

Senate Calendar

WEDNESDAY, MARCH 14, 2012

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ORDERS OF THE DAY

**ACTION CALENDAR
UNFINISHED BUSINESS**

Third Reading

S. 147.

An act relating to granting staff of the departments of corrections and for children and families ex officio status for the purpose of obtaining and providing notary public services.

Second Reading

Favorable with Proposal of Amendment

H. 512.

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

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 by striking out Sec. 41 in its entirety and inserting in lieu thereof a new Sec. 41 to read as follows:

Sec. 41. 8 V.S.A. § 6052(b) is amended to read:

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation and feasibility study which includes a description of the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer, together with such additional information as the commissioner may reasonably require. In considering and approving the risk retention group's plan of operation and any subsequent amendments thereto, the commissioner may limit the net amount of risk retained by a risk retention group. The risk retention group shall submit for approval by the commissioner an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, including any material change in the information called for in subsection (c) of this section, but excluding the identity of policyholders and any changes in rates or rating classification systems. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner. The risk

retention group shall inform the commissioner of any material changes in rates or rating classification systems, within 30 days of the adoption of such change.

(Committee vote: 5-0-2)

(For House amendments, see House Journal for February 16, 2012, page 290.)

CONSIDERATION POSTPONED

Third Reading

S. 230.

An act relating to property and casualty insurers and electronic notices.

PENDING QUESTION? Shall the recommendation of amendment as moved by Sen. Brock be amended as moved by Sen. Galbraith?

(For text of Sen. Brock's amendment and Sen. Galbraith's amendment thereto, see Senate Journal of March 13, 2012, page 316.)

AMENDMENT TO S. 230 TO BE OFFERED BY SENATOR GALBRAITH BEFORE THIRD READING

Senator Galbraith moves that the bill be amended in Sec. 1, 8 V.S.A. § 3666, subsection (f), by inserting the following at the end of the last sentence following the word "days": ; provided, however, that for notices of cancellation or nonrenewal pursuant to 8 V.S.A. § 3880, 3881, 4224, 4225, 4712, or 4713 the third notice shall be by certified mail

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 115.

An act relating to malpractice claims against public defender contract attorneys.

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

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

Sec. 1. 13 V.S.A. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the

office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

and that after passage the title of the bill be amended to read: "An act relating to ineffective assistance claims against assigned counsel"

(Committee vote: 5-0-0)

S. 131.

An act relating to the study of whether licensure should be required for the practice of roofing.

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

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

Sec. 1. CONTRACTOR REGISTRATION STUDY

(a) The secretary of state in consultation with the department of labor shall study whether registration or certification should be required for building contractors. The study shall be undertaken in consultation with interested parties, including the associated general contractors of Vermont, the homebuilders and remodeling association of Vermont, the Vermont independent electrical contracting association, and the Vermont state labor council. The study shall address the following issues if a registration or certification requirement is recommended:

(1) what entity should regulate or certify contractors;

(2) whether all contracting work should be required to be performed by a registered or certified contractor, or whether there should be exceptions to any registration or certification requirement;

(3) what type of penalties should be assessed for any unauthorized contracting practice;

(4) what standards should apply to the practice of contracting, if any;

(5) what type of oversight the regulating entity should have over contractors, such as investigating complaints of unprofessional conduct,

professional training education, and any experiential or education requirements;

(6) what grandfathering provisions should apply to persons currently practicing contracting and by what date the requirements of registration or certification should become effective; and

(7) whether a registry would enable the state to better monitor safety requirements for workers and compliance with workplace injury protection.

(b) By September 1, 2012, the secretary shall report to the house committee on general, housing and military affairs and the senate committee on economic development, housing and general affairs his or her findings and any recommendations for legislative action.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: “An act relating to studying whether building contractors should be registered or certified”

(Committee vote: 5-0-0)

S. 136.

An act relating to vocational rehabilitation.

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

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

Sec. 1. 21 V.S.A. § 641 is amended to read:

§ 641. VOCATIONAL REHABILITATION

(a) When as a result of an injury covered by this chapter, an employee is unable to perform work for which the employee has previous training or experience, the employee shall be entitled to vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. Vocational rehabilitation services shall be provided as follows:

* * *

(3) The commissioner shall adopt rules to assure that a worker who requests services or who has ~~received~~ been out of work for more than 90 days ~~of continuous temporary total disability benefits~~ is timely and cost-effectively screened for benefits under this section. The rules shall:

* * *

Sec. 2. STUDY

(a) The department of labor in consultation with the department of disabilities, aging, and independent living, and other interested parties, including vocational rehabilitation services, shall study the following:

(1) what performance standards should apply to vocational rehabilitation counselors;

(2) whether the department of disabilities, aging, and independent living should be allowed to provide workers' compensation vocational rehabilitation services and charge the fees for those services to insurance companies; and

(3) whether injured workers receiving vocational rehabilitation services are receiving those services in a timely manner.

(b) The department of labor shall report its findings as well as any recommendations by January 15, 2013, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

(Committee vote: 5-0-0)

S. 152.

An act relating to the definition of line of duty in the workers' compensation statutes.

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

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

Sec. 20. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(12) "Public employment" means the following:

* * *

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting in the line of duty in any capacity

under the direction and control of the fire department or rescue and ambulance squads, after the governing officials of such municipal body so vote;

(L) members of any regularly organized private volunteer fire department while acting ~~in the line of duty~~ in any capacity under the direction and control of the fire department after election by the organization to have its members covered by this chapter;

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting ~~in the line of duty~~ in any capacity under the direction and control of the rescue or ambulance squad after election by the organization to have its members covered by this chapter;

* * *

(Committee vote: 5-0-0)

S. 194.

An act relating to consolidation of supervisory unions.

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

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

Sec. 1. SUPERVISORY UNION SIZE AND STRUCTURE

(a) The secretary of administration or designee, in consultation with the commissioner of education or designee, shall explore the purpose, structure, duties, and authority of supervisory unions and design a revised structure based roughly on existing technical center service regions that results in no more than three supervisory unions within each region. The primary purpose of any design shall be to improve education quality. The secretary shall analyze the feasibility of the revised structure and shall develop a plan of transition. Among other things, the secretary shall:

(1) consider the optimal size of supervisory unions, in terms of geography and numbers of students, technical centers, schools, and school districts served;

(2) consider structural elements, such as:

(A) management models;

(B) staffing, including the most appropriate way to address existing contracts, staff consolidation, and salary equalization;

(C) special education services;

(D) financial and other data collection and management systems;

(E) transportation, including ownership of buses, merger of systems, and consolidation of routes;

(F) supervisory union boards, including structure, selection of members, district representation, and the purpose, authority, and membership of executive committees;

(G) supervisory union budgets, including the manner in which they are adopted and the method by which costs are assessed to the member districts;

(H) ownership of real and personal property;

(I) ability to borrow money; and

(J) alignment of curricula and calendars;

(3) consider ways in which the department and state board of education would support transition to a proposed structure; and

(4) estimate both the financial cost of transitioning to and the potential savings in the proposed structure.

(b) By January 15, 2013, the secretary shall report to the senate and house committees on education on the work required by this section. The secretary shall also provide recommendations for legislative action necessary to implement its proposed plan.

(Committee vote: 5-0-0)

S. 239.

An act relating to ensuring the humane treatment and slaughter of animals.

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

The Committee recommends that the bill be amended by striking out Secs. 3 and 4.

(Committee vote: 3-1-1)

S. 244.

An act relating to referral to court diversion for driving with a suspended license.

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

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

Sec. 1. LEGISLATIVE PURPOSE

(a) The Vermont General Assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. The committee began its work by looking at the most common nonviolent misdemeanors. Driving without a license (DLS), both criminal and civil, was cited by witnesses as a significant driver of costs to the justice system.

(b) Currently, over 38,000 motor vehicle licenses are suspended in Vermont. There are a number of reasons that a person's motor vehicle operator's license can be suspended, including failure to pay civil fines, accumulation of points for moving violations, failure to pay child support, procurement of alcohol by a minor, and automatic suspensions for serious violations such as driving while intoxicated. The majority of licenses (60 percent) are suspended for failure to pay a traffic ticket, followed by accumulation of points for moving violations (24 percent).

(c) The committee determined that many otherwise law-abiding citizens become caught in a cycle of suspensions due to an inability to meet the financial obligations of fees, fines, and subsequent increases to insurance rates. The committee believes it is in the public interest to assist people under civil license suspension to regain their license and avoid the spiral that may eventually result in a criminal suspension.

(d) Court diversion is an existing preadjudication option for many people who have been charged with a crime. The diversion program offers willing offenders the opportunity to take responsibility for their actions and make amends to victims and the community.

Sec. 2. DIVERSION PROGRAM FOR DRIVING WITH A SUSPENDED LICENSE

(a) The court administrator, the court diversion program, and the department of motor vehicles shall work cooperatively in an effort to assist Vermonters who have a suspended motor vehicle operator's license to regain their license through participation in the DLS diversion program, as provided in this section.

(b)(1) Except as provided in subdivision (2) of this subsection, the court administrator shall notify a person who has had his or her operator's license suspended pursuant to 23 V.S.A. §§ 674 or 676 that he or she is eligible to participate in the DLS diversion program, which is intended to assist people in regaining their operator's license. A person shall be eligible to participate in the DLS diversion program if the person completes all the requirements of the underlying violation and the suspension and if, as a result, the person would

otherwise be eligible to regain his or her license if not for unmet financial obligations.

(2) A person whose operator's license is suspended for a violation of 23 V.S.A. §§ 1091(b), 1094(b), 1128(b) or (c), or 1201 or 1205 shall not be eligible to participate in the DLS diversion program with respect to the suspension for such violation.

(3) The notice shall provide that:

(A) The program is designed to assist the person to get his or her driver's license reinstated prior to completion of payment of any debt related to the suspension.

(B) The person may be eligible for a reduction in the amount of the person's financial obligation to the state or may be permitted to establish a reasonable payment plan to discharge the debt.

(C) The program is voluntary but agreeing to participate would include certain requirements including:

(i) meeting with diversion staff to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension.

(ii) completing all conditions related to the offense and indicated by the screening process that are imposed by the diversion program.

(4) The court administrator may charge the cost of preparing and sending the notice against revenues collected pursuant to this subsection.

(c) Upon receiving a request from a person who has been issued a notice pursuant to subsection (b) of this section, the diversion program shall register the person in the DLS diversion program. The program staff shall meet with the person to assess the person's risks and to identify factors that contributed to previous violations leading to license suspension. Based upon the assessment, the program shall develop a contract with the person that may include:

(1) Adherence to a plan to pay fines and fees required to reinstate a driver's license.

(2) Acquiring and showing proof of auto insurance.

(3) Performance of community service.

(4) Completion of a driving education program.

(5) Any other conditions related to the reasons for the violation that led to license suspension.

(d) A person with fewer than five violations of 23 V.S.A. § 676 may apply to the DLS diversion program. Upon receipt of an application and determination of eligibility, the diversion program shall send the person a notice to report to the diversion program. The notice to report shall provide that the person is required to meet with diversion staff for the purposes of assessment and to complete all conditions of the diversion contract as provided in subsection (c) of this section.

(e) The diversion program shall notify the judicial bureau of acceptance of a person into the DLS diversion program and that a contract has been agreed to by the parties. Upon approval of the contract and any related payment plan, the judicial bureau shall notify the department of motor vehicles of compliance with the contract and the department shall reinstate the person's operator's license provided the person remains in compliance with the diversion contract. The department of motor vehicles may suspend a person's license for failure to comply with the diversion contract.

(f) The DLS diversion program shall work cooperatively with the judicial bureau to establish a reasonable payment plan for fines and fees owed by a person enrolled in the program. In addition to any remedies already provided, the judicial bureau may do the following in cases involving a person enrolled in the DLS diversion program:

(1) Reduce the amount of fines or fees owed in exchange for community service or education, or both, as provided in a diversion contract.

(2) Withdraw any debt placed for collection with a collection agency or the department of taxes.

(g) The court diversion program, in cooperation with the judiciary, shall adopt standards for operating the DLS diversion program, including determining whether a person is in compliance with conditions as set forth in this section. The standards shall specifically identify circumstances, such as additional violations or accumulation of points, which shall require additional contract conditions and circumstances that will result in dismissal from the program. Such standards shall be applicable in all county diversion programs.

(h) Each participant shall pay a fee to the local adult court diversion project. The amount of the fee shall be determined by the program using a sliding-scale fee based on financial means of the participant. The fee shall not exceed \$300.00. Notwithstanding 32 V.S.A. § 502(a), fees collected under this subsection shall be retained and used solely for the purpose of the DLS diversion program.

(i) The court administrator shall begin notification as provided in subsection (b) by January 15, 2013, at which time the DLS diversion program shall be operational. Priority shall be given to persons determined to be at

highest risk of acquiring a criminal DLS pursuant to 23 V.S.A. § 674 due to an accumulation of civil suspensions violation pursuant to 23 V.S.A. § 674.

(j) The department of motor vehicles and the court administrator shall coordinate a method for determining the appropriate mechanism to inform people about the DLS diversion program.

(k) The court administrator, the director of the court diversion program, and the commissioner of motor vehicles shall jointly report to the general assembly on or before April 1, 2013 and again on or before January 15, 2014 on the implementation of the DLS diversion program and the advisability of implementing the program through roadside stops for driving without a license and extending the program to persons who are currently prohibited from participation pursuant to subdivision (b)(2) of this section.

Sec. 3. DLS DIVERSION SPECIAL FUND

There is established the DLS diversion program special fund to be administered by the attorney general. The fund shall be used to fund the requirements of this act. Administrative fees collected pursuant to subsection (h) of Sec. 2 of this act shall be deposited and credited to this fund. The fund shall be available to the attorney general to enter into memorandums of understanding with diversion programs to pay for contractual and operating expenses and project-related staffing related to the implementation and continuing operations of the DLS diversion program.

Sec. 4. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

* * *

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than five times annually and shall cease to exist on January 1, ~~2012~~ 2014.

* * *

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 5-0-0)

Reported favorably by Senator Cummings for the Committee on Finance.

(Committee vote: 6-0-1)

Reported favorably with recommendation of amendment by Senator Nitka for the Committee on Appropriations.

The Committee recommends that the bill be amended by striking out Sec. 4 in its entirety and by renumbering the remaining section to be numerically correct.

(Committee vote: 5-0-2)

Joint Resolutions For Action

J.R.S. 50.

Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges.

By Senator Nitka,

J.R.S. 50. Joint resolution providing for a Joint Assembly to vote on the retention of three Superior Judges.

Whereas, declarations have been submitted by the following three Superior Judges that they be retained for another six-year term, Judge Karen R. Carroll, Judge Dennis R. Pearson, Judge Barry Peterson, and

Whereas, the procedures of the Joint Committee on Judicial Retention require at least two public hearings and the review of information provided by each judge and the comments of members of the Vermont bar and the public, and

Whereas, the Committee was unable to fulfill its responsibilities under subsection 608(b) of Title 4 to evaluate the judicial performance of the judges seeking to be retained in office by March 8, 2012, the date specified in subsection 608(e) of Title 4, and for a vote in Joint Assembly to be held on March 15, 2012, the date specified in subsection 10(b) of Title 2, and

Whereas, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly when the Committee is not able to make a timely recommendation, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, March 29, 2012, at one o'clock in the afternoon to vote on the retention of three Superior Judges. In case the vote to retain said Justices and Judges shall not be made on

that day, the two Houses shall meet in Joint Assembly at nine o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

NOTICE CALENDAR

Second Reading

S. 106.

An act relating to miscellaneous changes to municipal government law.

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

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

* * * Violations; Penalties * * *

Sec. 1. 10 V.S.A. § 2675 is amended to read:

§ 2675. PENALTIES

A person who commits a violation under subsection 2645(a) or 2648(a) of this title shall be subject to a fine of not more than ~~\$25.00~~ \$75.00 per violation. In the case of a violation which continues after the issuance of a fire prevention complaint, each day's continuance may be deemed a separate violation.

Sec. 2. 24 V.S.A. § 1974a is amended to read:

§ 1974a. ENFORCEMENT OF CIVIL ORDINANCE VIOLATIONS

(a) A civil penalty of not more than ~~\$500.00~~ \$800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is ~~\$500.00~~ \$800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than ~~\$500.00~~ \$800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

* * *

Sec. 3. 24 V.S.A. § 4451 is amended to read:

§ 4451. ENFORCEMENT; PENALTIES

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than ~~\$100.00~~ \$300.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than ~~\$100.00~~ \$300.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

* * * Damages by Dogs * * *

Sec. 4. REPEAL

20 V.S.A. §§ 3741 (election of remedy), 3742 (notice of damage; appraisal); 3743 (examination of certificate), 3744 (fees and travel expenses), 3745 (identification and killing of dogs), 3746 (action against town), and 3747 (action by town against owner of dogs) are repealed.

* * * Taxes * * *

Sec. 5. 24 V.S.A. § 1535 is amended to read:

§ 1535. ABATEMENT

(a) The board may abate in whole or part taxes, interest, ~~and~~ or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

* * *

* * * Municipal Powers and Duties * * *

Sec. 6. 24 V.S.A. § 1571 is amended to read:

§ 1571. ACCOUNTS

(a) The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him or her, and of moneys paid out by him or her for the town and the town school district, which accounts shall at all times be open to the inspection of persons interested.

(b) Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.

(c) The town treasurer shall file quarterly reports with the legislative body regarding his or her actions described in subsections (a) and (b) of this section.

Sec. 7. 24 V.S.A. § 1972 is amended to read:

§ 1972. PROCEDURE

(a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. ~~The full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published~~ legislative body shall arrange for one formal publication of the ordinance or rule in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, the information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a

vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title, ~~and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.~~

(2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by ~~section~~ subsection 1973(e) of this title.

* * *

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law, or particular statute.

Sec. 8. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

* * *

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. §§ ~~1141-1147~~ chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

* * *

(6) To regulate the location, installation, maintenance, repair, and removal of utility poles, wires and conduits, water pipes or mains, or gas mains and sewers, upon, under, or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295

of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise, or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon, or other conveyance, excepting persons selling fruits, vegetables, or other farm produce.

* * *

(11) To regulate, license, tax, or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.

* * *

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

* * *

(16) To name and rename streets and to number and renumber lots pursuant to section ~~4421~~ 4463 of this title.

* * *

* * * Poor Relief * * *

Sec. 9. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

* * *

(2) To perform all duties now conferred by law upon the ~~selectmen~~ selectboard, except that he or she shall not prepare tax bills, sign orders on the general fund of the town, ~~other than orders for poor relief~~, call special or annual town meetings, lay out highways, establish and lay out public parks, make assessments, award damages, act as member of the board of civil authority, nor make appointments to fill vacancies which the ~~selectmen are~~ selectboard is now authorized by law to fill; but he or she shall, in all matters herein excepted, render the ~~selectmen~~ selectboard such assistance as ~~they~~ it shall require;

* * *

(4) To have charge and supervision of all public town buildings, repairs thereon, and repairs of buildings of the town school district upon requisition of

the school directors; and all building done by the town or town school district, unless otherwise specially voted, shall be done under his or her charge and supervision;

(5) To perform all the duties now conferred by law upon the road commissioner of the town, including the signing of orders; provided, however, that when an incorporated village lies within the territorial limits of a town which is operating under a town manager, and such village fails to pay to such town for expenditure on the roads of the town outside the village, at least ~~fifteen~~ 15 percent of the last highway tax levied in such village, the legal voters residing in such town, outside such village, may elect one or two road commissioners who shall have and exercise all powers of road commissioner within that part of such town as lies outside such village;

* * *

Sec. 10. 24 V.S.A. § 1762 is amended to read:

§ 1762. LIMITS

(a) A municipal corporation shall not incur an indebtedness for public improvements which, with its previously contracted indebtedness, shall, in the aggregate, exceed ten times the amount of the last grand list of such municipal corporation. Bonds or obligations given or created in excess of the limit authorized by this subchapter and contrary to its provisions shall be void.

(b) However, the provisions of this subchapter as to the debt limit shall not apply to bonds issued under sections 1752; or 1754 ~~and 1769~~ of this title, relating to the ordinary expenses of a municipality, ~~nor to bonds issued for poor relief.~~

Sec. 11. REPEAL

24 V.S.A. §§ 1769 (notes and bonds for poor relief) and 1770 (application) are repealed.

* * * Glebe Lands * * *

Sec. 12. REPEAL

24 V.S.A. §§ 2404 (rents of other lands, how divided and applied) and 2405 (contract under previous law not affected) are repealed.

* * * Municipal Planning and Development * * *

Sec. 13. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

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

* * *

(33) “Public road” means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

Sec. 14. 24 V.S.A. § 4442 is amended to read:

§ 4442. ADOPTION OF BYLAWS AND RELATED REGULATORY TOOLS; AMENDMENT OR REPEAL

* * *

(c) Routine adoption.

(1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.

(2) However, a rural town ~~with a population of fewer than 2,500 persons as defined in section 4303 of this chapter~~, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

* * *

* * * Property; Filing of Land Plats * * *

Sec. 15. 27 V.S.A. § 1404(b) is amended to read:

(b) Survey plats prepared and filed in accordance with ~~section 4416 of Title 24 V.S.A. § 4463~~ shall be exempt from subdivision 1403(b)(6) of this title. Survey plats or plans filed under this exemption shall contain a title area, the location of the land and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 5-0-0)

Reported favorably by Senator Ashe for the Committee on Finance.

(Committee vote: 6-0-1)

S. 214.

An act relating to customer rights regarding smart meters.

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

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

Sec. 1. 30 V.S.A. § 2811 is added to read:

§ 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) “Smart meter” means a wired smart meter or a wireless smart meter.

(2) “Wired smart meter” means an advanced metering infrastructure device using a fixed wire for two-way communication between the device and an electric company.

(3) “Wireless smart meter” means an advanced metering infrastructure device using radio or other wireless means for two-way communication between the device and an electric company.

(b) Customer rights. Notwithstanding any law, order, or agreement to the contrary, an electric company may install a wireless smart meter on a customer’s premises, provided the company:

(1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights under subdivisions (2) and (3) of this subsection;

(2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge, unless such charge is approved by the public service board pursuant to subsection (c) of this section; and

(3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.

(c) Fees. Upon full deployment of its advanced metering infrastructure, an electric company may charge an opt-out fee to customers who choose not to have a wireless smart meter installed, or who have a wireless smart meter removed, provided the fee is cost based and approved by the board.

(d) Reports. On January 1, 2014 and again on January 1, 2016, the commissioner of public service shall publish a report on the energy savings realized through the use of smart meters, as well as on the occurrence of any breaches to a company's cyber security infrastructure. The reports shall be based on electric company data requested by and provided to the commissioner of public service and shall be in a form and in a manner the commissioner deems necessary to accomplish the purposes of this subsection. The reports shall be submitted to the senate committees on finance and on natural resources and energy and the house committees on commerce and economic development and on natural resources and energy.

(e) Health report. On or before January 15, 2013, the commissioner of health shall submit a report to the senate committee on finance and the house committee on commerce and economic development which shall include: an update of the department of health's 2012 report entitled "Radio Frequency Radiation and Health: Smart Meters"; a summary of the department's activities monitoring the deployment of wireless smart meters in Vermont, including a representative sample of postdeployment radio frequency level testing; and recommendations relating to evidence-based surveillance on the potential health effects of wireless smart meters.

Sec. 2. INSTALLED WIRELESS SMART METERS

If an electric company has installed a wireless smart meter, as defined in 30 V.S.A. § 2811(a)(2), prior to the effective date of this act, the company shall provide notice of the installation to the applicable customers, and such notice shall include a statement of customer rights as described under 30 V.S.A. § 2811(b).

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 6-0-1)

S. 226.

An act relating to prohibiting synthetic stimulants.

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

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

Sec. 1. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)

(a) Prescription drug abuse is Vermont's fastest growing drug problem. Treatment demand has grown over 500 percent since 2005 for medication-assisted treatment from physicians and methadone programs.

(b) Increased crime is a community by-product of the increase in untreated addiction. Reducing demand for these substances is an essential component of Vermont's strategy to decrease the crime and health-related problems stemming from prescription drug abuse and opiate addiction.

(c) Current capacity for methadone and buprenorphine treatment is not sufficient to meet the demand. As a component of the development of health homes, expansion of these treatments shall be sought in order to meet the escalating demand.

(d) The integrated treatment continuum for opiate dependence, also known as the hub and spoke model, that is being developed by the agency of human services in collaboration with community providers will create a coordinated, systemic response to the complex issues of opiate addiction. The use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 2. 13 V.S.A. § 1404 is amended to read:

§ 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

(1) Murder in the first or second degree.

(2) Arson under sections 501-504 and 506 of this title.

(3) Sexual exploitation of children under sections 7822, 2822, and 2824 of this title.

(4) Receiving stolen property under sections 2561-2564 of this title.

(5) An offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under ~~section 4237, subdivision 4231(c)(1), or subsection 4233(e) or 4234a(e) of Title 18;~~

(A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana.

(B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine.

(C) 18 V.S.A. § 4233(c), relating to trafficking in heroin.

(D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine.

(E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine.

Sec. 3. 13 V.S.A. § 1409 is amended to read:

§ 1409. PENALTIES

The penalty for conspiracy is the same as that authorized for the crime which is the object of the conspiracy, ~~except that no term of imprisonment shall exceed five years, and no fine shall exceed \$10,000.00.~~ A sentence imposed under this section shall be concurrent with any sentence imposed for an offense which was an object of the conspiracy.

Sec. 4. 13 V.S.A. § 4005 is amended to read:

§ 4005. WHILE COMMITTING A CRIME

~~A Except as otherwise provided in 18 V.S.A. § 4253, a person who carries a dangerous or deadly weapon, openly or concealed, while committing a felony or while committing an offense under section 667 of Title 7, or while committing the crime of smuggling of an alien as defined by the laws of the United States, shall be imprisoned not more than five years or fined not more than \$500.00, or both.~~

Sec. 5. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A DRUG

(a) A person who uses a firearm during and in relation to selling or dispensing a regulated drug in violation of subdivision 4230(b)(3), 4231(b)(3), 4232(b)(3), 4233(b)(3), 4234(b)(3), 4234a(b)(3), 4235(c)(3), or 4235a(b)(3) of this title shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, in addition to the penalty for the underlying crime.

(b) A person who uses a firearm during and in relation to trafficking a regulated drug in violation of subsection 4230(c), 4231(c), 4233(c), or

4234a(c) of this title shall be imprisoned not more than five years or fined not more than \$10,000.00, or both, in addition to the penalty for the underlying crime.

(c) For purposes of this section, “use of a firearm” shall include the exchange of firearms for drugs, and this section shall apply to the person who trades his or her firearms for drugs and the person who trades his or her drugs for firearms.

Sec. 6. MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The Vermont drug task force (task force) was established in 1987 as a multi-jurisdictional, collaborative law enforcement approach to combating drug crime. The task force is composed of state, local, and county officers who are assigned to work undercover as full-time drug investigators. These investigators receive specialized training, equipment, and resources that enable them to conduct covert drug investigations. There are four units of the task force geographically located to cover all areas of the state. The drug investigators of each of the units are supervised by a state police sergeant. State police commanders of the special investigation section are responsible for overall supervision and oversight of the task force.

(b) Working closely with state, local, county, and federal law enforcement agencies, the task force strives to investigate and apprehend those individuals directly involved in the distribution of dangerous drugs. The task force focuses on mid- to upper-level dealers, but also targets street level dealers who are negatively impacting Vermont’s communities.

(c) To address the growing concern regarding gang involvement in the illegal drug trade as well as other gang-related criminal activity in Vermont’s communities, a mobile enforcement team (team) shall be established consistent with the task force model. According to the U.S. Department of Justice, a gang is defined as a group or association of three or more persons who may have a common identifying sign, symbol, or name and who individually or collectively engage in or have engaged in criminal activity which creates an atmosphere of fear and intimidation.

(d) The team shall be made up of state and local investigators to include uniformed troopers and shall focus on gangs and organized criminal activity to include drug and gun trafficking and associated crimes. The team shall work closely with federal law enforcement agencies, state and federal prosecutors, the Vermont information and analysis center, and the department of corrections in collecting intelligence on gangs and organized criminal groups, to be shared with law enforcement partners throughout Vermont. The team shall not be

assigned to a specific geographical area of Vermont but shall act as a rapid response team to specific identified problem areas.

Sec. 7. GANG ACTIVITY TASK FORCE

(a) The gang activity task force is established for the purpose of raising public awareness about gang activity and organized crime in Vermont and across state and international borders, identifying resources for local, county, and state law enforcement officials, recommending to the public ways to identify and report acts of gang activity and organized crime, and making findings and recommendations regarding those efforts to the general assembly.

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

(1) The commissioner of public safety or his or her designee, who shall serve as chair.

(2) The commissioner of liquor control or his or her designee.

(3) Representatives, appointed by the governor, from the following:

(A) a municipal police department;

(B) a sheriff's department;

(C) the department of corrections;

(D) the department of education;

(E) the business community; and

(F) the health care community.

(4) The United States' attorney for Vermont.

(5) A representative of the Vermont crime victims services.

(c) The task force shall perform the following duties:

(1) Identify ways to raise public awareness about gang activity in Vermont communities.

(2) Recommend how the Vermont public, business community, local and state government, and health and education providers can best identify, report, and prevent acts of gang activity in Vermont.

(3) Identify the services needed by victims of gang activity and their families and recommend ways to provide those services.

(d) The task force shall have the assistance and cooperation of all state and local agencies and departments.

(e) For attendance at meetings, members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set in 32 V.S.A. § 1010, plus mileage.

(f) On or before November 15, 2012, the task force shall report to the members of the senate and house committees on judiciary and to the legislative council its recommendations and legislative proposals, if any, relating to its findings.

(g) The task force may meet no more than six times and shall cease to exist on January 15, 2013.

Sec. 8. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity in Vermont and assess whether Vermont would benefit from a state Racketeer Influenced and Corrupt Organizations Act. The attorney general shall consult with the gang activity task force and the defender general in his or her deliberations. The report shall identify existing Vermont and federal law that addresses organized crime and recommendations for enhancing these laws, including any legislation necessary to implement the recommendations. The attorney general shall issue the report to the general assembly no later than January 15, 2013.

Sec. 9. APPROPRIATION; MOBILE ENFORCEMENT TEAM TO COMBAT GANG ACTIVITY

(a) The amount of \$150,000.00 is appropriated from the general fund to the department of public safety to provide funding for the mobile enforcement team established in Sec. 6 of this act.

(b) The commissioner of public safety may, at his or her discretion, utilize grants dedicated to fund the work of the drug task force to support the efforts of the gang task force and mobile enforcement team.

Sec. 10. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to combating illegal diversion of prescription opiates and increasing treatment resources for opiate addiction"

(Committee vote: 5-0-0)

Reported favorably by Senator Sears for the Committee on Appropriations.

(Committee vote: 6-0-1)

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.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8lng for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/21/12)

REPORTS ON FILE

Reports 2012

Pursuant to the provisions of 2 V.S.A. §20(c), one (1) hard copy of the following reports is on file in the office of the Secretary of the Senate. Effective January 2010, pursuant to Act No. 192, Adj. Sess. (2008) §5.005(g) some reports will automatically be sent by electronic copy only and can be found on the State of Vermont webpage.

8. Progress Report on River Basin Water Quality Management Planning during 2011. (Agency of Natural Resources, Department of Environmental Conservation, Water Quality Division). (March 2012)

FOR INFORMATION ONLY

CROSSOVER DEADLINES

The following bill reporting deadlines are established for the 2012 session:

(1) From the standing committee of last reference (excluding the Committees on Appropriations and Finance), all Senate bills must be reported out of committee on or before March 16, 2012 and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) For bills referred pursuant to Senate Rule 31, all Senate bills must be reported out of the Committees on Appropriations and Finance on or before March 23, 2012 and filed with the Secretary of the Senate.

(3) All bills to be referenced from the House not meeting the respective applicable dates shall be referred to the Senate Rules Committee.

(4) These deadlines may be waived for any bill or committee **only** by consent given by the Committee on Rules.

Exceptions to the foregoing deadlines include the major money bills (Appropriations, Transportation, Capital, and Miscellaneous Taxes).