Journal of the Senate

TUESDAY, APRIL 10, 2012

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rick Swanson of Stowe.

Pledge of Allegiance

The President then led the members of the Senate in the pledge of allegiance.

Bill Referred to Committee on Appropriations

House bill of the following title, appearing on the Calendar for notice, and carrying an appropriation, under the rule, was referred to the Committee on Appropriations:

H. 770.

An act relating to the state's transportation program.

Bill Referred

House bill of the following title was read the first time and referred:

H. 506.

An act relating to vinous beverages.

To the Committee on Rules.

Message from the Governor
Appointments Referred

A message was received from the Governor, by Alexandra MacLean, Secretary of Civil and Military Affairs, submitting the following appointments, which were referred to committees as indicated:

Ashcroft, Mary of North Clarendon - Member of the Vermont Natural Gas and Oil Conservation Board, - from April 4, 2012, to February 28, 2014.

To the Committee on Natural Resources and Energy.

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Thomas, Brian of Shrewsbury - Member of the Plumbers Examining Board, - from April 4, 2012, to February 29, 2016.

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

Greene, Craig of Alburgh - Member of the Fish and Wildlife Board, - from April 4, 2012, to February 28, 2018.

To the Committee on Natural Resources and Energy.

Besio, Nathan of Colchester - Member of the Human Rights Commission, - from April 4, 2012, to February 28, 2017.

To the Committee on Judiciary.

Troiano, Jo Ann of Montpelier - Member of the Vermont State Housing Authority, - from April 4, 2012, to February 28, 2017.

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

Zahner, Michael of Marshfield - Member of the Valuation Appeals Board, - from April 4, 2012, to January 31, 2015.

To the Committee on Finance.

Powers, James of Montpelier - Member of the Valuation Appeals Board, - from April 4, 2012, to January 31, 2013.

To the Committee on Finance.

Joint Senate Resolution Adopted on the Part of the Senate

Joint Senate resolution of the following title was offered, read and adopted on the part of the Senate, and is as follows:

By Senators Carris and Mullin,

J.R.S. 56. Joint resolution relating to weekend adjournment.

Resolved by the Senate and House of Representatives:

That when the two Houses adjourn on Thursday, April 12, 2012, or, Friday, April 13, 2012, it be to meet again no later than Tuesday, April 17, 2012.

Bill Passed in Concurrence with Proposal of Amendment

H. 752.

House bill of the following title was read the third time and passed in concurrence with proposal of amendment:

An act relating to permitting stormwater discharges in impaired watersheds.

Bill Amended; Third Reading Ordered

S. 142.

Senator White, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to pet merchants.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 20 V.S.A. § 3681 is amended to read:

§ 3681. PERMIT

(a) ~~The owner or keeper of two or more domestic pets or wolf-hybrids four months of age or older kept for sale or for breeding purposes, except for his or her own use,~~ A person who sells, exchanges, or donates or offers to sell, exchange, or donate for monetary consideration three or more litters of domestic pets or wolf-hybrids in a calendar year shall apply to the municipal clerk of the town or city in which the domestic pets or wolf-hybrids are kept for a kennel permit to be issued on forms prescribed by the commissioner and pay the clerk a fee of ~~$10.00~~ $25.00 for the same. The provisions of subchapters 1, 2, and 4 of this chapter not inconsistent with this subchapter, shall apply to the permit which shall be in addition to other permits required. A kennel permit shall expire on March 31 next after issuance, and shall be displayed prominently on the premises on which the domestic pets or wolf-hybrids are kept. If the permit fee is not paid by April 1, the owner or keeper may thereafter procure a permit for that license year by paying a fee of ~~fifty~~ 50 percent in excess of that otherwise required. Municipal clerks shall maintain a record of the type of animals being kept by the permit holder.

(b) A person possessing a kennel permit issued under this section must include the permit number in any form of advertising, including Internet advertising, a brochure, or a sign that announces the availability of an animal for sale or exchange. The person's name and kennel permit number must be provided to the person purchasing or otherwise receiving an animal.

(c) The legislative body of a municipality may assess a penalty against any person who violates subsection (b) of this section.

Sec. 2. 20 V.S.A. § 3682 is amended to read:

§ 3682. INSPECTION OF PREMISES

These premises may be inspected at any ~~reasonable~~ time between 9:00 a.m. and 5:00 p.m. in the presence of or with the consent of the owner by a law enforcement officer, a representative of the agency of agriculture, food and

markets, or an officer or agent of ~~an~~ a Vermont incorporated humane society and a veterinarian licensed to practice in Vermont, designated by such officer, agent or agency.

And that when so amended the bill ought to pass.

Senator Cummings, for the Committee on Finance, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Bill Amended; Third Reading Ordered

S. 180.

Senator Cummings, for the Committee on Finance, to which was referred Senate bill entitled:

An act relating to the universal service fund and establishment of a high-cost program.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS AND PURPOSE

(a) The general assembly finds:

(1) Incumbent local exchange carriers (ILECs) are obligated to provide broad-based access to telephone services, even in areas that are high cost, sparsely populated, or filled with subscribers of limited means.

(2) Traditionally, ILECs were rewarded with an exclusive franchise in return for carrying out their regulatory responsibilities in unprofitable areas.

(3) However, with increased competition in the telecommunications field, particularly in profitable areas, ILECs have less of an opportunity to cover the costs of serving unprofitable areas.

(4) Vermont has a state universal service fund which is currently used to support the lifeline and enhanced 911 programs. Funds are generated by an end-user surcharge on all retail telecommunications service provided to a Vermont address.

(b) It is the purpose of this act to establish a new regulatory model under which ILECs can continue their costly responsibilities over wide areas and still have an opportunity to cover their costs, even in the presence of competitors.

* * * Universal Service Fund Studies * * *

Sec. 2. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST BASIC TELECOMMUNICATIONS SERVICE

(a) The general assembly intends that the universal service charge be used in the future as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. ~~In the future, and after this section has been amended by further act of legislation, payments may be made to reduce the cost of basic telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.~~

(b) The commissioner of public service, in conjunction with the public service board, shall conduct a study of the costs and other factors affecting the delivery of local exchange service by the incumbent local exchange carriers (the providers of last resort). The study shall ~~be conducted either as an independent inquiry or as part of a proceeding or docket affecting other matters~~ include an informal workshop process to be conducted by the board. Such process shall be noticed to the general public and structured to allow written and verbal comments by the general public, service providers, public officials, and others as determined by the board. The study shall:

(1) After considering information on how various factors affect the costs of providing telecommunications service in Vermont and elsewhere, estimate the current costs and estimate, on a forward-looking basis, the differential costs of providing local exchange service to various customer groups throughout Vermont.

(2) Estimate the relationship between basic telecommunications service charges and universal service, and the threshold level beyond which universal residential service is likely to be harmed.

(3) Estimate the relationship between basic telecommunications service charges and opportunities for uniform economic development throughout the state, and the threshold prices beyond which such opportunities may be adversely affected.

(4) Estimate the potential effects of local exchange competition on uniform and affordable basic telecommunications service charges in all parts of the state.

(5) Examine policy options by which the cost to customers may be managed so as not to jeopardize universal service and the uniform economic development opportunities, including at least the following:

(A) establishing a maximum price for basic telecommunications service, beyond which customers would have access, without regard to income, to credits or vouchers negotiable for local exchange service from a local exchange provider or competitive access provider;

(B) broadening eligibility for the lifeline program; and

(C) establishing a mechanism to adjust the level of support for higher cost customers over time to reflect legal rights, recover historic costs, and reflect the advantages of improved technology and increased efficiency.

(6) Examine the actions, if any, of the Federal Communications Commission (FCC) in revising its universal service fund, and the need, if any, for additional action in Vermont. In particular, the study shall examine the impact on Vermont services caused by the FCC's report and order released November 18, 2011, which, among other things, expands the federal universal service fund to include broadband deployment in unserved areas. Further, the study shall consider the potential impact of various legal challenges to the FCC action on the federal universal service fund.

(7) Propose mechanisms to support universal service and rural economic development while securing the benefits of telecommunications competition for Vermont households and businesses.

(8) Include an audit of the universal service fund to examine, among other things, the contributions made to the fund in terms of the categories of telecommunications service providers covered as well as the specific services charged. In addition, the audit shall assess the disbursements made from the fund.

(9) Consider any other relevant issues that may arise during the course of the study.

(c) The results of the study, together with any plan for amending and distributing funds under this section, shall be submitted to the ~~general assembly~~ house committee on commerce and economic development and the senate committee on finance on or before ~~January 15, 1996~~ December 1, 2012.

(d) The commissioner of public service may contract with a consultant to conduct the study required by this section. Costs incurred in conducting the study shall be reimbursed from the state universal service fund up to $75,000.00.

(e) To the extent this study may require disclosure of confidential information by a telecommunications service provider, such confidential information shall be disclosed to a third party pursuant to a protective agreement. In no event shall the third party be a person or persons employed

by a business competitor or whose primary duties engage them in business competition with a telecommunications service provider submitting the confidential information. The third party may be the consultant retained by the commissioner under subsection (d) of this section or may be another third party agreed upon by the commissioner and the telecommunications service providers. The third party shall be responsible for aggregating the information and, once aggregated, may publicly disclose such information consistent with the purposes of this section. The confidentiality requirements of this subsection shall not affect whether information provided to an agency of the state or a political subdivision of the state pursuant to other laws is or is not subject to disclosure.

Sec. 3. CREATION OF ONE-YEAR HIGH-COST PROGRAM

(a) There is created a high-cost program under which the universal service charge shall be used as a means of keeping basic telecommunications service affordable in all parts of this state, thereby maintaining universal service. Payments shall be made to Vermont's incumbent local exchange carriers (ILECs) for the purpose of reducing the cost of providing basic local telecommunications service in areas where that cost would otherwise jeopardize universal service or uniform economic development.

(b) Funds distributed under the high-cost program are intended to defray the cost an ILEC incurs in building and maintaining its network so that it stands ready to serve any customer in its service area, even those in the most remote areas of Vermont. In order to achieve this goal, funding shall not be based upon the number of basic telecommunications services ordered, but rather upon the cost to serve any customer in that service area who may request basic local exchange service. This includes the costs of building and maintaining the entire network in each exchange in the applicable service area.

(c) The fiscal agent shall make distributions for the high-cost program to the ILECs, as required by this section. The percentage of funds distributed to each ILEC shall reflect the percentage of total access lines reported by each ILEC in its annual report to the public service board.

(d) Any funds in excess of $1,000,000.00 remaining in the Vermont universal service fund as of September 1, 2012 shall be distributed among all the ILECs in a manner determined by the commissioner of public service.

Sec. 4. STUDY ON THE STATE USF AND PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

(a) The commissioner of public service or designee, in consultation with the commissioner of taxes or designee, shall convene a work group to study issues related to application of the state's universal service charge established

under 30 V.S.A. chapter 88 to prepaid wireless telecommunications services. The work group shall include representatives of prepaid wireless telecommunications service providers, Vermont retailers of prepaid wireless telecommunications services, consumers, the enhanced-911 program, and any other stakeholders identified by the commissioner. The study shall consider:

(1) the retail transactions subject to the charge;

(2) the amount of the charge;

(3) application of the charge to bundled telecommunications services;

(4) the effective date of any adjustments to the charge;

(5) billing and collection procedures, including:

(A) notice of charges to consumers; and

(B) various payment and collection methods, including payment and collection procedures similar to those used for the sales and use tax imposed under 32 V.S.A. chapter 233;

(6) the ability of retailers or the department of taxes, if applicable, to retain a percentage of the fees collected to offset collection and administration costs and, if so, the percentage which may be retained; and

(7) any other matter deemed relevant by the commissioner.

(b) The commissioner, on behalf of the work group established under subsection (a) of this section, shall report his or her findings and recommendations to the house committee on commerce and economic development and the senate committee on finance not later than December 1, 2012. The report shall include draft legislation for consideration during the 2013 legislative session.

(c) It is the intent of the general assembly that the study authorized under this section shall not circumscribe any obligation which may be imposed on a wireless telecommunications service provider in pending or future proceedings before the public service board concerning designation as an eligible telecommunications carrier.

Sec. 5. EFFECTIVE DATE

(a) This act shall take effect on passage.

(b) Sec. 3 of this act (creation of high cost program) shall take effect on passage and shall be repealed on June 30, 2013.

And that when so amended the bill ought to pass.

Senator Illuzzi, for the Committee on Appropriations, to which the bill was referred, reported that the bill ought to pass when so amended.

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

Proposal of Amendment; Third Reading Ordered

H. 765.

Senator Snelling, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to the mental health needs of the corrections population.

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

Sec. 1. INDIVIDUALS WITH A SERIOUS FUNCTIONAL IMPAIRMENT INCARCERATED IN A CORRECTIONAL FACILITY

(a) For the purpose of identifying and assessing the needs of individuals with a serious functional impairment as defined in 28 V.S.A. § 906(1) who are incarcerated in a correctional facility, the secretary of human services shall establish on or before July 1, 2012 a work group, including representatives appointed by the secretary of human services from the departments of corrections, of mental health, and of disabilities, aging, and independent living and including stakeholders. The work group shall:

(1) determine whether individuals with serious functional impairments are receiving appropriate programs and services while incarcerated in a correctional facility;

(2) consult with the members of the criminal justice community on ways to prevent initial incarceration and on ways to limit the length of incarceration for an individual with a serious functional impairment, as appropriate;

(3) work toward the successful reintegration into the community of an individual with serious functional impairment who has been incarcerated in a correctional facility;

(4) work toward reducing the recidivism rate among individuals with a serious functional impairment; and

(5) make long-term, systemic policy recommendations to the secretary of human services to create or improve mechanisms, programs, and services that benefit individuals with a serious functional impairment incarcerated in a correctional facility.

(b) On or before January 15, 2013, the secretary of human services shall issue a report to the general assembly recommending how to better address the needs of individuals with a serious functional impairment who are incarcerated in a correctional facility, based on the findings of the work group in the course of its duties as described in subsection (a) of this section. Prior to finalizing the report, the secretary shall obtain public input regarding the report and shall release a draft report to the public for public comment on or before December 15, 2012. At minimum, the report shall address the following:

(1) the prevalence of serious functional impairment among those members of the corrections population incarcerated in a correctional facility at the time the report is issued;

(2) the rate of recidivism among individuals with a serious functional impairment;

(3) the prevalence of psychotropic medication utilization by individuals in the mental health caseloads, including an analysis of the number of individuals with a serious functional impairment who possess a prescription for a psychotropic medication and whether that prescription was prescribed before or after the individual was incarcerated.

(4) the number of individuals incarcerated in a correctional facility with a serious functional impairment who are in need of mental health services that are not currently available to them; and

(5) opportunities to combine the department of mental health's expertise with that of the department of corrections to improve the mental health services for individuals with a serious functional impairment who are incarcerated in a correctional facility.

Sec. 2. INCARCERATED INDIVIDUALS AND MENTAL HEALTH

As a complement to the assessment conducted pursuant to Sec. 1 of this act, the commissioner of mental health shall ensure that information regarding incarcerated individuals with a mental illness or disorder as defined in 28 V.S.A. § 906(3) is collected and recorded separately, in addition to the other requirements of this act. The information collected shall include recidivism rates among this population. On or before January 15, 2013, the commissioner shall report this information and make recommendations to the house committee on corrections and institutions, the house committee on human services, the senate committee on health and welfare, and the senate committee on judiciary.

Sec. 3. TRAINING

On or before October 15, 2012, the departments of mental health, of disabilities, aging, and independent living, and of corrections, with input and participation from peer and advocacy organizations, shall review the department of corrections' training program for correctional officers as it relates to the Americans with Disabilities Act and to working with and identifying individuals with a serious functional impairment or a mental illness or disorder. The review shall determine if the training is gender-responsive and trauma-informed. No later than January 15, 2013, the commissioners of mental health and of corrections shall submit a report to the general assembly identifying the strengths, weaknesses, and opportunities for improvement in this training.

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Third Readings Ordered

H. 565.

Senator Cummings, for the Committee on Finance, to which was referred House bill entitled:

An act relating to regulating licensed lenders and mortgage loan originators.

Reported that the bill ought to pass in concurrence.

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

H. 613.

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

An act relating to governance of the Community High School of Vermont .

Reported that the bill ought to pass in concurrence.

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

Consideration Postponed

S. 28.

Senator Lyons, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to consolidating land use and environmental permit administration, rulemaking, and appeals into a department of environmental quality headed by an environmental council.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Environmental Division, Superior Court * * *

Sec. 1. ENVIRONMENTAL DIVISION AMENDMENTS; PURPOSE

The purpose of Secs. 2 (environmental division; magistrate) and 3 (access to information) of this act, which enhance the environmental division of the superior court (the division), is to increase the speed and accessibility to the public of appeals before the division by reducing discovery, requiring parties to exchange relevant information before hearings, and adding a magistrate to help expedite proceedings in a manner that gives due consideration to the needs of pro se litigants and to supply the division with an additional judicial appointee who may decide noncomplex cases and, in complex matters, may make preliminary decisions and assist in early and rigorous case management. Secs. 2 and 3 of this act shall be applied consistently with this purpose.

Sec. 2. 4 V.S.A. § 1001 is amended to read:

§ 1001. ENVIRONMENTAL DIVISION

(a) The environmental division shall consist of two judges, each sitting alone, and one magistrate.

(b)(1) Two environmental judges shall be appointed to hear matters in the environmental division and to hear other matters in the superior court when so assigned by the administrative judge pursuant to subsection 21a(c) of this title.

(2) An environmental magistrate shall be appointed to perform duties that relate solely to matters in the environmental division and that are authorized by rule or an environmental judge. An environmental magistrate may be so authorized to perform one or more of the following:

(A) Case management,

(B) Issuing a decision on a procedural issue that does not dispose of a matter. including issuance of a scheduling order and managing discovery.

(C) Determining whether appeals should be consolidated or coordinated pursuant to 10 V.S.A. § 8504(g).

(D) Determining whether a matter should be referred for alternative dispute resolution.

(E) Conducting alternative dispute resolution.

(F) Issuing a recommended decision on the merits of any matter subject to review and approval by an environmental judge. Prior to such review and approval, the recommended decision shall be served on all parties, and all adversely affected parties shall have an opportunity to file exceptions and present briefs and oral argument to the environmental judge on the recommended decision.

(G) Issuing a final decision on the merits of a matter that an environmental judge determines is not complex and does not involve questions of facts or law the determination of which is likely to have significant precedential effect.

(c) An environmental judge and an environmental magistrate shall be an attorney admitted to practice before the Vermont supreme court.

(1) An environmental judge shall be nominated, appointed, confirmed, paid, and retained, and shall receive all benefits in the manner of a superior judge.

(2) An environmental magistrate:

(A) Shall be nominated, appointed, confirmed, and retained in the manner of a superior judge;

(B) Shall be an exempt employee of the judicial branch, subject to the code of judicial conduct;

(C) Shall devote full time to his or her duties; and

(D) Shall be compensated in the same manner as other magistrates in the judicial branch.

(d) An environmental judge and an environmental magistrate shall be appointed on April 1, for a term of six years or the unexpired portion thereof.

(e) Evidentiary proceedings in the environmental division shall be held in the county in which all or a portion of the land which is the subject of the appeal is located or where the violation is alleged to have occurred, unless the parties agree to another location; provided, however, that the environmental ~~judge~~ division shall offer expeditious evidentiary hearings so that no such proceedings are moved to another county to obtain an earlier hearing. Unless otherwise ordered by the court, all nonevidentiary hearings may be conducted

by telephone or video conferencing using an audio or video record. If a party objects to a telephone hearing, the ~~court~~ division may require a personal appearance for good cause.

(f) [Repealed.]

(g) The supreme court may enact rules and develop procedures consistent with this chapter to govern the operation of the environmental division and proceedings in it. In adopting these rules, the supreme court shall ensure that the rules provide for:

(1) expeditious proceedings that give due consideration to the needs of pro se litigants;

(2) the ability of the judge to hold pretrial conferences by telephone;

(3) the use of scheduling orders under the Vermont Rules of Civil Procedure in order to limit discovery to that which is necessary for a full and fair determination of the proceeding; and

(4) the appropriate use of site visits by the presiding judge or magistrate to assist the ~~court~~ division in rendering a decision.

Sec. 3. 4 V.S.A. § 1004 is amended to read:

§ 1004. ACCESS TO INFORMATION

(a) In connection with ~~any~~ evidentiary proceedings under 10 V.S.A. chapter 201 ~~of Title 10~~ (environmental law enforcement) or 220 (consolidated environmental appeals), each party shall provide all other parties with all written statements and information in the possession, custody, or control of the party relative to the violation, including any technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, the names and addresses of the party's witnesses, and any other information which the environmental division deems necessary, in its sole discretion, to a fair and full determination of the proceeding.

(b) No other discovery or depositions, written interrogatories or requests to admit shall be permitted except that which ~~is~~ the environmental division deems necessary, in its sole discretion, for a full and fair determination of the proceeding.

* * * Act 250; District Commissioners; Ethical Standards * * *

Sec. 4. 10 V.S.A. § 6026 is amended to read:

§ 6026. DISTRICT COMMISSIONERS

* * *

(c) Members shall be removable for cause only, except the ~~chairman~~ chair who shall serve at the pleasure of the governor.

* * *

(e) The chair and members of a district commission shall comply with the following ethical standards:

(1) The provisions of 12 V.S.A. § 61 (disqualification for interest).

(2) The chair and each member of a district commission shall conduct the affairs of his or her office in such a manner as to instill public trust and confidence and shall take all reasonable steps to avoid any action or circumstance that might result in any one of the following:

(A) Undermining his or her independence or impartiality of action.

(B) Taking official action on the basis of unfair considerations.

(C) Giving preferential treatment to any private interest on the basis of unfair considerations.

(D) Giving preferential treatment to any family member or member of his or her household.

(E) Using his or her office for the advancement of personal interest or to secure special privileges or exemptions.

(F) Adversely affecting the confidence of the public in the integrity of the district commission.

(f) As soon as practicable after grounds become known, a party may move to disqualify a district commissioner from a particular matter before the district commission.

(1) The motion shall contain a clear statement of the specific grounds for disqualification and when such grounds were first known.

(2) On receipt of the motion, the district commissioner who is the subject of the motion shall disqualify himself or herself or shall refer the motion to the chair of the board. The chair of the board may disqualify the district commissioner from the matter before the district commission if, on review of the motion, the chair determines that such disqualification is necessary to ensure compliance with subsection (e) (ethical standards) of this section.

(3) On disqualification of a district commissioner under this subsection, the chair of the board shall assign another district commissioner to take the place of the disqualified commissioner. The chair shall consider making such

an assignment from among the members of the same district commission before assigning a member of another district commission.

(g) For one year after leaving office, a former appointee to a district commission shall not, for pecuniary gain:

(1) Be an advocate on any matter before the district commission to which he or she was appointed; or

(2) Be an advocate before any other public body, or the general assembly or its committees, regarding any matter in which, while an appointee, he or she exercised any official responsibility or participated personally and substantively.

* * * Party Status; Standing to Appeal * * *

Sec. 5. PARTY STATUS AMENDMENTS; PURPOSE

The purpose of Secs. 6 (party status) and 7 (person aggrieved) of this act is to correct the overly rigorous application of existing standards for party status and standing to appeal exemplified by the decision of *In re Pion Sand and Gravel*, No. 245-12-09 Vtec (July 2, 2010), and to assure that future decisions properly apply these standards. To determine standing, the Vermont supreme court has applied an analysis used by the federal courts under Article III of the United States Constitution. *Parker v. Milton*, 169 Vt. 74 (1998). In addition, Vermont statutes establish who may be a party. For the purpose of 10 V.S.A. §§ 6085(c)(1)(E) (party status; adjoining property owner; other persons) and 8502(7) (person aggrieved), establishing status as a party or "person aggrieved" is distinct from a merits determination. A person need not prove the merits of a claim in order to participate or appeal, but rather need only demonstrate a reasonable possibility of injury to a particularized interest. The subdivisions amended in Secs. 6 and 7 of this act shall be applied consistently with this purpose.

Sec. 6. 10 V.S.A. § 6085(c) is amended to read:

(c)(1) Party status. In proceedings before the district commissions, the following persons shall be entitled to party status:

* * *

(E) Any adjoining property owner or other person who ~~has~~ alleges an injury to a particularized interest protected by this chapter that may be ~~affected by an act or decision by a district commission~~ attributable to a proposed development or subdivision. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

Sec. 7. 10 V.S.A. § 8502(7) is amended to read:

(7) "Person aggrieved" means a person who alleges an injury to a particularized interest protected by the provisions of law listed in section 8503 of this title, attributable to an act or decision by a district coordinator, district commission, the secretary, or the environmental division that can be redressed by the environmental division or the supreme court. If such an allegation is disputed, the person need only demonstrate that there is a reasonable possibility of injury to a particularized interest.

* * * Recorded Hearings; Pilot Project; Act 250 * * *

Sec. 8. ON THE RECORD PILOT; FINDINGS; PURPOSE

(a) The purpose of Secs. 9 (appeals on the record) and 10 (prospective repeal; report) of this act is to establish a pilot project to test the use of recorded hearings by the Act 250 district commissions that, on appeal to the environmental division, will be subject to a review on the record (OTR) rather than a de novo hearing.

(b) There is disagreement on the use of OTR for appeals to the environmental division from decisions of the district commissions. On the one hand, proponents of OTR argue that, in the case of Act 250, OTR will ensure the primacy of the district commissions in making the decisions and, in cases that are likely to be appealed, avoid duplicative expenditure of time and resources resulting from presenting, on appeal, expert and witness testimony and other evidence already presented. Proponents also argue that OTR enhances citizen participation because a record preserves citizen input before the district commissions and the district commissions are more accessible to citizens than a court. On the other hand, skeptics of OTR argue that it will result in an overly formal district commission process that will harm citizen participation and increase the cost and time of all district commission proceedings in order to benefit those that are appealed.

(c) The pilot project authorized by this act is intended to test whether OTR can be implemented in a manner that results in the benefits asserted by proponents without the negative impacts raised by skeptics. To this end, it is important that district commissions participating in the project limit recorded proceedings to matters that are likely to be appealed, assure that recorded proceedings are run in the same informal and citizen-friendly manner as other district commission proceedings, make all efforts to resolve and narrow issues for hearing, and assure adequate time and information for all parties to have a fair opportunity to prepare for the hearing.

Sec. 9. 10 V.S.A. § 6085a is added to read:

§ 6085a. APPEALS ON THE RECORD

(a) The districts no. 1, 4, and 5 environmental commissions may hold on-the-record hearings on the motion of any party or on its own motion. Any motion or decision to hold on-the-record hearings shall be made as early as possible during the course of an application and prior to convening a hearing on the merits. Notwithstanding subdivision 6001(4) of this title, for the purpose of this section, “district commission” shall mean the district no. 1, 4, or 5 environmental commission.

(b) The district commission shall schedule a prehearing conference in each matter in which on-the-record hearings may be held to:

(1) determine whether on-the-record hearings shall be held;

(2) narrow and specify all issues for hearing;

(3) establish a fair and adequate schedule for all parties to prepare submissions of information; and

(4) establish a schedule for and the order of a hearing.

(c) The district commission may hold on-the-record hearings if it determines that:

(1) the application raises issues that are likely to be contested and appealed;

(2) on-the-record hearings are likely to result in significant cost and time savings;

(3) on-the-record hearings would assure complete information and argument for the district commission’s consideration;

(4) on-the-record hearings will not unnecessarily burden the parties; and

(5) on-the-record hearings will not significantly deter citizen participation and the ability of parties to participate pro se.

(d) In a case in which a district commission decides to hold on-the-record hearings:

(1) The district commission may request that the parties engage in alternative dispute resolution in an effort to resolve or narrow issues before the district commission.

(2) The district commission shall assure that all parties and the district commission have adequate information in sufficient time to address issues before the district commission.

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names and addresses of the party's witnesses.

(iv) Summaries of all proposed testimony.

(B) The district commission may require each participating party to provide the district commission and all other parties with one or more of the following:

(i) Prefiled testimony.

(ii) Memoranda concerning any issue in controversy.

(iii) Particular information that a party may request by written questions.

(iv) Any other information that the commission deems necessary to a fair and full determination of the proceeding.

(C) The provisions of this subdivision (2) shall be in addition to the provisions of 3 V.S.A. §§ 809, 809a, and 809b.

(3) The district commission shall make every reasonable effort to maintain the procedural informality characteristic of district commission proceedings that are not on-the-record. There shall be flexibility in allowing the introduction of evidence. The district commission shall ensure that all hearings, conferences, and requirements for prehearing submissions are in keeping with the citizen-run and citizen-served process under this chapter, and due consideration and respect shall be given to the needs of all applicants, parties, and pro se parties.

(e) The district commission shall cause on-the-record hearings to be recorded by video. Such recordings shall be at the expense of the board. The board shall provide training and education opportunities, and legal counsel as appropriate, to enable district commissioners to preside successfully at on-the-record hearings.

(f) Notwithstanding sections 6089 and 8504 of this title, there shall be no appeal of a district commission's decision on whether to hold on-the-record hearings.

(g) Notwithstanding subsection 8504(h) of this title, in a matter in which a district commission has elected to hold on the record hearings under this section, the appeal of a decision of the district commission shall be reviewed on the record prepared by the commission. In such an appeal:

(1) The record shall consist of the video recording of the hearing and all documents and materials reviewed or considered by the district commission. The district commission shall forward the record to the environmental division within 20 days of the date the district commission receives the notice of appeal.

(2) The appellant shall bear the burden to demonstrate that the district commission committed reversible error.

(3) No objection that has not been urged before the district commission may be considered by the environmental division, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the district commission with respect to questions of fact, if supported by substantial evidence on the record as a whole, shall be conclusive.

(5) The environmental division may reverse district commission conclusions or decisions only if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Sec. 10. PROSPECTIVE REPEAL; REPORT

(a) 10 V.S.A. § 6085a (appeals on the record) shall be repealed on July 1, 2016, except that the section shall remain in effect for an application for a permit under 10 V.S.A. chapter 151 if prior to that date:

(1) The application was filed with the district no. 1, 4, or 5 environmental commission and determined to be complete; and

(2) With respect to the application, a motion for on-the-record hearings was filed or the district commission determined to hold on-the-record hearings under that section.

(b) With respect to the implementation of 10 V.S.A. § 6085a (appeals on the record), the natural resources board shall submit annual reports by January 15 of each year that 10 V.S.A. § 6085a is in effect. In addition, the natural resources board shall submit an evaluation report by January 15, 2014

and a further evaluation report by January 15, 2016. The evaluation report shall be combined with the annual report for the same year.

(1) Each report shall be submitted to the house committee on fish, wildlife and water resources and the house and senate committees on judiciary and on natural resources and energy.

(2) The evaluation reports shall provide a quantitative and qualitative assessment of the use of on-the-record hearings, including the timeliness and manageability of the overall process, any effects on public participation, party feedback, any additional resource demands or efficiencies, and whether to incorporate or make more use of alternative dispute resolution methods, including intervenor funding, community stakeholder process, and mediation.

(3) The annual reports shall detail the range of projects for which there were on-the-record hearings, the districts in which the hearings were held, the time required and the outcome of completed commission hearings, whether appeals were taken, and if so, by which party, and the time required for the outcome of appellate proceedings before the environmental division.

Sec. 11. AGENCY OF NATURAL RESOURCES; RECORD REVIEW; REPORT

On or before January 15, 2013, the secretary of natural resources shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy on how the secretary might implement on-the-record (OTR) appeals of acts or decisions of the secretary and on affording deference on appeal to those acts or decisions. Such report shall:

(1) Provide data on the number of appeals from those acts or decisions during the preceding three years that went to hearing on the merits and the amount of staff time necessitated by each such appeal.

(2) Detail the changes that the secretary would propose or deem necessary within the agency of natural resources to effect OTR appeals such as revisions to notice requirements or conduct of hearings, preparation of the record, or establishment of internal administrative hearings.

(3) Set out what specific standards of deference, if any, the secretary proposes should apply on appeal of his or her acts or decisions; what internal changes to the agency, if any, should be implemented to support use of those standards; and the extent to which OTR appeals are necessary to effecting one or more of the proposed standards.

(4) Provide the secretary's recommendations and reasons for those recommendations.

Sec. 12. NATURAL RESOURCES BOARD; REPORT; CLIMATE CHANGE; SPRAWL; CUMULATIVE IMPACTS

On or before January 15, 2013, the chair of the natural resources board shall submit a report to the house committee on fish, wildlife and water resources and the house and senate committees on natural resources and energy with recommendations for improving the provisions of and process under 10 V.S.A. chapter 151 (Act 250) with respect to: the issue of climate change due to anthropogenic global warming; preservation of Vermont's settlement pattern of concentrated settlements surrounded by rural countryside and prevention of sprawl and the related loss of agricultural soils and forestland; and enhancement of the ability of Act 250 to address the cumulative effects of development over time. Prior to submitting this report, the chair shall consult with other state permitting officials, including representatives of the agencies of agriculture, food and markets, of commerce and community development, of natural resources, and of transportation; municipal permitting officials; and members of the public through public meetings, use of the Internet, and other forms of outreach.

Sec. 13. JUDICIARY POSITION; APPROPRIATION

For the purpose of Sec. 2 of this act (environmental division; magistrate):

(1) The position of environmental magistrate is created within the judicial branch.

(2) For fiscal year 2013, the sum of $125,000.00 is appropriated to the judiciary from the general fund.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 1, 3–8, and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Secs. 2 (environmental division; magistrate) and 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

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

An act relating to the permit process for protecting the environment.

And that when so amended the bill ought to pass.

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Natural Resources and Energy with the following amendments thereto:

First: By striking out Secs. 1 (environmental division amendments; purpose) and 2 (environmental division) in their entirety and inserting in lieu thereof: Secs. 1 and 2. [Deleted.]

Second: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subdivision (d)(2), by striking out subdivision (A) and inserting in lieu thereof a new subdivision (A) to read as follows:

(A) The district commission shall require each participating party to provide the district commission and all other parties with each of the following:

(i) Written statements and information in the possession, custody, or control of the party.

(ii) Technical studies, expert reports including the basis and reasons for each opinion, tests and reports, maps, architectural and engineering plans and specifications, drawings, site plans, graphs, charts, photographs, and other data or data compilations from which information can be obtained.

(iii) The names, addresses, and telephone numbers of the party's witnesses.

(iv) Fair and accurate summaries of all proposed testimony.

(v) The curriculum vitae of each expert witness, including a list of all other cases in which, during the previous four years, the witness testified as an expert.

Third: In Sec. 9, 10 V.S.A. § 6085a (appeals on the record), in subsection (d), after subdivision (3), by inserting a new subdivision to be numbered subdivision (4) to read as follows:

(4) The district coordinator for the district commission shall provide pro se parties with reasonable assistance on procedure before the district commission.

Fourth: By striking out Secs. 13 (judiciary position; appropriation) and 14 (effective dates; implementation) in their entirety and inserting in lieu thereof:

Sec. 13. JUDICIARY POSITION; APPROPRIATION

The establishment of one new exempt position in the judicial branch of state government—environmental division staff attorney—is authorized in fiscal year 2013. This position shall be converted from an existing law clerk position

within the judicial branch. The job duties of the environmental division staff attorney shall be within the environmental division of the superior court and shall include: researching legal issues; drafting legal memoranda; screening and management of division caseload with special attention to complex cases and division backlogs; and supervising law clerks and interns. For the purpose of this section, the sum of $60,000.00 is appropriated to the judiciary from the general fund for fiscal year 2013.

Sec. 14. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 3–8 and 10–12 of this act shall take effect on passage.

(b) Sec. 9 (appeals on the record) shall take effect on July 1, 2012. As of the effective date of this Sec. 14, the natural resources board shall commence planning and training of district commissions for implementation of Sec. 9.

(c) Sec. 13 (judiciary position; appropriation) of this act shall take effect on July 1, 2012.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the recommendation of the Committee on Natural Resources and Energy be amended as recommended by the Committee on Appropriations?, on motion of Senator MacDonald consideration of the bill was postponed until the next legislative day.

Proposal of Amendment; Third Reading Ordered

H. 403.

Senator Sears, for the Committee on Judiciary, to which was referred House bill entitled:

An act relating to foreclosure of mortgages.

Reported recommending that the Senate propose to the House to amend the bill by striking out Sec. 3 in its entirety and inserting in lieu thereof four new sections to be numbered Secs. 3, 4, 5, and 6 to read as follows:

Sec. 3. 12 V.S.A. § 506 is amended to read:

§ 506. JUDGMENTS

Actions on judgments and actions for the renewal or revival of judgments shall be brought by filing a new and independent action on the judgment and recording a copy of the complaint in the land records where the property lies within eight years after the rendition of the judgment, and not after.

Sec. 4. 12 V.S.A. § 2903(b) is amended to read:

(b) A judgment which is renewed or revived pursuant to section 506 of this title shall constitute a lien on real property for eight years from the issuance of the renewed or revived judgment if recorded in accordance with this chapter and shall relate back to the date on which the original lien was first recorded if a copy of the complaint to renew the judgment was recorded in the land records where the property lies within eight years after the rendition of the judgment.

Sec. 5. 27 V.S.A. § 612(b) is amended to read:

(b) A purchaser shall have the right to terminate a binding contract for the sale of real estate if, prior to closing, the purchaser determines and gives written notice to the seller that land development has occurred on the real estate without a required municipal land use permit or in violation of an existing municipal land use permit. Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain the required municipal land use permits or to comply with existing municipal land use permits. If the seller does not obtain the required municipal land use permits or comply with existing municipal land use permits, the purchaser may terminate the contract if, as an owner or occupant of the real estate, the purchaser may be subject to an enforcement action under 24 V.S.A. § 4496 24 V.S.A. § 4454.

Sec. 6. EFFECTIVE DATES; APPLICABILITY

(a) Secs. 1 and 2 of this act shall take effect on July 1, 2012 and shall apply to any mortgage foreclosure proceeding instituted after that date.

(b) This section and Secs. 3, 4, and 5 of this act shall take effect on passage.

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

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

Proposals of Amendment; Third Readings Ordered

H. 459.

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

An act relating to approval of amendments to the charter of the town of Brattleboro.

Reported recommending that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, in § 2.4 (representative town meeting), in subdivision (a)(2), by striking out the fifth sentence which reads, "The town clerk and town treasurer shall be nonvoting ex officio members if appointed by the town manager."

Second: In Sec. 2, in § 3.2 (initiative), in subdivision (1)(B), at the end of the final sentence before the period, by striking out ", unless it is deemed illegal or unconstitutional by the body, in consultation with the town attorney"

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

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

Adjournment

On motion of Senator Campbell, the Senate adjourned until three o'clock and thirty minutes in the afternoon on Wednesday, April 11, 2012.