means land planted in closely mowed, managed grasses,

including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) "Turf" shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or

(ii) private and public golf courses.

(7) "Water" or "water of the state" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the state or any portion of it.

(b) Application of phosphorus fertilizer.

(1) No person shall apply phosphorus fertilizer to turf except for:

(A) phosphorus fertilizer necessary for application to turf that is deficient in phosphorus as shown by a soil test performed no more than 18 months before the application of the fertilizer; or

(B) phosphorus fertilizer that is labeled as starter fertilizer and that is intended for application to turf when a property owner or an agent of a property owner is first establishing grass in turf via seed or sod procedures and the application of starter fertilizer is limited to the first growing season.

(2) On or before October 1, 2011, the secretary of agriculture, food and markets, after consultation with the University of Vermont, shall approve a standard, which may authorize multiple testing methods, for the soil test required under subdivision (1)(A) of this subsection.

(c) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer:

(1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application. This subdivision shall not apply to activities regulated under the accepted agricultural practices as those practices are defined by the secretary of agriculture, food and markets under 6 V.S.A. § 4810;

(2) to turf before April 1 or after October 15 in any calendar year or at any time when the ground is frozen; or

(3) to turf within 25 feet of a water of the state.

(d) Retail display of phosphorus fertilizer. If a retailer sells or offers for sale phosphorus fertilizer to consumers and consumers have direct access to the phosphorus fertilizer, the retailer shall:

(1) In the retail area where phosphorus fertilizer is accessible by a consumer, display nonphosphorus fertilizer separately from phosphorus fertilizer; and

(2) Post in the retail location, if any, where phosphorus fertilizer is accessible by the consumer a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test."

(e) Violations. A person who knowingly and intentionally violates this section shall be subject to a civil penalty of not more than $500.00 per violation. A violation of this section shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by the agency of agriculture, food and markets or the agency of natural resources.

Sec. 2. 6 V.S.A. § 381 is added to read:

§ 381. GOLF COURSES; NUTRIENT MANAGEMENT PLAN

Beginning July 1, 2012, as a condition of the permit issued to golf courses under chapter 87 of this title and regulations adopted thereunder, a golf course shall be required to submit to the secretary of agriculture, food and markets a nutrient management plan for the use and application of fertilizer to grasses or other lands owned or controlled by the golf course. The nutrient management plan shall ensure that the golf course applies fertilizer according to the agronomic rates for the site-specific conditions of the golf course.

Sec. 3. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

(1) Traffic violations alleged to have been committed on or after July 1, 1990.

(2) Civil ordinance violations alleged to have been committed on or after July 1, 1994.

(3) Minor fish and wildlife violations alleged to have been committed on or after September 1, 1996.

* * *

(21) Violations of 13 V.S.A. §§ 3602 and 3603, relating to the unlawful cutting of trees and the marking of harvest units.

(22) Violations of 10 V.S.A. § 1266b, relating to the application of fertilizer to nonagricultural turf.

(c) The judicial bureau shall not have jurisdiction over municipal parking violations.

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except:

(1) Municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to 24 V.S.A. § 1979. For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.

(2) The agency of natural resources and the natural resources board shall include full and waiver penalties in each rule that is adopted under 10 V.S.A. § 8019. For purposes of environmental violations, the issuing entity shall indicate the appropriate full and waiver penalties on the complaint.

Sec. 4. Sec. E.700.1 of Act No. 1 2009 Special Sess. is amended to read:

Sec. E.700.1 REPORT AND RULEMAKING ON WATER MANAGEMENT TYPING FOR THE WHITE RIVER BASIN AND THE WEST, WILLIAMS, AND SAXONS RIVER BASIN

(a) On or before January 31, 2011, the Two Rivers Ottauquechee Regional Commission and the Windham Regional Commission shall submit to the agency of natural resources and the natural resources board the recommended water management type designations required under Sec. E.700(a)(1) and (2) of this act. Upon receipt of the recommended water management type designations required under this section, the agency of natural resources shall post the recommended water management type designations to its website and shall make the recommendations available to any person upon request.

(b) ~~Within three months of receipt of the recommended water management type designations under this section, the~~ The natural resources board shall initiate rulemaking to amend the water management types in order to consider the recommended water management type designations for the White River basin and the West, Williams and Saxons River basin.

Sec. 5. EFFECTIVE DATE

(a) This section and Sec. 4 (water management typing) of this act shall take effect on passage.

(b) Secs. 1 (application of fertilizer), 2 (golf course management plans) and

3 (judicial bureau offense) of this act shall take effect on January 1, 2012.

And, after passage, by amending the title to read:

An act relating to the application of phosphorus fertilizer to nonagricultural turf.

(Committee vote: 5-0-0)

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

(For House amendments, see House Journal for February 23, 2011, page 327; February 24, 2011, page 340.)

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

Favorable with Proposal of Amendment

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?

(Text of Report of the Committee on Education)

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

First: In Sec. 2, 16 V.S.A. § 1431(a)(4)(D) at the end of the subparagraph by striking out the word "or" and in subparagraph (E) at the end of the subparagraph before the period by inserting the following: ; or

(F) a chiropractor licensed pursuant to chapter 10 of Title 26

Second: In Sec. 2, 16 V.S.A. § 1431(b) by striking out the words "and the Vermont School Boards Association" and by striking out the words "those associations" and inserting in lieu thereof the words that association

(For House amendments, see House Journal for February 9, 2011, page 207.)

PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 16 V.S.A. § 1431, by striking out subsection (d) in its entirety.

Second: In Sec. 3, subdivision (2), after the words "(notice and training)" by striking out "and (d) (participation)"

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

Sec. 4. STUDY

(a) There is created a committee to study participation in school athletic activities by athletes who have sustained concussions or other head injuries. The committee shall be composed of the following members:

(1) One member appointed by the Vermont School Boards Association;

(2) One member appointed by the Vermont Superintendents Association;

(3) One member appointed by the Vermont Principals' Association;

(4) One member appointed by the Vermont-NEA;

(5) One member appointed by the Vermont Association for Justice; and

(6) One member appointed by the Vermont Medical Society.

(b) The committee shall study best practices for protecting student-athletes from sports-related concussions and head injuries, including consideration of whether statutorily prohibiting certain conduct by coaches is the most appropriate method to ensure the health and welfare of student-athletes without unnecessarily increasing potential liability.

(c) On or before December 15, 2011, the committee shall report its findings and any recommendations for legislative action to the house and senate committees on education and on judiciary.

PROPOSAL OF AMENDMENT TO H. 46 TO BE OFFERED BY SENATORS SEARS AND MULLIN

Senators Sears and Mullin move that the Senate propose to the House to amend the bill in Sec. 2, 16 V.S.A. chapter 31, subchapter 3, § 1431, subsection (d), subdivision (1), by striking out the following: "the coach has reason to believe" and by inserting in lieu thereof the following: there is clear and convincing evidence

UNFINISHED BUSINESS OF MONDAY, APRIL 18, 2011

H. 66.

An act relating to the illegal taking of trophy big game animals.

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

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

Sec. 1. 10 V.S.A. § 4514 is amended to read:

§ 4514. POSSESSION OF FLESH OF GAME

(a) When legally taken, the flesh of a fish or wild animal may be possessed for food for a reasonable time thereafter and such flesh may be transported and stored in a public cold storage plant. Nothing in this section shall authorize the possession of game birds or carcasses or parts thereof contrary to regulations made pursuant to the migratory bird treaty act.

(b) Any person convicted of illegally taking, destroying or possessing wild animals shall, in addition to other penalties provided under this chapter, pay into the fish and wildlife fund for each animal taken, destroyed or possessed, no more than the following amounts:

(1) Big game ~~$1,000.00~~ $2,000.00 each

(2) Endangered or threatened species as defined in section 5401 of this title ~~1,000.00~~ $2,000.00 each

(3) Small game ~~250.00~~ $500.00 each

(4) Fish ~~25.00~~ $25.00 each

Sec. 2. 10 V.S.A. § 4518 is amended to read:

§ 4518. BIG GAME VIOLATIONS

Whoever violates a provision of this part or orders or rules of the board relating to taking, possessing, transporting, buying, or selling of big game shall be fined not more than ~~$500.00~~ $1,000.00 nor less than ~~$200.00~~ $400.00 or imprisoned for not more than 60 days, or both. Upon a second and all subsequent convictions, the violator shall be fined not more than ~~$1,000.00~~ $2,000.00 nor less than ~~$500.00~~ $1,000.00 or imprisoned for not more than 60 days, or both.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 16, 2011, page 404; March 17, 2011, page 408.)

H. 91.

An act relating to the management of fish and wildlife.

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

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

* * * Management of Wildlife * * *

Sec. 1. FINDINGS

The general assembly finds and declares:

(1) The protection, propagation, control, management, and conservation of the wildlife of Vermont are in the best interest of the public.

(2) Exposure of wildlife to domestic animals, as that term is defined in 6 V.S.A. § 1151, increases the risk that a disease or parasite, such as chronic wasting disease, is introduced into or spread to the wildlife of Vermont.

(3) To prevent the introduction or spread of a disease or parasite to the wildlife of Vermont, white-tailed deer and moose should not be entrapped in captive cervidae facilities.

(4) If a white-tailed deer or moose is entrapped in a facility that contains domestic animals, existing rules require the facility owner to consult with the department of fish and wildlife in order to determine the best method for removal of the entrapped white-tailed deer or moose.

(5) To preserve the health of the wildlife of Vermont, all owners of captive cervidae facilities should be required to remove entrapped white-tailed deer or moose, and such facilities should be required to take the necessary measures to prevent future entrapment of white-tailed deer or moose.

Sec. 2. 10 V.S.A. § 4081 is amended to read:

§ 4081. POLICY

(a) ~~It is the policy of the state that the~~ (1) As provided by Chapter II, § 67 of the Constitution of the State of Vermont, the fish and wildlife of Vermont are held in trust by the state for the benefit of the citizens of Vermont and shall not be reduced to private ownership. The state of Vermont, in its sovereign capacity as a trustee for the citizens of the state, shall have ownership, jurisdiction, and control of all of the fish and wildlife of Vermont.

(2) The commissioner of fish and wildlife shall manage and regulate the fish and wildlife of Vermont in accordance with the requirements of this part and the rules of the fish and wildlife board. The protection, propagation control, management, and conservation of fish, wildlife, and fur-bearing animals in this state ~~is~~ are in the interest of the public welfare~~, and that~~

~~safeguarding of this valuable resource~~. The state, through the commissioner of fish and wildlife, shall safeguard the fish, wildlife, and fur-bearing animals of the state for the people of the state ~~requires~~, and the state shall fulfill this duty with a constant and continual vigilance.

(b) Notwithstanding the provisions of ~~section 2803 of Title~~ 3 V.S.A. § 2803, the fish and wildlife board shall be the state agency charged with carrying out the purposes of this subchapter.

(c) An abundant, healthy deer herd is a primary goal of fish and wildlife management. The use of a limited unit open season on antlerless deer shall be implemented only after a scientific game management study by the fish and wildlife department supports such a season.

(d) Annually, the department shall update a scientific management study of the state deer herd. The study shall consider data provided by department biologists and citizen testimony taken under subsection (f) of this section.

(e) Based on the results of the updated management study and citizen testimony, the board shall decide whether an antlerless deer hunting season is necessary and if so how many permits are to be issued. If the board determines that an antlerless season is necessary, it shall adopt a rule creating one and the department shall then administer an antlerless program.

(f) Annually, the department shall hold regional public hearings to receive testimony and data from concerned citizens about their knowledge and concerns about the deer herd. The board shall identify the regions by rule.

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents a person may apply for a permit. Each person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

(2) Permits remaining after allocation pursuant to subdivision (1) of this subsection shall be issued by lottery.

(3) Any permits remaining after permits have been allocated pursuant to subdivisions (1) and (2) of this subsection shall be issued by the department for a $10.00 fee for residents. Ten percent of the remaining permits may be issued to nonresident applicants for a $25.00 fee.

Sec. 3. REPEAL OF DORMANT STATUTORY REQUIREMENTS FOR MANAGEMENT OF THE DEER HERD

(a) 10 V.S.A. §§ 4743 (relating to muzzle loader season), 4744 (relating to bow and arrow season), and 4753 (relating to annual deer limit), as suspended by Sec. 5(a) of No. 136 of the Acts of the 2003 Adj. Sess. (2004), and by Sec. 2 of No. 97 of the Acts of the 2007 Adj. Sess. (2008), shall be repealed July 1, 2011.

(b) Sec. 7(d) (repeal of transfer to the fish and wildlife board of management authority over deer herd) of No. 136 of the Acts of the 2003 Adj. Sess. (2004), as amended by No. 97 of the Acts of the 2007 Adj. Sess. (2008), shall be repealed July 1, 2011.

Sec. 4. REPEAL OF TRANSFER OF REGULATORY AUTHORITY OVER CAPTIVE CERVIDAE FACILITY

Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) (transfer of regulatory oversight over captive cervidae facility and the white-tailed deer or moose entrapped within it to the agency of agriculture, food and markets) is repealed.

Sec. 5. TRANSITION

(a) For purposes of this section, "relevant captive cervidae facility" shall mean a captive cervidae facility subject to the requirements of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) prior to repeal under Sec. 4 of this act.

(b) Upon repeal of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) under Sec. 4 of this act, the jurisdiction and regulatory authority over a relevant captive cervidae facility and the white-tailed deer and moose entrapped within it are transferred from the agency of agriculture, food and markets to the department of fish and wildlife.

(c) Upon transfer of jurisdiction and regulatory authority to the department of fish and wildlife under subsection (b) of this section, a relevant captive cervidae facility shall be regulated as a captive hunt facility under the fish and wildlife board's rule governing the importation and possession of animals for taking by hunting as set forth in 10 V.S.A. App. § 19, except that:

(1) For purposes of review of an application for a permit submitted under subsection (d) of this section, demonstrated compliance by a relevant captive cervidae facility with the requirements of Sec. E.702.1 of No. 156 of the Acts of the 2009 Adj. Sess. (2010) or the agency of agriculture, food and markets' rules governing captive cervidae shall be deemed as substantial compliance with comparable provisions of the department of fish and wildlife rules governing the importation and possession of animals for taking by hunting.

(2) The wild cervidae entrapped at a relevant captive cervidae facility may remain at the facility, provided that:

(A) The white-tailed deer and moose entrapped at the facility shall be subject to hunt during an applicable open season or seasons established by the fish and wildlife board;

(B) The fish and wildlife board shall adopt by rule a process by which the number of white-tailed deer and moose entrapped within the relevant captive hunt facility is reduced to zero by taking, as that term is defined in 10 V.S.A. § 4001, over a three-year period from September 1, 2011. The rule adopted by the fish and wildlife board under this subdivision shall specify:

(i) The number and type of white-tailed deer or moose to be taken in any season set by the board for the relevant captive hunt facility, subject to the following:

(I) The board shall not authorize the hunting or killing of the moose known as Pete and may authorize the relocation or transfer of said moose to an adequate facility;

(II) The number of white-tailed deer or moose authorized for taking should be reasonably equal in each of the three years from September 1, 2011, provided that all white-tailed deer or moose remaining at the facility in the fifth year shall be authorized for taking;

(III) In each year of the three-year period, the owner of the relevant captive cervidae facility shall present to the department of fish and wildlife for disease surveillance at least the number of white-tailed deer and moose authorized for taking by the fish and wildlife board under this subdivision (C)(2)(B)(i).

(ii) The process and protocol for a disease surveillance program at the relevant captive cervidae facility.

(C) the owner of the relevant captive cervidae facility may post his or her land according to 10 V.S.A. § 5201 and may restrict access to the facility for hunting; and

(D) no fee shall be charged by the relevant captive cervidae facility

for the right to take white-tailed deer or moose during a hunt season established by the fish and wildlife board under this subsection.

(3) No person knowingly or intentionally shall allow wild cervidae at the relevant captive cervidae facility to escape or to be released from the facility.

(4) Failure of the relevant captive cervidae facility to meet the requirements of this section shall be a fish and game violation subject to enforcement under 10 V.S.A. chapter 109.

(d) By September 1, 2011, the owner of a relevant captive cervidae facility shall submit to the department of fish and wildlife an application for a permit for the possession of animals for the purpose of hunting.

(e) On or before January 15, 2012, and annually thereafter, the department of fish and wildlife shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of the relevant captive cervidae facility's compliance with:

(1) the requirements of this section; and

(2) the fish and wildlife board's rule governing the importation and possession of animals for taking by hunting.

(f) Prior to filing under 3 V.S.A. § 841 a final proposal of the rules required by subsection (c) of this section, the fish and wildlife board shall submit a copy of the proposed rules to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The house committee on fish, wildlife and water resources and the senate committee on natural resources and energy shall review the proposed rules for consistency with legislative intent. The house committee on fish, wildlife and water resources and the senate committee on natural resources and energy shall recommend that the proposed rules be amended or shall recommend that the proposed rules be filed with the secretary of state and the legislative committee on administrative rules under 3 V.S.A. § 841. If the general assembly is not in session when the fish and wildlife board is prepared to file a final proposal of rules, the board may submit the proposed rules to the secretary of the senate, the clerk of the house, and the chairs of the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy.

* * * Department of Fish and Wildlife; Enforcement Authority * * *

Sec. 6. 10 V.S.A. §§ 4519–4520a are added to read:

§ 4519. ASSURANCE OF DISCONTINUANCE

(a) As an alternative to judicial proceedings, the commissioner may accept an assurance of discontinuance of any violation of this part. An assurance of

discontinuance may include, but need not be limited to:

(1) specific actions to be taken;

(2) abatement or mitigation schedules;

(3) payment of a civil penalty and the costs of investigation;

(4) payment of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved persons.

(b) An assurance of discontinuance shall be in writing and signed by the respondent and shall specify the statute or regulation alleged to have been violated. An assurance of discontinuance shall be simultaneously filed with the attorney general and the civil division of the superior court of the county in which the alleged violation occurred or the civil division of the superior court of Washington County. An assurance of discontinuance may, by its terms, become an order of the court. Evidence of a violation of an assurance of discontinuance shall be prima facie proof of the violation.

(c) Any violation of an assurance of discontinuance shall constitute a separate and distinct offense of the underlying statute or rule and shall be subject to an administrative penalty under section 4520 of this title, in addition to any other applicable penalties.

§ 4520. ADMINISTRATIVE PENALTIES

(a) In addition to other penalties provided by law, the commissioner may assess administrative penalties, not to exceed $1,000.00, for each violation of this part.

(b) In determining the amount of the penalty to be assessed under this section, the commissioner may give consideration to one or more of the following:

(1) the degree of actual and potential impact on fish, game, public safety, or the environment resulting from the violation;

(2) the presence of mitigating or aggravating circumstances;

(3) whether the violator has been warned or found in violation of fish and game law in the past;

(4) the economic benefit gained by the violation;

(5) the deterrent effect of the penalty;

(6) the financial condition of the violator.

(c) Each violation may be a separate and distinct offense and, in the case of a continuing violation, each day's continuance may be deemed to be a separate and distinct offense. In no event shall the maximum amount of the penalty

assessed under this section exceed $25,000.00.

(d) In addition to the administrative penalties authorized by this section, the commissioner may recover the costs of investigation, which shall be credited to a special fund and shall be available to the department to offset these costs.

(e) Any party aggrieved by a final decision of the commissioner under this section may appeal de novo to the civil division of the superior court of the county in which the violation occurred or the civil division of the superior court of Washington County within 30 days of the final decision of the commissioner.

(f) The commissioner may enforce a final administrative penalty by filing a civil collection action in the civil division of the superior court of any county.

(g) The commissioner may, subject to 3 V.S.A. chapter 25, suspend any license or permit issued pursuant to his or her authority under this part for failure to pay a penalty under this section more than 60 days after the penalty was issued.

§ 4520a. NOTICE AND HEARING REQUIREMENTS

(a) The commissioner shall use the following procedures in assessing the penalty under section 4520 of this title: the attorney general or an alleged violator shall be given an opportunity for a hearing after reasonable notice; and the notice shall be served by personal service or by certified mail, return receipt requested. The notice shall include:

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

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

(3) the amount of the proposed administrative penalty; and

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

(b) Any person who receives notification pursuant to this section shall be deemed to have waived the right to a hearing unless, within 15 days of the receipt of the notice, the person requests a hearing in writing. If the person waives the right to a hearing, the commissioner shall issue a final order finding the person in default and imposing the penalty. A copy of the final default order shall be sent to the violator by certified mail, return receipt requested.

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

* * * Hunting and Fishing Licenses; Members of Armed Forces * * *

Sec. 7. 10 V.S.A. § 4258 is amended to read:

§ 4258. LICENSE; ARMED FORCES

A license to hunt or fish shall be issued, upon payment of the resident license fee, to any member of the armed forces of the United States of America who is on active duty and stationed at some military, air, or naval post, station, or base within the state. Said member of the armed forces, desiring a hunting or fishing license, ~~must present a certificate from the commander of said post, station or base, or his designated agent, that the person mentioned in the certification is stationed at or attached to said post, station or base~~ shall certify that he or she is eligible for such a license under this section. Holders of such licenses shall be subject to all the laws of the state and the rules and regulations of the board regulating hunting and fishing; and for violations of said laws or rules and regulations, shall be subject to the penalties prescribed therefor, and such licenses shall be revoked in the same manner as provided in section 4502 of this title.

Sec. 8. 10 V.S.A. § 4259 is amended to read:

§ 4259. VERMONT RESIDENTS; ARMED FORCES

Any resident of the state of Vermont who is serving in the armed forces of the United States or is performing or under orders to perform any homeland defense or state-side contingency operation, or both, for a period of 120 consecutive days or more~~, as certified by the Adjutant General for the Vermont National Guard is eligible~~ shall certify that he or she is eligible under this section to obtain at no cost a hunting or fishing license or a combination hunting and fishing license. This provision will apply only during the period he or she is serving in the armed forces of the United States, or as certified pursuant to this section. A person who obtains a license under this section may keep the license until it expires, whether or not the person continues to serve in the armed forces until the expiration date.

* * * Posting of Land; Eligibility * * *

Sec. 9. 10 V.S.A. § 4081(g) is amended to read:

(g) If the board finds that an antlerless season is necessary to maintain the health and size of the herd, the department shall administer an antlerless deer program. Annually, the board shall determine how many antlerless permits to issue in each wildlife management unit. For a nonrefundable fee of $10.00 for residents and $25.00 for nonresidents a person may apply for a permit. Each

person may submit only one application for a permit. The department shall allocate the permits in the following manner:

(1) A Vermont landowner, as defined in section 4253 of this title, who owns 25 or more contiguous acres and who applies shall receive a permit for antlerless hunting in the management unit on which the land is located before any are given to people eligible under subdivision (2) of this subsection. If the land is owned by more than one individual, corporation or other entity, only one permit shall be issued. Landowners applying for antlerless permits under this subdivision shall not, at the time of application or thereafter during the regular hunting season, post their lands except under the provisions of section 4710 of this title. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title. If the number of landowners who apply exceeds the number of permits for that district, the department shall award all permits in that district to landowners by lottery.

* * *

Sec. 10. 10 V.S.A. § 4253 is amended to read:

§ 4253. LANDOWNER; FAMILY; EXCEPTION

(a) A resident owner of lands, his or her spouse, and their minor children may, without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds therein subject to the provisions of this part.

(b) A nonresident owner of lands, his or her spouse, and their minor children, may without procuring a license under this chapter, take fish from the waters therein, shoot pickerel, and take wild animals or wild birds thereon subject to the provisions of this part, except if the lands are posted under provisions other than section 4710 of this title.

(c) As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

Sec. 11. 10 V.S.A. § 4826(f) is amended to read:

(f)(1) "Person" includes all people who jointly own or ~~occupy~~ lease the land. ~~Therefore, if two or more people jointly own or occupy land, they may jointly take or authorize the taking of only up to four deer.~~

(2) "Post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land, except for signs erected pursuant to section 4710 of this title.

Sec. 12. 10 V.S.A. § 4829 is amended to read:

§ 4829. PERSON SUFFERING DAMAGE BY DEER OR BLACK BEAR

A person who suffers damage by deer to the person's crops, fruit trees, or crop-bearing plants on land not posted against the hunting of deer, or a person who suffers damage by black bear to the person's cattle, sheep, swine, poultry, or bees or bee hives on land not posted against hunting or trapping of black bear is entitled to reimbursement for the damage, and may apply to the department of fish and wildlife within 72 hours of the occurrence of the damage for reimbursement for the damage. As used in this section, "post" means any signage that would lead a reasonable person to believe that hunting is prohibited on the land.

* * * Deer Doing Damage to Forestland; Working Group * * *

Sec. 13. DEPARTMENT OF FISH AND WILDLIFE WORKING GROUP ON DEER DOING DAMAGE TO LAND MANAGED FOR THE PRODUCTION OF MARKETABLE FOREST PRODUCTS

(a) The commissioner of fish and wildlife shall convene a working group to review and recommend methods for addressing or limiting damage by deer to trees, saplings, and seedlings on land managed for the production of marketable forest products and to assess land access issues related to wildlife management. The working group shall consist of the commissioner or his or her designee and the following members to be appointed by the commissioner:

(1) two qualified foresters;

(2) two owners of land managed for the production of marketable forest products;

(3) two members of the fish and wildlife board;

(4) two wildlife biologists with knowledge of the state deer herd or of the impact of deer on forestland; and

(5) two persons who hold a valid Vermont hunting license.

(b) On or before January 15, 2012, the commissioner shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with the recommendations of the working group. The report shall include an analysis of how and if prohibiting the posting of land as a condition of taking deer doing damage to land managed for the production of marketable forest products will achieve the goal of reducing or mitigating distinct occurrences of damage from deer populations, including an assessment of broader land access issues related to wildlife management.

Sec. 14. EDUCATION AND OUTREACH REGARDING FORESTRY PRACTICES TO PREVENT DEER DOING DAMAGE

On or before September 1, 2011, the commissioner of fish and wildlife, in consultation with the commissioner of forests, parks and recreation, shall conduct education and outreach activities regarding forestry practices to address deer doing damage to land managed for the production of marketable forest products. Outreach should include methods by which owners of land managed for the production of marketable forest products can contact Vermont licensed hunters in order to invite hunting on land being damaged by deer. The commissioner shall publish recommended forestry practices and other methods for addressing deer damage to land managed for the production of marketable forest products in the department of fish and wildlife's landowner habitat management guidelines; in the Vermont guide to hunting, fishing, and trapping laws; and on the website of the department of fish and wildlife.

Sec. 15. EFFECTIVE DATES

(a) This section and Secs. 9 (antlerless permit; post), 10 (landowner hunt exception; post), 11 (deer doing damage; post), 12 (bear doing damage; post), 13 (working group on deer doing damage), and 14 (outreach and education) of this act shall take effect on passage.

(b) Secs. 1 (findings; wildlife management; captive cervidae facility), 2 (policy for management of fish and wildlife), 3 (repeal of dormant deer herd management statutes), 6 (department of fish and wildlife; assurance of discontinuance; administrative penalties), 7 (hunting and fishing license; armed forces; nonresident) and 8 (hunting and fishing license; armed forces; resident) of this act shall take effect on July 1, 2011.

(c) Secs. 4 (repeal of transfer of regulatory authority over captive cervidae facility) and 5 (transition of regulatory authority over captive cervidae facility) of this act shall take effect September 1, 2011, except that Sec. 5(d) (application for possession of animals for the purpose of a hunting permit) shall take effect on July 1, 2011.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 15, 2011, page 515.)

PROPOSAL OF AMENDMENT TO H. 91 TO BE OFFERED BY SENATOR BENNING ON BEHALF OF THE COMMITTEE ON NATURAL RESOURCES AND ENERGY

Senator Benning, on behalf of the Committee on Natural Resources and Energy, moves to amend the committee proposal in Sec. 5, subdivision (c)(2)(B)(i)(II), by striking out the word "fifth" where it appears and inserting in lieu thereof third

H. 411.

An act relating to the application of Act 250 to agricultural fairs.

Reported favorably with recommendation of proposal of amendment by Senator Baruth for the Committee on Agriculture.

The Committee recommends that the Senate propose to the House to amend the bill in: Sec. 2, 10 V.S.A. § 6001(34), by striking out subdivision (C) in its entirety and inserting in lieu thereof the following:

(C) conducting contests, displays, and demonstrations designed to advance farming, advance the local food economy, or train or educate farmers, youth, or the public regarding agriculture.

(Committee vote: 5-0-0)

(For House amendments, see House Journal for March 22, 2011, page 510.)

H. 430.

An act relating to providing mentoring support for new principals and technical center directors.

Reported favorably with recommendation of proposal of amendment by Senator Lyons for the Committee on Education.

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

Sec. 1. 16 V.S.A. § 245 is added to read:

§ 245. PRINCIPALS; TECHNICAL CENTER DIRECTORS; MENTORING

(a) When a school district hires a principal or a technical center director who has not been employed previously in that capacity, the superintendent serving the district, in consultation with the Vermont Principals' Association, shall work to ensure that the new principal or technical center director receives mentoring supports during at least the first two years of employment. Mentoring supports shall be consistent with best practices, research-based approaches, or other successful models, and shall be identified jointly by the Vermont Principals' Association and the Vermont Superintendents Association.

(b) When a school district hires a principal or technical center director identified in subsection (a) of this section, the district shall allocate sufficient funds annually in the first two years of employment toward the cost of providing the mentoring supports from one or more of the following sources:

(1) funds allocated by the district for professional development;

(2) grant monies obtained for the purpose of providing mentoring supports;

(3) state funds appropriated for the purpose of providing mentoring supports; or

(4) other sources.

(c) This section shall not be interpreted to prohibit or discourage a superintendent from working to ensure that any administrator other than those identified in subsection (a) of this section receives mentoring supports.

Sec. 2. INTERIM STUDY OF TEACHER INDUCTION AND MENTORING

(a) Creation of committee. There is created a committee to study how the education profession inducts and mentors new teachers and to recommend legislative changes that would help new teachers to develop strong skills in their initial years and that would increase the retention of high-quality teachers.

(b) Membership. The committee shall be composed of two members representing the Vermont Standards Board for Professional Educators, two members designated by the Vermont-NEA, two members designated by the Vermont Principals' Association, one member designated by the Vermont School Boards Association, one member designated by the Vermont Superintendents Association, and two members of approved programs in educator preparation who are chosen by the Vermont Standards Board for Professional Educators and who have experience, expertise, or demonstrated interest in teacher mentoring.

(c) Powers and duties.

(1) The committee shall study and evaluate the induction and mentoring practices and programs currently in effect throughout Vermont and other states, including consideration of:

(A) How successful induction and mentoring programs would affect new teachers' ability to be effective educators and to remain in the profession.

(B) What components are critical to effective induction and mentoring programs that meet established standards and provide substantial support to new teachers; including

(i) What qualifications mentors should possess;

(ii) How to offer incentives for qualified veteran or retired teachers to obtain training in the mentoring of new teachers;

(iii) How mentors should be assigned;

(iv) What induction or mentoring activities have been effective;

(v) Who should set mentoring standards and how should they be defined and enforced;

(vi) What should the appropriate duration of the mentoring be; and

(C) What other issues the general assembly, the department of education, and the state board of education should consider in order to enact a high-quality induction and mentoring program for new teachers.

(2) The committee shall identify effective ways to provide mentoring support to new teachers without incurring excessive costs.

(d) Meetings. The commissioner of education shall convene the first meeting of the committee on or before August 1, 2011. The committee shall elect a chair at its first meeting.

(e) Report. On or before January 1, 2012, the committee shall submit and present a written report to the senate and house committees on education regarding its findings and any recommendations for legislative action. The report and testimony shall include estimated costs associated with all recommendations.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage. Sec. 1 of this act shall apply to new contracts of employment for the 2012–2013 academic year and after.

and that after passage the title of the bill be amended to read: "An act relating to providing mentoring support for teachers, new principals, and new technical center directors"

(Committee vote: 5-0-0)

(No House amendments.)

UNFINISHED BUSINESS OF TUESDAY, APRIL 12, 2011

House Proposal of Amendment

S. 2

An act relating to sexual exploitation of a minor and the sex offender registry.

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

Sec. 1. 13 V.S.A. § 5401 is amended to read:

§ 5401. DEFINITIONS

As used in this subchapter:

* * *

(10) "Sex offender" means:

* * *

(B) A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old:

* * *

(ix) sexual exploitation of a minor as defined in 13 V.S.A. § ~~3258(b)~~ 3258.

* * *

Sec. 2. 13 V.S.A. § 5411a is amended to read:

§ 5411a. ELECTRONIC POSTING OF THE SEX OFFENDER REGISTRY

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

(1) Sex offenders who have been convicted of:

* * *

(I) ~~Sexual~~ A felony violation of sexual exploitation of a minor (13 V.S.A. § ~~3258(b)~~ 3258(c)).

* * *

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

* * *

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

* * *

Sec. 3. 16 V.S.A. § 255 is amended to read:

§ 255. PUBLIC AND INDEPENDENT SCHOOL EMPLOYEES; CONTRACTORS

(a) Superintendents, headmasters of recognized or approved ~~Vermont~~ independent schools, and their contractors shall request criminal record information for the following:

(1) The person a superintendent or headmaster is prepared to recommend for any full-time, part-time or temporary employment.

(2) Any person directly under contract to an independent school or school district who may have unsupervised contact with school children.

(3) Any employee of a contractor under contract to an independent school or school district who is in a position that may result in unsupervised contact with school children.

(4) Any student working toward a degree in teaching who is a student teacher in a school within the superintendent's or headmaster's jurisdiction.

(b) After signing a user agreement, a superintendent or a headmaster shall make a request directly to the Vermont criminal information center. A contractor shall make a request through a superintendent or headmaster.

(c) A request made under subsection (b) of this section shall be accompanied by a set of the person's fingerprints and a fee established by the Vermont criminal information center which shall reflect the cost of obtaining the record from the FBI. The fee shall be paid in accordance with adopted school board policy.

* * *

(h) A superintendent or headmaster shall request and obtain information from the child protection registry maintained by the department for children and families and from the vulnerable adult abuse, neglect, and exploitation registry maintained by the department of disabilities, aging, and independent living (collectively, the "registries") for any person for whom a criminal record check is required under subsection (a) of this section. The department for children and families and the department of disabilities, aging, and independent living shall adopt rules governing the process for obtaining information from the registries and for disseminating and maintaining records of that information under this subsection.

(i) A person convicted of a sex offense that requires registration pursuant to chapter 167, subchapter 3 of Title 13 shall not be eligible for employment under this section.

(j) The board of trustees of a recognized or approved independent school shall request a criminal record check and a check of the registries pursuant to the provisions of this section prior to offering employment to a headmaster.

Sec. 4. 4 V.S.A. § 952 is amended to read:

§ 952. RULES OF COURT ADMINISTRATOR

(a) The court administrator, subject to the approval of the supreme court, shall make rules regarding the qualifications, lists, and selection of all jurors

and prepare questionnaires for prospective jurors. Each superior court clerk shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the ~~jury commission~~ superior court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

(b) Rules adopted under this section shall be consistent with the provisions of this chapter.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

AMENDMENT TO S. 2 TO BE OFFERED BY SENATOR SEARS, ON BEHALF OF THE COMMITTEE ON JUDICIARY, BEFORE THIRD READING

Senator Sears, on behalf of the Committee on Judiciary, moves that the Senate concur in the House proposal of amendment with a further proposal of amendment by adding a new Sec. 5 to read as follows:

Sec 5. 20 V.S.A. § 2056b is amended to read:

§ 2056b. DISSEMINATION OF CRIMINAL HISTORY RECORDS TO PERSONS CONDUCTING RESEARCH

(a) The Vermont criminal information center may provide Vermont criminal history records as defined in section 2056a of this title to bona fide persons conducting research related to the administration of criminal justice, subject to conditions approved by the commissioner of public safety to assure the confidentiality of the information and the privacy of individuals to whom the information relates. Bulk criminal history data requested by descriptors other than the name and date of birth of the subject may only be provided in a format that excludes the subject's name and any unique numbers that may reference the identity of the subject, except that court docket numbers and the state identification number may be provided. Researchers ~~must~~ shall sign a user agreement which specifies data security requirements and restrictions on use of identifying information.

(b) No person shall confirm the existence or nonexistence of criminal history record information to any person other than the subject and properly designated employees of an organization who have a documented need to know the contents of the record.

(c) A person who violates the provisions of this section with respect to unauthorized disclosure of confidential criminal history record information obtained from the center under the authority of this section shall be fined not

more than $5,000.00. Each unauthorized disclosure shall constitute a separate civil violation.

and by renumbering the remaining section to be numerically correct.

UNFINISHED BUSINESS OF THURSDAY, APRIL 14, 2011

Resolutions for Action

J.R.S. 28.

Joint resolution congratulating the Republic of China on its centennial anniversary and supporting its being granted observer or participation status in certain travel and tourism organizations.

(For text of resolution, see Senate Journal of April 13, 2011, page 401.)

NEW BUSINESS

Third Reading

H. 443.

An act relating to the state's transportation program.

H. 446.

An act relating to capital construction and state bonding.

PROPOSAL OF AMENDMENT TO H. 446 TO BE OFFERED BY SENATOR ILLUZZI BEFORE THIRD READING

Senator Illuzzi moves that the Senate propose to the House to amend the bill as follows

First: By striking out Sec. 27 in its entirety and inserting in lieu thereof the following:

Sec. 27. REPEAL OF AUTHORITY TO SELL REDSTONE

Subdivision (g)(2) of Sec. 25 of No. 43 of the Acts of 2009 (authority to sell the Redstone building) is repealed.

Second: By adding a Sec. 27a to read:

Sec. 27a. REDSTONE FEASIBILITY STUDY

The commissioner of buildings and general services shall provide a feasibility study to the senate committee on institutions and the house committee on corrections and institutions on or before January 15, 2012 on whether it is in the best interest of the state for the Redstone building located at 26 Terrace Street in Montpelier to remain in the state's inventory for the support of state government, public functions, state museums, or any other use consistent with functions of state government, including apartment housing for

the chief executive. The commissioner may propose a plan that includes partnering with nonprofit entities to restore and renovate the building to accommodate the proposal and retain the property's historic value.

Third: In Sec. 44, in the opening paragraph, by striking out the words "take action on" and inserting in lieu thereof the word approve

PROPOSAL OF AMENDMENT TO H. 446 TO BE OFFERED BY SENATORS ILLUZZI AND STARR

Senators Illuzzi and Starr move that the Senate propose to the House that the bill be amended by adding Secs. 45a and 45b to read:

Sec. 45a. FINDINGS

Two local civic leaders, John Boylan and John Worth, played instrumental roles in establishing a state airport in Island Pond (town of Brighton). However, in an effort to shorten the airport's name, John Worth was not recognized.

Sec. 45b. RENAMING OF JOHN H. BOYLAN AIRPORT

Notwithstanding any provisions of law to the contrary, the Vermont Board of Libraries is authorized to rename the "John H. Boylan Airport" in Island Pond (town of Brighton).

PROPOSAL OF AMENDMENT TO H. 446 TO BE OFFERED BY SENATOR ILLUZZI BEFORE THIRD

Senator Illuzzi moves that the Senate propose to the House to amend the bill by striking out Sec. 46 in its entirety and inserting in lieu thereof a new Sec. 46 to read:

Sec. 46. TELECOMMUTING BY STATE WORKERS

(a) The general assembly finds that:

(1) Telework is an innovative management option that allows selected employees to work from home or from a state office location close to the employee's home.

(2) Telework offers a working environment that can reduce distractions, and result in greater worker productivity and job performance.

(3) The goal of a telework program is to improve employee morale and job satisfaction as well as to reduce absenteeism and sick leave usage.

(4) A telework program can help retain valued employees and recruit top-quality employees while improving quality of life and protecting the environment.

(b) The secretary of administration shall authorize a pilot project to evaluate the efficacy of permitting some state employees to work from home or from an alternative work location closer to the employee's home. For purposes of this section, "telework" means working from a location other than an employee's principal state-owned duty station during the employee's standard work day. The pilot project shall be based on guidelines developed by the secretary of administration.

Second Reading

H. 436.

An act relating to tax changes, including income taxes, property taxes, economic development credits, health care-related tax provisions, and miscellaneous tax provisions.

Reported favorably with recommendation of proposal of amendment by Senator Cummings 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. § 3113b, in the last sentence, by striking out the word "second" and inserting in lieu thereof the word third, and after the following: "15 V.S.A. § 792" by inserting the following: and the offset of lottery winnings for restitution pursuant to 13 V.S.A. § 7043

Second: By inserting a new section to be Sec. 3a to read as follows:

Sec. 3a. 32 V.S.A. § 5823(a)(8) is added to read:

(8) The amount paid by the state of Vermont pursuant to chapter 181 of Title 20 to the extent that such amount is included in the federal adjusted gross income of the taxpayer for the taxable year.

Third: In Sec. 12, Examination of Renewable Energy Property Tax Issues, in subsection (b), by striking the designation "(1)" in subdivision (1) and by striking out subdivisions (2)–(7) in their entirety.

Fourth: By inserting a new section to be numbered Sec. 13a to read as follows:

Sec. 13a. 32 V.S.A. § 3757(a) is amended to read:

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax either upon the development of that land, as defined in section 3752 of this chapter, or two years after the issuance of all permits legally required for any action constituting development. Said tax shall be at the rate of 20 percent of the full fair market value of the changed land determined without regard to the use

value appraisal; or the tax shall be at the rate of 10 percent if the owner demonstrates to the satisfaction of the director that the parcel has been enrolled continuously more than 10 years. If changed land is a portion of a parcel, the fair market value of the changed land shall be the fair market value of the changed land prorated on the basis of acreage, divided by the common level of appraisal. Such fair market value shall be determined as of the date the land is no longer eligible for use value appraisal. This tax shall be in addition to the annual property tax imposed upon such property. Nothing in this section shall be construed to require payment of an additional land use change tax upon the subsequent development of the same land, nor shall it be construed to require payment of a land use change tax merely because previously eligible land becomes ineligible, provided no development of the land has occurred.

Fifth: By inserting a new section to be numbered Sec. 13b to read as follows:

Sec. 13b. 32 V.S.A. § 6066(i) is added to read:

(i) Adjustments under subsection (a) of this section shall be calculated without regard to any exemption under section 3802(11) of this title.

Sixth: By inserting a new section to be numbered Sec. 13c to read as follows:

Sec. 13c. 32 V.S.A. § 5401(12) is amended to read:

(12) "Excess spending" means:

(A) the per equalized pupil amount of~~:~~

~~(i)~~ the district's education spending, as defined in 16 V.S.A. § 4001(6), plus any amount required to be added from a capital construction reserve fund under 24 V.S.A. § 2804(b); ~~minus~~

~~(ii) the portion of education spending which is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to 16 V.S.A. § 827 for capital construction costs by the independent school which has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to 16 V.S.A. § 3448(a)(2); and minus~~

~~(iii) the portion of education spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior; and minus~~

~~(iv) a budget deficit in a district that pays tuition to a public school for all of its students in one or more grades in any year in which the deficit is~~

~~solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed;~~

(B) in excess of 125 percent of the statewide average district education spending per equalized pupil in the prior fiscal year, as determined by the commissioner of education on or before November 15 of each year based on the passed budgets to date.

Seventh: By inserting a new section to be numbered Sec. 13d to read as follows:

Sec. 13d. 16 V.S.A. § 4001(6) is amended to read:

(6) "Education spending" means the amount of the school district budget, any assessment for a joint contract school, technical center payments made on behalf of the district under subsection 1561(b) of this title, and any amount added to pay a deficit pursuant to 24 V.S.A. § 1523(b) which is paid for by the school district, but excluding any portion of the school budget paid for from any other sources such as endowments, parental fund raising, federal funds, nongovernmental grants, or other state funds such as special education funds paid under chapter 101 of this title.

* * *

(B) For purposes of calculating excess spending pursuant to 32 V.S.A. § 5401(12~~,~~)**.** "education spending" shall not include:

(i) Spending during the budget year for approved school capital construction for a project that received preliminary approval under section 3448 of this title, including interest paid on the debt; provided the district shall not be reimbursed or otherwise receive state construction aid for the approved school capital construction.

(ii) For a project that received final approval for state construction aid under chapter 123 of this title:

(I) Spending for approved school capital construction during the budget year that represents the district's share of the project, including interest paid on the debt;

(II) Payment during the budget year of interest on funds borrowed under subdivision 563(21) of this title in anticipation of receiving state aid for the project.

(iii) Spending that is approved school capital construction spending or deposited into a reserve fund under 24 V.S.A. § 2804 to pay future approved school capital construction costs, including that portion of tuition paid to an independent school designated as the public high school of the school district pursuant to section 827 of this title for capital construction costs by the

independent school that has received approval from the state board of education, using the processes for preliminary approval of public school construction costs pursuant to subdivision 3448(a)(2) of this title.

(iv) Spending attributable to the cost of planning the merger of a small school, which for purposes of this subdivision means a school with an average grade size of 20 or fewer students, with one or more other schools.

(v) Spending attributable to the district's share of special education spending in excess of $50,000.00 for any one student in the fiscal year occurring two years prior.

(vi) A budget deficit in a district that pays tuition to a public school or an approved independent school or both for all of its resident students in any year in which the deficit is solely attributable to tuition paid for one or more new students who moved into the district after the budget for the year creating the deficit was passed.

(vii) For a district that pays tuition for all of its resident students and into which additional students move after the end of the census period defined in subdivision (1)(A) of this section, the number of students that exceeds the district's most recent average daily membership and for whom the district will pay tuition in the subsequent year multiplied by the district's average rate of tuition paid in that year.

Eighth: By striking out Sec. 15, 24 V.S.A. § 1894(a)(2) in its entirety and inserting in lieu thereof a new Sec. 15 to read as follows:

Sec. 15. 32 V.S.A. § 5404a(l) is amended to read:

(l) ~~The state auditor of accounts shall review and audit all active tax increment financing districts every three years.~~

(1) Audits of a tax increment financing district under this subsection shall be performed only if the total value of the education tax increment is projected to exceed $1,000,000. Notwithstanding this threshold, the department of taxes or the Vermont economic progress council shall retain the authority to require an independent audit firm to conduct an audit of any tax increment financing district.

(2) An audit of a tax increment financing district under this subsection shall be conducted by an independent audit firm hired by a municipality and paid for by the municipality, and the amount paid for the audit shall be considered a "related cost" as defined in 24 V.S.A. § 1981(6). An audit of a tax increment financing district may be incorporated into a regular comprehensive municipal audit conducted by an independent firm.

(3) An audit of a tax increment financing district that exceeds the threshold established in subdivision (1) of this subsection shall be performed at

three separate stages, may be incorporated into a regular comprehensive municipal audit conducted by an independent firm, and shall include the following:

(A) At completion of construction of public infrastructure improvements or five years after the commencement of construction, whichever is earlier, an audit shall be performed and the audit shall, at a minimum, validate that expenditures were for public infrastructure improvements approved by the Vermont economic progress council;

(B) Halfway through the debt repayment period, an audit shall be performed and shall, at a minimum, confirm that appropriate amounts of incremental tax revenue were retained and that those amounts were utilized to pay for authorized debt;

(C) Upon termination of the tax increment financing district, an audit shall be performed and shall, at a minimum, confirm that appropriate amounts of incremental tax revenue were retained for the second half of the debt repayment period and that those amounts were utilized to pay for authorized debt and shall validate that any excess education tax increment was distributed to the education fund in accordance with 24 V.S.A. § 1900. Incremental tax revenue retained by the municipality that was not used to repay debt or to pay for improvements in the tax increment financing district shall be returned to the requisite taxing authority.

(4) The municipality shall share the results of the audits required under this subsection with the office of the auditor of accounts, the department of taxes, and the Vermont economic progress council.

(5) The provisions of this section shall not apply to audits initiated by the auditor of accounts prior to the passage of this act. Municipalities with tax increment financing districts that have been subject to audit by the auditor of accounts are responsible only for those parts of the audits under this subsection that were not addressed by the auditor of accounts.

Ninth: By inserting a new section to be numbered Sec. 17a to read as follows:

Sec. 17a. 32 V.S.A. 5930y(b) is amended to read:

(b) A credit against the income tax liability is available as follows:

(1) A credit of two percent of the wages paid in the taxable year by an employer for services performed in the designated counties associated with the manufacture of finished wood products. The credit shall be available to the employer in any year the counties qualify and for one year after a qualification ends. For purposes of this section, "finished wood products" means wood

products that are manufactured into the form in which they are offered for sale to consumers.

* * *

Tenth: In Sec. 24, 33 V.S.A. § 1953(a), in subdivision (1), by striking out the word "budgeted" and removing the striking from the word "full", and by striking out the words "approved by" and removing the striking from the words "reported to"

Eleventh: In Sec. 27, 32 V.S.A. § 7771, in subsection (d), by striking out the following: "125.5" and inserting in lieu thereof the following: 162, and in Sec. 27a, 32 V.S.A. § 7814(b), in subdivision (b), by striking out the following: "$0.25" and inserting lieu thereof the following: $1.00

Twelfth: In Sec. 28, 8 V.S.A. § 4089l(a), in subdivision (1), by striking out the following: "0.80" and inserting lieu thereof the following: "0.65"

Thirteenth: In Sec. 28, 8 V.S.A. § 4089l, in subsection (c)(1), after the following: "hospital indemnity," in the third sentence, by striking out the following: "dental care,"

Fourteenth: By inserting a new section to be numbered Sec. 32a to read as follows:

Sec. 32a. 33 V.S.A. § 2503(e) is amended to read:

(e) Fuel sellers, which are regulated "companies" as defined in ~~subsection~~ 30 V.S.A. § 201(a) ~~of Title 30~~, which provide conservation programs that meet the goals of the weatherization program in a manner approved by the public service board, and which enhance the weatherization program's capacity to serve low income households may be eligible for rebates from the fuel gross receipts tax imposed under this section. To establish rebate eligibility, such a company shall file with the public service board, on or before August 15 of each year, a request for approval of rebates based on the company's activities during the prior fiscal year. The public service board shall make a determination of the amount of rebate for each applicant on or before January 15 of each year, and such amount shall be rebated by the state economic opportunity office under the provisions of subsection (g) of this section. The public service board shall authorize rebates equal to the expenditures undertaken by the regulated utilities provided that such expenditures were prudently incurred and cost-effective, that they provided weatherization services following a comprehensive energy audit and work plan, except in cases where the fuel seller and weatherization staff jointly conclude that the need for weatherization services can be determined without a comprehensive energy audit, and that they were targeted to households ~~at or below 150 percent of the federally-established poverty guidelines~~ that meet the eligibility criteria

for low income weatherization services as determined by the office of economic opportunity.

Fifteenth: In Sec. 36, 32 V.S.A. § 9743, in subdivision (7), by striking out the following: "subdivisions (3) and (5)" and inserting in lieu thereof the following: subdivision (3)

Sixteenth: By inserting a new section to be numbered Sec. 36a to read as follows:

Sec. 36a. 32 V.S.A. § 9783 is added to read:

§ 9783. NOTICE OF USE TAX DUE

(a) As used in this section:

(1) "De minimis online auction website" means an online auction website that facilitated total gross sales in Vermont in the prior calendar year of less than $100,000.00 and reasonably expects to facilitate total gross sales in Vermont in the current calendar year of less than $100,000.00.

(2) "De minimis retailer" means any noncollecting retailer that made total gross sales in Vermont in the prior calendar year of less than $100,000.00 and reasonably expects total gross sales in Vermont in the current calendar year to be less than $100,000.00.

(3) "Noncollecting retailer" means any retailer not currently registered to collect and remit Vermont sales and use tax who makes sales of tangible personal property, services, and products transferred electronically from a place of business outside Vermont to be shipped to Vermont for use, storage, or consumption and who is not required to collect Vermont sales or use taxes.

(4) "Online auction website" means a collection of web pages on the Internet that allows any person to display tangible personal property, services, or products transferred electronically for sale which is purchased through a competitive process in which a participant places a bid, with the highest bidder purchasing the property, service, or product when the bidding period ends.

(5) "Vermont purchaser" means any purchaser who purchases tangible personal property, services, or products transferred electronically to be shipped or transferred to Vermont.

(b) Each noncollecting retailer shall give notice that Vermont use tax is due on nonexempt purchases of tangible personal property, services, or products transferred electronically and shall be paid by the Vermont purchaser. The notice in this subsection shall be readily visible and contain the information as follows:

(1) The noncollecting retailer is not required and does not collect Vermont sales and use tax;

(2) The purchase is subject to state use tax unless it is specifically exempt from taxation;

(3) The purchase is not exempt merely because the purchase is made over the Internet, by catalogue, or by other remote means;

(4) The state requires each Vermont purchaser to report any purchase that was not taxed and to pay tax on the purchase. The tax may be reported and paid on the Vermont use tax form; and

(5) The use tax form and corresponding instructions are available on the department of taxes website.

(c) Notice requirements.

(1) The notice required by subsection (b) of this section to be displayed on a website shall occur on a page necessary to facilitate the applicable transaction. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The prominent linking notice shall direct the purchaser to the principal notice information required by subsection (b) of this section.

(2) The notice required in a catalogue by subsection (b) of this section shall be part of the order form. The notice shall be sufficient if the noncollecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont on page __." The notice on the order form shall direct the purchaser to the page that includes the principal notice required by subsection (b) of this section.

(3) For any Internet purchase made pursuant to this section, the invoice notice shall occur on the electronic order confirmation. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The invoice notice link shall direct the purchaser to the principal notice required by subsection (b) of this section. If the noncollecting retailer does not issue an electronic order confirmation, the complete notice shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) For any catalogue or telephone purchase made pursuant to this section, the complete notice required by subsection (b) of this section shall be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(5) For any Internet purchase made pursuant to this section, notice on the check-out page fulfills simultaneously both the website and invoice notice

requirements of subdivisions (1) and (3) of this subsection. The notice shall be sufficient if the noncollecting retailer provides a prominent linking notice that reads as follows: "See important Vermont sales and use tax information regarding the tax you may owe directly to the state of Vermont." The check-out page notice link shall direct the purchaser to the principal notice required by subsection (b) of this section.

(d) Exemptions and limitations.

(1) If a retailer is required to provide a similar notice for another state in addition to Vermont, the retailer may provide a consolidated notice so long as the notice includes the information contained in subsection (b) of this section, specifically references Vermont, and meets the placement requirements of this section.

(2) A noncollecting retailer may not state or display or imply that no tax is due on any Vermont purchase unless the display is accompanied by the notice required by subsection (b) of this section each time the display appears. If a summary of the transaction includes a line designated "sales tax" and shows the amount of sales tax as zero, this constitutes a display implying that no tax is due on the purchase. This display shall be accompanied by the notice required by subsection (b) of this section each time it appears.

(3) Notwithstanding the limitation in this section, if a noncollecting retailer knows that a purchase is exempt from Vermont tax pursuant to Vermont law, the noncollecting retailer may display or indicate that no sales or use tax is due even if the display is not accompanied by the notice required by subsection (b) of this section.

(4) With the exception of notification on an invoice, the provisions of this section apply to online auction websites.

(5) A de minimis retailer and a de minimis online auction website are exempt from the notice requirements provided by this section.

(6) No criminal penalty or civil liability may be applied or assessed for failure to comply with the provisions of this section.

Seventeenth: By inserting a new section to be numbered Sec. 36b to read as follows:

Sec. 36b. LINK-BASED USE TAX RETURNS

The department of taxes shall evaluate the feasibility of providing a voluntary Internet-based use tax reporting and payment system in conjunction with the notice required under Sec. 36a of this act. The department of taxes shall communicate its findings to the senate committee on finance and the house committee on ways and means by memorandum no later than January 15, 2012.

Eighteenth: By inserting a new section to be numbered Sec. 36c to read as follows:

Sec. 36c. REPEAL

Sec. H.6 of No. 1 of the Acts of 2009 (Sp. Sess.) (transition to department of revenue) is repealed.

Nineteenth: By inserting a new section to be numbered Sec. 36d to read as follows:

Sec. 36d. 7 V.S.A. § 422 is amended to read:

§ 422. TAX ON SPIRITUOUS LIQUOR

A tax ~~of 25 percent of the gross revenues~~ is assessed on the gross revenue on the retail sale of spirituous liquor, including fortified wine, sold by ~~or through~~ the liquor control board or sold by a manufacturer or rectifier of spirituous liquor in accordance with the provisions of this title. The tax shall be at the following rates based on the gross revenue of the retail sales by the seller in the previous year:

(1) if the gross revenue of the seller is $250,000.00 or lower a year, the rate of tax is five percent;

(2) if the gross revenue of the seller is between $250,000.00 and $450,000.00, the rate of tax is $12,500.00 plus 15 percent of gross revenues over $200,000.00;

(3) if the gross revenue of the seller is over $450,000.00, the rate of tax is 25 percent.

Twentieth: By adding a new section to be numbered Sec. 36e to read as follows:

Sec. 36e. TAXPAYER OUTREACH EDUCATION

The department of taxes shall develop a plan for education outreach to taxpayers in specific classes to insure that taxpayers in those classes are aware of their obligations under law.

Twenty-first: By striking out Sec. 30, Data Collection for Provider Taxes, in its entirety and inserting in lieu thereof a new Sec. 30 to read as follows:

Sec. 30. DATA COLLECTION FOR PROVIDER TAXES

The secretary of administration shall develop systems to identify and collect the data necessary to administer any health-care-related tax under 42 C.F.R. part 433.50 et seq. that is permitted by federal law but that Vermont does not currently levy, including an analysis of the base to which such a tax would apply and mechanisms for collection.

Twenty-second: In Sec. 37 (Effective Dates), in subdivision (4), after "(definition of household income)" by inserting the following: and Sec. 13b (veteran's exemption adjustment), and by striking out the following: "tax year" and inserting in lieu thereof the following: claim year

Twenty-third: In Sec. 37 (Effective Dates), in subdivision (7), before "22" by striking out the following: "Sec." and inserting in lieu thereof the following: Secs., and after "(cigar tax)" by inserting the following: , 36a (sales and use tax notification), 36b (link-based use tax reporting), and 36d (tax in spirits)

Twenty-fourth: In Sec. 37 (Effective Dates) by adding a new subdivision (11) to read as follows:

(11) Sec. 13a shall take effect on January 1, 2012.

Twenty-fifth: In Sec. 37 (Effective Dates) by adding a new subdivision (12) to read as follows:

(12) Secs. 13c and 13d of this act shall take effect on passage and shall apply to tax rates calculated for fiscal year 2012 school budgets and after.

(Committee vote: 5-1-1)

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

(For House amendments, see House Journal for March 22, 2011, pages 502-506 and March 23, 2011, pages 516-524.)

PROPOSAL OF AMENDMENT TO H. 436 TO BE OFFERED BY SENATOR POLLINA

Senator Pollina moves that the Senate propose to the House to amend the bill by adding a Sec. 3b to read as follows:

Sec. 3b. Sec. 20 of No. 2 of the Acts of 2009 Spec. Sess. is amended to read:

Sec. 20. PERSONAL INCOME TAX RATES

(a) For taxable year 2009 only, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	7.00
8.50	8.25

9.00	8.90
9.50	9.40

(b) For taxable year 2010 ~~and after~~ only, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	6.80
8.50	7.80
9.00	8.80
9.50	8.95

(c) For taxable years 2011, 2012, and 2013, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	6.80
8.50	7.80
9.00	9.80
9.50	10.45

(d) For taxable year 2014 and after, income tax rates under 32 V.S.A. § 5822, after taking into account any inflation adjustments to taxable income as required under subdivision 5822(b)(2), shall be as follows:

For taxable income which, without the passage of this act, would be subject to tax at the following rate (%):	That taxable income shall instead be taxed at the following rate (%):
3.60	3.55
7.20	6.80

8.50	7.80
9.00	8.80
9.50	8.95

NOTICE CALENDAR

Favorable

H. 426.

An act relating to extending the state's reporting concerning transportation of children in state custody and transportation of individuals in the custody of the commissioner of mental health.

Reported favorably by Senator Fox for the Committee on Health and Welfare.

(Committee vote: 5-0-0)

(No House amendments.)

Favorable with Proposal of Amendment

H. 201.

An act relating to hospice and palliative care.

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

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

First: By striking out the Sec. 3 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 3 to read as follows:

Sec. 3. REQUEST FOR A WAIVER

By no later than July 1, 2012, the department of Vermont health access shall request and apply for a demonstration project or waiver from the Centers for Medicare and Medicaid Services to allow for the state to obtain federal Medicaid matching funds to provide for an "enhanced hospice access" benefit, whereby the definition of "terminal illness" is expanded from six months' life expectancy to 12 months' and participants may access hospice without being required to first discontinue curative therapy. Also, by no later than July 1, 2012, the department shall request and apply for a Medicare demonstration project or waiver from the Centers for Medicare and Medicaid Services to provide funding for the same enhanced hospice access benefit.

Second: In Sec. 4, subsection (c), by striking out the following: "Assembly of Home Health Agencies, Inc." and inserting in lieu thereof the following: Vermont Assembly of Home Health and Hospice Agencies

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

Sec. 7. 26 V.S.A. § 1400 is amended to read:

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health~~.

(b) A licensee applying for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine expiring after August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to ensure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to ensure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee applying for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license

renewal applications at the time he or she becomes aware of the new or changed information.

~~(b)~~(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

~~(c)~~(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee and the late renewal penalty, and if applicable, by completion of the continuing medical education requirement as established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

Fourth: In Sec. 8, after the following "set forth in 26 V.S.A." by striking out the following: "§ 1400(b)(1) and (2), in the field of field of palliative care, hospice, end-of-life care, and management of chronic pain" and inserting in lieu thereof the following: § 1400(b)

Fifth: In Sec. 10, 18 V.S.A. § 9708, by striking subsection (f) in its entirety. And by relettering the remaining subsections in Sec. 10 to be alphabetically correct

Sixth: In Sec. 10, 18 V.S.A. § 9708, by striking relettered subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

~~(b)~~(g) A clinician who issues a DNR order ~~may~~ shall authorize issuance of a DNR identification to the ~~principal~~ patient. Uniform minimum requirements for DNR identification shall be determined by rule by the department of health no later than March 1, 2012.

Seventh: In Sec. 10, 18 V.S.A. § 9708, by inserting a new subsection to be lettered subsection (i) to read as follows:

(i) A DNR/COLST order executed prior to July 1, 2011 shall be a valid order if the document complies with the statutory requirements in effect at the time the document was executed or with the provisions of this chapter.

And by relettering the remaining subsections in Sec. 10 to be alphabetically correct.

Eighth: By inserting a new section to be numbered Sec. 11 to read as follows:

* * * STUDY ON DNR/COLST ORDER INFORMED CONSENT * * *

SEC. 11. STUDY ON DNR/COLST ORDER INFORMED CONSENT

(a) The DNR/COLST order informed consent committee is created and shall be convened by the commissioner of health to study criteria to be used for rules concerning individuals who are giving informed consent for a DNR/COLST order issued pursuant to 18 V.S.A. § 9708(b), but who are not the patient, the patient's agent, or the patient's guardian.

(b) The committee shall consist of the following members or their designees:

(1) The commissioners of health; Vermont health access; and disabilities, aging, and independent living;

(2) one representative each from the Vermont Medical Society, the Vermont Ethics Network, the Vermont Association of Hospitals and Health Systems, Vermont Program for Quality in Health Care, the Hospice and Palliative Care Council of Vermont, the Vermont Center for Independent Living, Vermont Area Agencies on Aging, Vermont Assembly of Home Health and Hospice Agencies, and the Vermont Health Care Association;

(3) the long term care ombudsman; and

(4) the state health care ombudsman.

(c) The committee shall make recommendations on the criteria to be used for rules concerning individuals who are giving informed consent for a DNR/COLST order to be issued pursuant to 18 V.S.A. § 9708(b), but who are not the patient, the patient's agent, or the patient's guardian. The committee's recommendations shall include:

(1) which individual or individuals who are not the patient, the patient's agent, or the patient's guardian, but who shall be a family member of the patient or a person with a known close relationship to the patient, are permitted to give informed consent for a DNR/COLST order;

(2) how decisions regarding who is the appropriate person to be giving informed consent for a DNR/COLST order are to be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as set forth in 18 V.S.A. § 9711; and

(3) the use of a hospital's internal ethics protocols when there is a disagreement over who is the appropriate person to give informed consent for a DNR/COLST order.

(d) The committee shall report by December 1, 2011 to the Vermont health access oversight committee, the chair of the house committee on human services, and the chair of the senate committee on health and welfare on its findings and recommendations.

And by renumbering all remaining sections to be numerically correct.

Ninth: In renumbered Sec. 12, 18 V.S.A. § 9709, subsection (c), by striking out subdivision (5) in its entirety and inserting in lieu thereof new subdivisions (5) and (6) to read as follows:

(5) Upon transfer or discharge ~~from the~~ to another facility, a copy of any advance directive, DNR order, ~~and clinician order for life sustaining treatment is~~ or COLST order shall be transmitted with the principal ~~or, if~~ or patient. If the transfer is to a health care facility or residential care facility, ~~is~~ any advance directive, DNR order, or COLST order shall be promptly transmitted to the subsequent facility, unless the sending facility has confirmed that the receiving facility has a copy of ~~any~~ the advance directive, DNR order, or ~~clinician order for life sustaining treatment~~ COLST order.

(6) For a patient for whom DNR/COLST orders are documented in a facility-specific manner, any DNR/COLST orders to be continued upon discharge, during transport, or in another setting shall be documented on the Vermont DNR/COLST form issued pursuant to 18 V.S.A. § 9708(b) or on the form as prescribed by the patient's state of residence.

Tenth: By inserting a new section to be numbered Sec. 13 to read as follows:

Sec. 13. 18 V.S.A. § 9713 is amended to read:

§ 9713. IMMUNITY

(a) No individual acting as an agent or guardian shall be subjected to criminal or civil liability for making a decision in good faith pursuant to the terms of an advance directive, or DNA order, or COLST order and the provisions of this chapter.

(b)(1) No health care provider, health care facility, residential care facility, or any other person acting for or under such person's control shall, if the

provider or facility has complied with the provisions of this chapter, be subject to civil or criminal liability for:

(A) providing or withholding ~~health care~~ treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNA order, a COLST order, a DNR identification ~~of the principal~~, the consent of a principal or patient with capacity or of the principal's or patient's agent or guardian, or a decision or objection of a principal or patient; or

(B) relying in good faith on a suspended or revoked advance directive, suspended or revoked DNR order, or suspended or revoked COLST order, unless the provider or facility knew or should have known of the suspension or revocation.

(2) No funeral director, crematory operator, cemetery official, procurement organization, or any other person acting for or under such person's control, shall, if the director, operator, official, or organization has complied with the provisions of this chapter, be subject to civil or criminal liability for providing or withholding its services in good faith pursuant to the provisions of an advance directive, whether or not the advance directive has been suspended or revoked.

(3) Nothing in this subsection shall be construed to establish immunity for the failure to follow standards of professional conduct and to exercise due care in the provision of services.

(c) No employee shall be subjected to an adverse employment decision or evaluation for:

(1) providing or withholding ~~health care~~ treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification ~~of the principal~~, the consent of the ~~principal's~~ principal or patient with capacity or principals or patient's agent or guardian, a decision or objection of a principal or patient, or the provisions of this chapter. This subdivision shall not be construed to establish a defense for the failure to follow standards of professional conduct and to exercise due care in the provision of services;

(2) relying on an amended, suspended, or revoked advance directive, unless the employee knew or should have known of the amendment, suspension or revocation; or

(3) providing notice to the employer of a moral or other conflict pursuant to subdivision 9707(b)(3) of this title, so long as the employee has provided ongoing health care until a new employee or provider has been found to provide the services.

And by renumbering all remaining sections to be numerically correct.

Eleventh: In renumbered Sec. 15, after the following: "This act shall take effect on passage" by inserting the following: , except for Sec. 7, 26 V.S.A. § 1400(c), which shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians

(Committee vote: 5-0-0)

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

(For House amendments, see House Journal for March 18, 2011, page 473; March 24, page 650)

ORDERED TO LIE

S. 38.

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

PENDING ACTION: Third Reading

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)