Journal of the Senate

THURSDAY, APRIL 26, 2012

The Senate was called to order by the President.

Devotional Exercises

A moment of silence was observed in lieu of devotions.

Bill Referred

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

H. 790.

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

To the Committee on Rules.

Joint Resolution Referred

J.R.S. 60.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senators Campbell, Cummings, Flory, Kitchel, Mazza, Snelling and White,

J.R.S. 60. Joint resolution expressing the General Assembly's expectation that the full range of concerns and issues raised by the general public regarding the merger of Central Vermont Public Service Corporation and Green Mountain Power Corporation will be given full consideration, and that the final agreement must be in the best interests of the ratepayers and people of the State of Vermont.

Whereas, currently before the public service board is a petition proposing to merge Vermont's two largest electric utilities, Central Vermont Public Service Corporation (CVPS) and Green Mountain Power Corporation (GMP), and

Whereas, a merger of this magnitude involves many complexities and considerations and, if approved by the public service board, will be significant for the State of Vermont, and

Whereas, in the merger proceeding, the public service board has received testimony from a number of parties setting forth different positions and the evidentiary record is now closed, and

Whereas, the public service board had previously approved windfall sharing mechanisms for both GMP and CVPS, arising out of a Hydro Quebec power purchase agreement, but left the specific procedure in each case as to how the windfall proceeds would be returned to customers for later resolution at the time of any subsequent acquisition or merger, and

Whereas, on March 26, 2012, the department of public service and GMP entered into a comprehensive memorandum of understanding (MOU) concerning the proposed merger between GMP and CVPS, and several other parties also entered into MOUs regarding issues of concern to those parties, and

Whereas, as part of the March 26th MOU, the department of public service achieved numerous beneficial concessions, in particular with regard to increased public governance of Vermont Electric Power Company (VELCO), so that eight of 13 board seats will represent the public interest compared to the three originally proposed by GMP, and

Whereas, as details about the proposed merger and MOU have become known by the general public, the people of our state have expressed a range of concerns about matters directly and indirectly affecting them, and

Whereas, there is disagreement among the general public as to the best mechanism for returning the $21 million in windfall proceeds to CVPS ratepayers and as to whether the efficiency investments proposed for these proceeds should be recovered in future rates, and

Whereas, there will be significant operational savings as a result of the merger, but there is a concern as to whether these operational savings should be shared between investors and the ratepayers, and if so, how, and

Whereas, the House of Representatives has taken testimony from the utilities, the department of public service, AARP, and other interested persons and has heard opinions regarding the potential value of the merger, as well as its risks and drawbacks, and on the windfall sharing mechanism in particular, and

Whereas, the public service board has now heard evidence and received briefs setting forth the positions of the parties, as well as public comments, and

Whereas, by law, the public service board exercises independent judgment and has not yet ruled on the proposed merger and acquisition, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly expects that the full range of concerns and issues raised by the general public will be given full consideration, and that the

proposed merger must be in the best interests of the ratepayers and people of the State of Vermont, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the department of public service, Green Mountain Power Corporation, and Central Vermont Public Service Corporation, and that the department of public service send a copy to all parties in the merger docket.

Thereupon, the President, in his discretion, treated the joint resolution as a bill and referred it to the Committee on Finance.

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:

Keane, Michael of North Bennington - Member of the Vermont Economic Progress Council, - from April 18, 2012, to March 31, 2013.

To the Committee on Finance.

Pinkham, Kreig of Northfield - Member of the Children and Family Council for Prevention Programs, - from April 18, 2012 to February 28, 2015,

To the Committee on Health and Welfare.

Recess

On motion of Senator Campbell the Senate recessed until eight o'clock and forty-five minutes in the forenoon.

Called to Order

The Senate was called to order by the President.

Recess

On motion of Senator McCormack the Senate recessed until nine o'clock and fifteen minutes.

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Consideration Postponed

H. 781.

Consideration was resumed on House bill entitled:

An act relating to making appropriations for the support of government.

Thereupon, pending the question, Shall Senator Galbraith's motion to amend, as substituted by Senator Flory, be further substituted as moved by Senator Sears?, Senator Sears, requested and was granted leave to withdraw his substitute proposal of amendment.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Appropriations be amended as proposed by Senator Galbraith, as substituted?, On motion of Senator Campbell action on the bill was postponed until later in the day.

House Proposals of Amendment Concurred In

H. 785.

House proposals of amendment to Senate bill entitled:

An act relating to capital construction and state bonding budget adjustment.

Were taken up.

The House concurs in the Senate proposal of amendment with further amendment thereto as follows:

First: In Sec. 2, amending Sec. 1 of No 40 of the Acts of 2011, in subdivision (b)(3), by striking "$87,952,312" and inserting in lieu thereof "$87,712,632"

Second: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, by adding subdivision (b)(14) to read:

(14) Newport, Northern State Correctional Facility, maintenance shop: ~~350,000~~ 110,320

* * *

Third: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(8), house committee rooms, by striking "380,960" and inserting in lieu thereof "430,960"

Fourth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(A), by striking "11,975,000" and inserting in lieu thereof "12,000,000"

Fifth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (c)(9)(B)(i), by striking "4,975,000" and inserting in lieu thereof "5,000,000"

Sixth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(1)(B), by inserting "coordinated services delivered;" following "standards;"

Seventh: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in subdivision (f)(4)(A), by inserting "Stanley," following "condition:" and by striking subdivision (f)(4)(D) in its entirety

Eighth: In Sec. 3, amending Sec. 2 of No. 40 of the Acts of 2011, in the FY 2012 and FY 2013 totals at the end of the section, by striking "$26,178,802" and inserting in lieu thereof "$25,939,122" and by striking "$29,264,450" and inserting in lieu thereof "$29,364,450" and by striking "$55,443,252" and inserting in lieu thereof "$55,303,572"

Ninth: In Sec. 4, amending Sec. 4 of No. 40 of the Acts of 2011, in subdivision (e)(2), by striking "and 10 V.S.A. chapter nine"

Tenth: By striking Sec. 6a, amending Sec. 8 of No. 40 of the Acts of 2011, reducing state aid for school construction, in its entirety and inserting in lieu thereof "[Deleted.]"

Eleventh: In Sec. 7a, adding a subsection (d) to Sec. 11 of No. 40 of the Act of 2011, by striking (d) and inserting in lieu thereof the following: "(d) If funds are allocated in any Acts of the 2011 Adj. Sess. (2012) other than an act relating to capital construction and state bonding budget adjustment for a new Community College of Vermont facility in Brattleboro and those funds are insufficient for the full cost of construction of the new facility, to the extent the $153,160,000 of general obligation bonds authorized by Sec. 25 of this act can be reduced by the use of bond premiums, up to $2,000,000 of the authorized amount that is no longer required to fund appropriations of this act as amended by capital budget adjustment shall be used to offset part of the construction cost. It is the intent of the general assembly that in the next biennium, any bond premium received shall be used to reduce state aid for school construction debt and shall be in addition to any regular capital appropriation for this purpose."

Twelfth: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in subdivision (b)(1)(A), by striking "1,480,720" and inserting in lieu thereof "1,500,400" and in subdivision (b)(5)(E), by striking the "(E)" and inserting in lieu thereof "(6) the department of forest, parks and recreation"

Thirteenth: In Sec. 8, amending Sec. 12 of No. 40 of the Acts of 2011, in the FY 2013 and Total Appropriation totals at the end of the section, by striking "$10,922,460" and inserting in lieu thereof "$10,942,140" and by striking "$24,444,173" and inserting lieu thereof "$24,463,853"

Fourteenth: By striking Sec. 12a, amending Sec. 21 of No. 40 of the Acts of 2011, Information and Innovation, in its entirety and inserting in lieu thereof "[Deleted.]" and by striking Sec. 12b, amending Sec. 23 of No. 40 of the Acts

of 2011, Vermont Interactive Television, in its entirety and inserting in lieu thereof "[Deleted.]"

Fifteenth: In Sec. 13, amending Sec. 24 of No. 40 of the Acts of 2011, in subdivision (42), in the sum, by underlining the "1"

Sixteenth: In Sec. 13, amending Sec 24 of No. 40 of the Acts of 2011, in subdivision (58), by striking "Session" and inserting in lieu thereof "Sess."

Seventeenth: In Sec. 14, amending Sec. 26 of No. 40 of the Acts of 2011, in subsection (a), in the second sentence, by striking "$81,0000" and inserting in lieu thereof "$81,000" and by inserting "for other purposes" following "department"

Eighteenth: By striking Sec. 15a, amending 29 V.S.A. § 152, duties of the commissioner, in its entirety and inserting in lieu thereof "[Deleted.]"

Nineteenth: By striking Sec. 21, amending 29 V.S.A. § 165, in its entirety and inserting in lieu thereof "[Deleted.]"

Twentieth: By striking Sec. 22 in its entirety and inserting in lieu thereof the following:

Sec. 22. 29 V.S.A. § 44 is amended to read:

§ 44. FUNDS TRANSFER FOR ART

* * *

(b) Of the funds transferred under subsection (a) of this section, ~~$7,500.00~~ $5,000.00 shall be available for use by the council for the expenses of administering this chapter.

* * *

Twenty-first: In Sec. 26, Parking in the Capitol Complex, in subsection (a), at the end of the first sentence, following the word "program," by inserting "subject to the collective bargaining rights of executive and judiciary employees. The program may include a pilot program designed to encourage employees of the executive, judiciary, and legislative branches of government working in Montpelier to use alternative means of transportation"

Twenty-second: In Sec. 26a, Civil War Monuments Study, in the second sentence, by striking "its" and inserting in lieu thereof "the"

Twenty-third: In Sec. 27a, adding 24 V.S.A. § 5607, in subsection (a), by deleting "to regional economic development corporations" and, in the last sentence of subsection (a), before the period by inserting "and shall be coordinated with the efforts described in chapter 76a of this title" before the period

Twenty-fourth: In Sec. 27a, adding 24 V.S.A. § 5607, in subsection (b), by striking "secretary of administration" and inserting in lieu thereof "commissioner of economic, housing and community affairs"

Twenty-fifth: In Sec. 28d, amending 6 V.S.A. § 4828, by striking subsection (d) in its entirety and insert in lieu thereof "[Repealed.]

Twenty-sixth: In Sec. 37a, Sustainable Prisons, in the first sentence, by striking "and to provide educational and green job training to inmates" and by striking the second sentence in its entirety and inserting a new second sentence to read:

"On or before January 15, 2013, the commissioners of buildings and general services and of corrections shall report on the feasibility of providing educational and green jobs training as part of this effort."

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

Bill Passed in Concurrence with Proposal of Amendment

H. 485.

House bill entitled:

An act relating to establishing universal recycling of solid waste.

Was taken up.

Thereupon, pending third reading of the bill, Senator Kitchel moved to amend the Senate proposal of amendment in Sec. 12 as follows:

First: In subsection (a) by striking out (4)(A) and inserting in lieu thereof the following:

(A) An assessment of facilities and programs necessary at the state, regional, or local level to achieve the priorities and the goals established in the state solid waste plan, including, after consultation with the secretary of agriculture, food and markets, an estimate of the number and type of composting facilities on farms.

Second: By striking subsection (b) in its entirety and inserting in lieu thereof the following:

(b) In preparing the report required by subsection (a) of this section, the secretary shall consult with interested persons, including the secretary of agriculture, food and markets, manufacturers, recyclers, collectors, retailers, solid waste districts, and environmental groups.

Which was agreed to.

Senator Ashe moved that the Senate proposal of amendment be amended in Sec. 7, 10 V.S.A. § 6605l, in subdivision (a)(2), by striking out "Public land" shall not mean land leased by the state to a person for private use."

Which was agreed to.

Senator Pollina moved that the Senate proposal of amendment be amended as follows:

First: By adding a new section to be numbered Sec. 16a to read as follows:

Sec. 16a. 10 V.S.A. § 1522 is amended to read:

§ 1522. BEVERAGE CONTAINERS; DEPOSIT

(a) Except with respect to beverage containers which contain liquor, a deposit of not less than five cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. With respect to beverage containers of volume greater than 50 ml. which contain liquor, a deposit of 15 cents shall be paid by the consumer on each beverage container sold at the retail level and refunded to the consumer upon return of the empty beverage container. The difference between liquor bottle deposits collected and refunds made is hereby retained by the liquor control fund for administration of this subsection.

* * *

(e)(1) Except for the difference between liquor bottle deposits collected and refunds made that are retained by the liquor control fund under subsection (a) of this section, beginning January 1, 2014, the difference between bottle deposits collected and refunds made by a manufacturer are hereby retained by the state for deposit in the clean environment jobs fund under section 1530 of this title.

(2) On or before July 1, 2013, the secretary of natural resources shall adopt by rule requirements for the collection of the difference between bottle deposits collected and refunds made. The rules shall establish requirements for collection that are substantially similar to the requirements in other states for the collection of unclaimed beverage container deposits.

Second: By adding a new section to be numbered Sec. 16b to read as follows:

Sec. 16b. 10 V.S.A. § 1530 is added to read:

§ 1530. CLEAN ENVIRONMENT JOBS FUND

(a) There is hereby established in the state treasury a special fund to be known as the clean environment jobs fund, to be administered and expended by the secretary of natural resources to fund programs or projects that promote

or support the growth of jobs or businesses in the state that are related to or engaged in recycling and solid waste management, provided that expenditures from the fund shall not be used to fund programs or projects associated with the incineration of solid waste.

(b) The secretary may authorize disbursement or expenditures from the fund for loans or grants to Vermont citizens or businesses initiating or expanding a business engaged in recycling or solid waste management, including: collection, transport, and recycling of electronic waste; salvage, recovery, and recycling of building materials; and the collection and disposal of mercury-added products.

(c) There shall be deposited into the fund:

(1) except for deposits retained by the liquor control fund, all abandoned beverage container deposits retained by the state under subsection 1522(e) of this title;

(2) private gifts, bequests, grants, or donations made to the state from any public or private source for the purposes for which the fund was established; and

(3) such sums as may be appropriated by the general assembly.

(d) Interest earned by the fund shall be credited and deposited to the fund. All balances in the fund at the end of the fiscal year shall be carried forward and remain a part of the fund.

Thereupon, Senator Galbraith moved that the question be divided.

Thereupon, the pending question, Shall the proposal of amendment of Senators Pollina and Ashe in the *first* proposal of amendment.

Which was disagreed to on a roll call, Yeas 12, Nays 18.

Senator Pollina having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Campbell, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, Pollina.

Those Senators who voted in the negative were: Benning, Brock, Carris, Cummings, Flory, Hartwell, Illuzzi, Kitchel, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Starr, Westman, White.

Thereupon, the pending question, Shall the proposal of amendment of Senators Pollina and Ashe in the second proposal of amendment?, Senator Pollina requested and was granted leave to withdraw the second proposal of amendment.

Senator White moved that the Senate proposal of amendment be amended as follows:

First: In Sec. 4, 10 V.S.A. § 6605, in subsection (l), by striking out the following: "municipal solid waste" each time it appears in the first and second sentences and inserting in lieu thereof the following: solid waste

Second: In Sec. 8, 10 V.S.A. § 6607a, by striking out subsection (h) in its entirety and inserting in lieu thereof a new subsection (h) to read as follows:

(h) A transporter certified under this section that offers the collection of solid waste may not charge a separate line item fee on a bill to a residential customer for the collection of mandated recyclables, provided that a transporter may charge a fee for all service calls, stops, or collections at a residential property and a transporter may charge a tiered or variable fee based on the size of the collection container provided to a residential customer or the amount of waste collected from a residential customer. A transporter certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of solid waste and may adjust the charge for the collection of solid waste. A transporter certified under this section that offers the collection of solid waste may charge a separate fee for the collection of leaf and yard residuals or organic waste from a residential customer.

Which was agreed to.

Senators Ashe and Mazza moved that the Senate proposal of amendment be amended by:

Sec. 18a. STATE HOUSE RECYCLING PROGRAM

On or before July 1, 2012, the sergeant at arms shall establish a program for the recycling of mandated recyclables, as that term is defined in 10 V.S.A § 6602. Under the program required by this section, when a container or containers are provided in the state house for the collection of solid waste destined for disposal, a container shall be provided for the collection of mandated recyclables. The program required by this section shall provide for the recycling of all mandated recyclables. Bathrooms in the state house shall be exempt from the requirement to provide an equal number of containers for the collection of mandated recyclables.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment on a roll call, Yeas 29, Nays 0.

Senator Campbell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, *Sears, Snelling, Westman, White.

Those Senators who voted in the negative were: None.

The Senator absent and not voting was: Starr.

*Senator Sears explained his vote as follows:

"I hate making laws we can't enforce, but it is good public policy to recycle."

Bill Passed in Concurrence with Proposal of Amendment

H. 745.

House bill entitled:

An act relating to the Vermont prescription monitoring system.

Was taken up.

Thereupon, pending third reading of the bill, Senator Sears moved to amend the Senate proposal of amendment by adding Secs. 17a-i to read as follows:

Sec. 17a. INTEGRATED TREATMENT CONTINUUM FOR OPIATE DEPENDENCE (HUB AND SPOKE INITIATIVE)

(a) Prescription drug abuse is Vermont's fastest growing drug problem, with treatment demand growing 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 drugs 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 for opiate addiction is not sufficient to meet the demand. As a component of the development of health homes, availability of these treatments should be expanded 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 and the use of medication-assisted treatment, including counseling and behavioral therapy, will provide a holistic approach to address the component of demand reduction.

Sec. 17b. 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(c) or 4234a(c) 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. 17c. 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. 17d. 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. 17e. 18 V.S.A. § 4253 is added to read:

§ 4253. USE OF A FIREARM WHILE SELLING OR DISPENSING A REGULATED 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. 17f. 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 and illegal diversion of prescription opiates. 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. 17g. 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.

(6) An attorney appointed by the criminal law section of the Vermont Bar Association.

(7) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(8) A senator appointed by the president pro tempore.

(9) A representative appointed by the speaker of the house.

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

(1) Identify ways to raise public awareness about gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates.

(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. 17h. ATTORNEY GENERAL REPORT; RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

The attorney general shall examine the issue of gang activity, including the distribution of dangerous drugs and illegal diversion of prescription opiates, 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. 17i. 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. 17f 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.

Which was agreed to.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

House Proposal of Amendment Concurred In

S. 203.

House proposal of amendment to Senate bill entitled:

An act relating to child support enforcement.

Was taken up.

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

Sec. 1. 4 V.S.A. § 466(f) is added to read:

(f) When an obligor is referred to an employment services program, the magistrate may require the program to file periodic written reports with the court regarding the obligor's progress and cooperation with the program requirements. Such reports shall be admissible in an enforcement or contempt proceeding without the appearance of a witness from the program unless there is a dispute with respect to the authenticity of the report or the obligor disputes the facts set forth in the report concerning the obligor's performance and the facts in dispute are relevant to the determination of the issues before the court.

Sec. 2. 15 V.S.A. § 603 is amended to read:

§ 603. CONTEMPT

(a) ~~A person who disobeys a lawful order or decree of a court or judge, made under the provisions of this chapter, may be proceeded against for contempt as provided by 12 V.S.A. § 122. The department for children and families may institute such proceedings in all cases in which a party or dependent children of the parties are the recipients of financial assistance from the department~~ Nonfinancial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order does not relate to payment of a financial obligation, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122.

(b) ~~For contempt of an order or decree made under the provisions of this chapter, the court may:~~

~~(1) order restitution to the department;~~

~~(2) order payments be made to the department for distribution;~~

~~(3) order a party to serve not more than 30 days of preapproved furlough as provided in 28 V.S.A. § 808(a)(7); or~~

~~(4) make such other orders or conditions as it deems proper~~

Financial obligations. If a person disobeys a lawful order of the family division made under the provisions of this chapter and the order creates a financial obligation, including payment of child support, spousal maintenance, or a lump sum property settlement, the person may be subject to proceedings for civil contempt as provided by 12 V.S.A. § 122 and the provisions set forth herein.

(c) Parties. The office of child support may institute proceedings in all cases in which the office provides services under Title IV-D of the Social Security Act to either or both parties.

(d) Notice of hearing. The person against whom the contempt proceedings are brought shall be served with a notice of a hearing ordering the person to appear at the hearing to show cause why he or she should not be held in contempt. The notice shall inform the person that failure to appear at the hearing may result in the issuance of an arrest warrant directing a law enforcement officer to transport the person to court.

(e) Rebuttable presumption of ability to comply. A person who is subject to a court-ordered financial obligation and who has received notice of such obligation shall be presumed to have the ability to comply with the order. In a contempt proceeding, the noncomplying party may overcome the presumption by demonstrating that, due to circumstances beyond his or her control, he or she did not have the ability to comply with the court-ordered obligation.

(f) Finding of contempt. A person may be held in contempt of court if the court finds all of the following:

(1) The person knew or reasonably should have known that he or she was subject to a court-ordered obligation.

(2) The person has failed to comply with the court order. If the failure to comply involves a failure to pay child support or spousal maintenance, the person who brings the action has the burden to establish the total amount of the obligation, the amount unpaid, and any unpaid surcharges or penalties.

(3) The person has willfully violated the court order in that he or she had the ability to comply with the order and failed to do so.

(g) Findings of fact. The court shall make findings of fact on the record based on the evidence presented which may include direct or circumstantial evidence.

(h) Order upon finding of contempt. Upon a finding of contempt, the court shall determine appropriate sanctions to obtain compliance with the court order. The court may order any of the following:

(1) The person to perform a work search and report the results of his or her search to the court or to the office of child support, or both.

(2) The person to participate in an employment services program, which may provide referrals for employment, training, counseling, or other services, including those listed in section 658 of this title. Any report provided from such a program shall be presumed to be admissible without the appearance of a

witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

(3) The person to appear before a reparative board. The person shall return to court for further orders if:

(A) the reparative board does not accept the case; or

(B) the person fails to complete the reparative board program to the satisfaction of the board in a time deemed reasonable by the board.

(4) Incarceration of the person unless he or she complies with purge conditions established by the court. A court may order payment of all or a portion of the unpaid financial obligation as a purge condition, providing that the court finds that the person has the present ability to pay the amount ordered and sets a date certain for payment. If the purge conditions are not met by the date established by the court and the date set for payment is within 30 days of finding of ability to pay, the court may issue a mittimus placing the contemnor in the custody of the commissioner of corrections.

(A) As long as the person remains in the custody of the commissioner of corrections, the court shall schedule the case for a review hearing every 15 days.

(B) The commissioner shall immediately release such a person from custody upon the contemnor's compliance with the purge conditions ordered by the court.

(C) The commissioner may, in his or her sole discretion, place the contemnor on home confinement furlough or work crew furlough without prior approval of the court.

(5) Orders and conditions as the court deems appropriate.

(i) Finding of present ability to pay. A finding of present ability to pay a purge condition shall be effective for up to 30 days from the date of the finding. In determining present ability to pay for purposes of imposing necessary and appropriate coercive sanctions to bring the noncomplying person into compliance and purge the contempt, the court may consider:

(1) A person's reasonable ability to use or access available funds or other assets to make all or a portion of the amount due by a date certain set by the court.

(2) A person's reasonable ability to obtain sufficient funds necessary to pay all or a portion of the amount due by a date certain set by the court, as demonstrated by the person's prior payment history and ability to comply with previous contempt orders.

Sec. 3. 15 V.S.A. § 653 is amended to read:

§ 653. DEFINITIONS

As used in this subchapter:

(1) "Available income" means gross income, less:

(A) the amount of spousal support or preexisting child support obligations, including any court-ordered periodic repayment toward arrearages, actually paid;

* * *

(7) "Self-support reserve" means the needs standard established annually ~~by the commissioner for children and families which shall be an amount sufficient to provide a reasonable subsistence compatible with decency and health. The needs standard shall take into account the available income of the parent responsible for payment of child support~~, and calculated at 120 percent of the United States Department of Health and Human Services poverty guideline per year for a single individual.

* * *

Sec. 4. 15 V.S.A. § 658 is amended to read:

§ 658. SUPPORT

* * *

(d) The court or magistrate may order ~~a parent who is in default of a child support order,~~ an obligor or a parent who will become the obligor pending an anticipated child support order to participate in employment, educational, or ~~training related~~ training-related activities if the court finds that participation in such activities would assist in providing support for a child, or in addressing the causes of the default. The court may also order the parent to participate in substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment. Activities ordered under this section shall ~~not~~ be ~~inconsistent~~ consistent with, and may be more rigorous than, any requirements of a state or federal program in which the parent is participating. For the purpose of this subsection, "employment, educational, or ~~training related~~ training-related activities" shall mean:

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;

(12) the provision of child care services to an individual who is participating in a community service program.; and

(13) an employment services program, which may provide referrals for employment, training, counseling, or other services. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

* * *

Sec. 5. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

(a)(1) On motion of either parent or, the office of child support, any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90

days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.

(c) ~~Receipt of workers' compensation, unemployment compensation or disability benefits~~ The following shall be considered a real, substantial, and unanticipated change of circumstances:

(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.

(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.

(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.

(d) A motion to modify a support order under subsection (b) or (c) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

(e) An order may be modified only as to future support installments and installments which accrued subsequent to the date of notice of the motion to the other party or parties. The date the motion for modification is filed shall be deemed to be the date of notice to the opposing party or parties.

(f) Upon motion of the court or upon motion of the office of child support, the court may deem arrears judicially unenforceable in cases where there is no longer a duty of support, provided the court finds all of the following:

(1) The obligor is presently unable to pay through no fault of his or her own.

(2) The obligor currently has no known income or has only nominal assets.

(3) There is no reasonable prospect that the obligor will be able to pay in the foreseeable future.

(g) Upon motion of an obligee or the office of child support, the court may set aside a judgment that arrears are judicially unenforceable based on newly discovered evidence or a showing of a real, substantial, and unanticipated change in circumstances, provided the court finds any of the following:

(1) The obligor is presently able to pay.

(2) The obligor has income or has only nominal assets.

(3) There is a reasonable prospect that the obligor will be able to pay in the foreseeable future.

Sec. 6. 15 V.S.A. § 662 is amended to read:

§ 662. INCOME STATEMENTS

(a) A party to a proceeding under this subchapter shall file an affidavit of income and assets which shall be in a form prescribed by the court administrator. A party shall provide the affidavit of income and assets to the court and the opposing party on or before the date of the case management conference scheduled or, if no conference is scheduled, at least five business days before the date of the first scheduled hearing before the magistrate. Upon request of either party, or the court, the other party shall furnish information documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

(b) If a party fails to provide information as required under subsection (a) of this section, the court shall use the available evidence to estimate the noncomplying parent's income. Failure to provide the information required under subsection (a) of this section ~~shall~~ may create a presumption that the noncomplying parent's gross income is ~~the greater of:~~

~~(1)~~ 150 percent of the most recently available annual average covered wage for all employment as calculated by the department of labor~~; or~~

~~(2) the gross income indicated by the evidence~~.

(c)(1) Upon a motion filed by either party or the office of child support, the court may relieve a party from a final judgment or child support order upon a showing that the income used in a default child support order was inaccurate by at least 10 percent. A showing that the court used incorrect financial information shall be considered a mistake for the purposes of Rule 60 of the Vermont Rules of Civil Procedure.

(2) The motion in subdivision (1) of this subsection shall be filed within one year of the date the contested order was issued.

Sec. 7. 15 V.S.A. § 668 is amended to read:

§ 668. MODIFICATION OF ORDER

(a) On motion of either parent or any other person to whom custody or parental rights and responsibilities have previously been granted, and upon a showing of real, substantial and unanticipated change of circumstances, the court may annul, vary or modify an order made under this subchapter if it is in the best interests of the child, whether or not the order is based upon a stipulation or agreement.

(b) Whenever a judgment for physical responsibility is modified, the court shall order a child support modification hearing to be set and notice to be given to the parties. Unless good cause is shown to the contrary, the court shall simultaneously issue a temporary order pending the modification hearing, if adjustments to those portions of any existing child support order or wage withholding order that pertain to any child affected by the modification are necessary to assure that support and wages are paid in amounts proportional to the modified allocation of responsibility between the parties.

Sec. 8. 28 V.S.A. § 2a(a) is amended to read:

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

(1) Resolve conflicts and disputes by means of a nonadversarial community process.

(2) Repair damage caused by criminal acts to communities in which they occur, and to address wrongs inflicted on individual victims.

(3) Reduce the risk of an offender committing a more serious crime in the future, that would require a more intensive and more costly sanction, such as incarceration.

Sec. 9. 28 V.S.A. § 3 is amended to read:

§ 3. GENERAL DEFINITIONS

Whenever used in this title:

* * *

(8) "Offender" means any person convicted of a crime or offense under the laws of this state, and, for purposes of work crew, a person found in civil contempt under 15 V.S.A. § 603.

* * *

Sec. 10. 28 V.S.A. § 352 is amended to read:

§ 352. SUPERVISED COMMUNITY SENTENCE

(a) At the request of the court, the commissioner of corrections shall prepare a preliminary assessment to determine whether an offender should be considered for a supervised community sentence.

(b) Upon adjudication of guilt, ~~or~~ a finding of violation of probation, or a finding of civil contempt, and only after the filing of a recommendation for supervised community sentence by the commissioner of corrections, the court may impose a sentence of imprisonment and order that all or part of the term of imprisonment be served in the community subject to the provisions of this chapter. Such a sentence shall not limit the court's authority to place a person on probation and to establish conditions of probation.

* * *

Sec. 11. 28 V.S.A. § 910 is amended to read:

§ 910. RESTORATIVE JUSTICE PROGRAM ~~FOR PROBATIONERS~~

This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under 15 V.S.A. § 603. The program shall be carried out by community reparative boards under the supervision of the commissioner, as provided by this chapter.

Sec. 12. 28 V.S.A. § 910a is amended to read:

§ 910a. REPARATIVE BOARDS; FUNCTIONS

* * *

(d) Each board shall conduct its meetings in a manner that promotes safe interactions among ~~a probationer~~ an offender, victim or victims, and community members, and shall:

(1) In collaboration with the department, municipalities, the courts, and other entities of the criminal justice system, implement the restorative justice program of seeking to obtain ~~probationer~~ offender accountability, repair harm and compensate a victim or victims and the community, increase ~~a probationer's~~ an offender's awareness of the effect of his or her behavior on a

victim or victims and the community, and identify ways to help ~~a probationer~~ an offender comply with the law.

(2) Educate the public about, and promote community support for, the restorative justice program.

(e) Each board shall have access to the central file of any ~~probationer~~ offender required to participate with that board in the restorative justice program.

* * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012

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

Proposal of Amendment; Third Reading Ordered

H. 556.

Senator Doyle, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to creating a private activity bond advisory committee.

Reported recommending that the Senate propose to the House to amend the bill in Sec. 3, in 10 V.S.A. § 219(d), wherever it appears, by striking out the following: "or the governor-elect"

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

Senator Kitchel, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Economic Development, Housing and General Affairs.

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.

Proposal of Amendment; Third Reading Ordered

H. 771.

Senator Baruth, for the Committee on Economic Development, Housing and General Affairs, to which was referred House bill entitled:

An act relating to making technical corrections and other miscellaneous changes to education law.

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:

* * * Technical Corrections * * *

Sec. 1. 16 V.S.A. § 212 is amended to read:

§ 212. COMMISSIONER'S DUTIES GENERALLY

The commissioner shall execute those policies adopted by the state board in the legal exercise of its powers and shall:

* * *

(12) Distribute at his or her discretion upon request to approved independent schools appropriate forms and materials relating to the ~~Vermont state basic competency program~~ school quality standards for elementary and secondary pupils.

* * *

Sec. 2. 16 V.S.A. § 261a(a) is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(7) employ a person or persons qualified to provide financial and student data management services for the supervisory union and the member districts;

* * *

Sec. 3. 16 V.S.A. § 429 is amended to read:

§ 429. LOANS

~~The~~ Notwithstanding subsection 4029(b) of this title, a school board may draw orders for loans without interest to the ~~town~~ town's general fund and the ~~board of selectmen~~ town selectboard may draw orders for loans without interest to the ~~town~~ school district fund, the loans to be secured by ~~notes signed by the board of selectmen or the school directors as the case may be and stipulating the terms agreed upon between the board of school directors and the board of selectmen. The notes shall be payable on demand or mature within three months from date of issue~~ a note signed by both the selectboard and the school board that stipulates mutually agreeable terms and conditions. A note shall be payable not more than 90 days after its issuance and shall be payable

on demand anytime within the 90-day term. The school board shall report all loans to the department pursuant to subsection 4029(f) of this title. For purposes of this section, "town" and "selectboard" shall have the same meaning as they have in 1 V.S.A. § 139.

Sec. 4. 16 V.S.A. § 821 is amended to read:

§ 821. SCHOOL DISTRICT TO MAINTAIN PUBLIC ELEMENTARY SCHOOLS OR PAY TUITION

(a) Elementary school. Each school district shall ~~provide, furnish, and~~ maintain one or more approved schools within the district in which elementary education for its resident pupils in kindergarten through grade six is provided unless:

(1) ~~The~~ the electorate authorizes the school board to provide for the elementary education of the pupils ~~residing in the district~~ by paying tuition in accordance with law to one or more public elementary schools in one or more school districts~~.~~;

(2) ~~The~~ the school district is organized to provide only high school education for its pupils~~.~~; or

(3) ~~Otherwise provided for by~~ the general assembly provides otherwise.

(b) ~~Kindergarten program. Each school district shall provide public kindergarten education within the district. However, a school district may pay tuition for the kindergarten education of its pupils:~~

~~(1) at one or more public schools under subdivision (a)(1) of this section; or~~

~~(2) if the electorate authorizes the school board to pay tuition to one or more approved independent schools or independent schools meeting school quality standards, but only if the school district did not operate a kindergarten on September 1, 1984, and has not done so afterward.~~ [Repealed.]

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board ~~without previous authorization by the electorate~~ in a district that operates an elementary school may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have authority to direct the school board to pay all, some, or none of the pupil's tuition and whose decision shall be final.

(d) Notwithstanding ~~subsection (a)~~ subdivision (a)(1) of this section, the electorate of a school district that does not maintain an elementary school may grant general authority to the school board to pay tuition for an elementary pupil at an approved independent elementary school or an independent school meeting school quality standards pursuant to sections 823 and 828 of this chapter upon notice given by the pupil's parent or legal guardian before April 15 for the next academic year.

Sec. 5. REPEAL

16 V.S.A. §§ 1381–1385 (appointment of medical inspectors; appropriation to state board of education) are repealed.

* * * Joint Contract Schools; Technical Corrections * * *

Sec. 6. 16 V.S.A. § 3447 is amended to read:

§ 3447. SCHOOL BUILDING CONSTRUCTION-STATE BONDS; CITY AS SCHOOL DISTRICT

The state treasurer may issue bonds under 32 V.S.A. chapter 13 ~~of Title 32~~ in such amount as may from time to time be appropriated to assist incorporated school districts, joint contract ~~school districts~~ schools, town school districts, union school districts, regional technical center school districts, and independent schools meeting school quality standards which serve as the public high school for one or more towns or cities, or combination thereof, and which both receive their principal support from public funds and are conducted within the state under the authority and supervision of a board of trustees, not less than two-thirds of whose membership is appointed by the selectboard of a town or by the city council of a city or in part by such selectboard and the remaining part by such council under the conditions and for the purpose set forth in sections 3447-3456 of this title. A city shall be deemed to be an incorporated school district within the meaning of sections 3447-3456 of this title.

Sec. 7. 16 V.S.A. § 4015 is amended to read:

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

(6) "School district" means a town, city, incorporated, interstate, or union school district or a joint contract school ~~district~~ established under subchapter 1 of chapter 11 of this title.

* * *

Sec. 8. 16 V.S.A. § 572(d) is amended to read:

(d) Unless the school districts ~~which~~ that are parties to the contract have agreed upon a different method of allocating board members that is consistent with law, the allocation of the board members shall be as ~~follows~~ provided in this subsection. The school district ~~having~~ with the largest number of pupils attending the joint, contract, or consolidated school shall have three members on the joint board. Each other school district shall have at least one member on the joint board, and its total membership shall be determined by dividing the number of pupils from the school district with the largest enrollment by three, rounding off the quotient to the nearest whole number, which shall be called the "factor" and by then dividing the pupil enrollment of each of the other school districts by the "factor," rounding off this quotient to the nearest whole number, this number being the number of school directors on the joint board from each of the other school districts. Pupil enrollment for the purpose of determining the number of members on the joint board to which each school district is entitled shall be taken from the school registers on January 1 of the calendar year in which the school year starts. ~~Such~~ The joint board shall annually select from among ~~the~~ its members ~~thereof a chairman~~ a chair and a clerk and shall also select a treasurer from among the treasurers of the contracting districts.

* * * Prekindergarten Rules * * *

Sec. 9. 16 V.S.A. § 829(1) is amended to read:

(1) To ensure that, before a school district begins or expands a prekindergarten education program that intends to enroll students who are included in its average daily membership, the district engage the community in a collaborative process that includes an assessment of the need for the program in the community and an inventory of the existing service providers; provided, however, if a district needs to expand a prekindergarten education program in order to satisfy federal law relating to the ratio of special needs children to children without special needs and if the law cannot be satisfied by any one or more qualified service providers with which the district may already contract, then the district may expand an existing school-based program without engaging in a community needs assessment.

Sec. 10. PREKINDERGARTEN EDUCATION; RULES

The state board of education shall amend its rules before January 1, 2013 to reflect the requirements of Sec. 10 of this act.

* * * Harassment, Hazing, and Bullying * * *

Sec. 11. REPEAL

16 V.S.A. 565 (harassment and hazing prevention policies) is repealed.

Sec. 12. 16 V.S.A. chapter 9, subchapter 5 is added to read:

Subchapter 5. Harassment, Hazing, and Bullying

§ 570. HARASSMENT, HAZING, AND BULLYING PREVENTION POLICIES

(a) State policy. It is the policy of the state of Vermont that all Vermont educational institutions provide safe, orderly, civil, and positive learning environments. Harassment, hazing, and bullying have no place and will not be tolerated in Vermont schools. No Vermont student should feel threatened or be discriminated against while enrolled in a Vermont school.

(b) Prevention policies. Each school board shall develop, adopt, ensure the enforcement of and make available in the manner described under subdivision 563(1) of this title harassment, hazing, and bullying prevention policies that shall be at least as stringent as model policies developed by the commissioner. Any school board that fails to adopt one or more of these policies shall be presumed to have adopted the most current model policy or policies published by the commissioner.

(c) Notice. Annually, prior to the commencement of curricular and cocurricular activities, the school board shall provide notice of the policy and procedures developed under this subchapter to students, custodial parents or guardians of students, and staff members, including reference to the consequences of misbehavior contained in the plan required by section 1161a of this title. Notice to students shall be in age-appropriate language and should include examples of harassment, hazing, and bullying. At a minimum, this notice shall appear in any publication that sets forth the comprehensive rules, procedures, and standards of conduct for the school. The school board shall use its discretion in developing and initiating age-appropriate programs to inform students about the substance of the policy and procedures in order to help prevent harassment, hazing, and bullying. School boards are encouraged to foster opportunities for conversations between and among students regarding tolerance and respect.

(d) Duties of the commissioner. The commissioner shall:

(1) develop and, from time to time, update model harassment, hazing, and bullying prevention policies; and

(2) establish an advisory council to review and coordinate school and statewide activities relating to the prevention of and response to harassment, hazing, and bullying. The council shall report annually in January to the state board and the house and senate committees on education. The council shall include:

(A) the executive director of the Vermont Principals' Association or designee;

(B) the executive director of the Vermont School Boards Association or designee;

(C) the executive director of the Vermont Superintendents Association or designee;

(D) the president of the Vermont-National Education Association or designee;

(E) the executive director of the Vermont Human Rights Commission or designee;

(F) the executive director of the Vermont Independent Schools Association or designee; and

(G) other members selected by the commissioner.

(e) Definitions. In this subchapter:

(1) "Educational institution" and "school" mean a public school or an approved or recognized independent school as defined in section 11 of this title.

(2) "Organization," "pledging," and "student" have the same meanings as in subdivisions 140a(2), (3), and (4) of this title.

(3) "Harassment," "hazing," and "bullying" have the same meanings as in subdivisions 11(a)(26), (30), and (32) of this title.

(4) "School board" means the board of directors or other governing body of an educational institution when referring to an independent school.

§ 570a. HARASSMENT

(a) Policies and plan. The harassment prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that harassment, as defined in subdivision 11(a)(26) of this title, is prohibited and may constitute a violation of the public accommodations act as more fully described in section 14 of this title.

(2) Consequences and appropriate remedial action for staff or students who commit harassment. At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints.

(3) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(4) A description of the circumstances under which harassment may be reported to a law enforcement agency.

(5) A procedure for investigating reports of violations and complaints. The procedure shall provide that, unless special circumstances are present and documented by the school officials, an investigation is initiated no later than one school day from the filing of a complaint and the investigation and determination by school officials are concluded no later than five school days from the filing of the complaint with a person designated to receive complaints under subdivision (7) of this section. All internal reviews of the school's initial determination, including the issuance of a final decision, shall, unless special circumstances are present and documented by the school officials, be completed within 30 days after the review is requested.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to harassment.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

(8) A procedure for publicizing the availability of the Vermont human rights commission and the federal Department of Education's Office of Civil Rights and other appropriate state and federal agencies to receive complaints of harassment.

(9) A statement that acts of retaliation for the reporting of harassment or for cooperating in an investigation of harassment are unlawful pursuant to 9 V.S.A. § 4503.

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster

or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

(2) The independent review shall proceed expeditiously and shall consist of an interview of the student and the relevant school officials and review of written materials involving the complaint maintained by the school or others.

(3) Upon the conclusion of the review, the reviewer shall advise the student and the school officials as to the sufficiency of the school's investigation, its determination, the steps taken by the school to correct any harassment found to have occurred, and any future steps the school should take. The reviewer shall advise the student of other remedies that may be available if the student remains dissatisfied and, if appropriate, may recommend mediation or other alternative dispute resolution.

(4) The independent reviewer shall be considered an agent of the school for the purpose of being able to review confidential student records.

(5) The costs of the independent review shall be borne by the public school district or independent school.

(6) Nothing in this subsection shall prohibit the school board from requesting an independent review at any stage of the process.

(7) Evidence of conduct or statements made in connection with an independent review shall not be admissible in any court proceeding. This subdivision shall not require exclusion of any evidence otherwise obtainable from independent sources merely because it is presented in the course of an independent review.

(8) The commissioner may adopt rules implementing this subsection.

§ 570b. HAZING

The hazing prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that hazing, as defined in subdivision 11(a)(30) of this title, is prohibited and may be subject to civil penalties pursuant to subchapter 9 of chapter 1 of this title.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which hazing may be reported to a law enforcement agency.

(5) Appropriate penalties or sanctions or both for organizations that or individuals who engage in hazing and revocation or suspension of an organization's permission to operate or exist within the institution's purview if that organization knowingly permits, authorizes, or condones hazing.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to hazing.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure for publicizing those people's availability.

§ 570c. BULLYING

The bullying prevention policy required by section 570 of this title and its plan for implementation shall include:

(1) A statement that bullying, as defined in subdivision 11(a)(32) of this title, is prohibited.

(2) A procedure that directs students, staff, parents, and guardians how to report violations and file complaints.

(3) A procedure for investigating reports of violations and complaints.

(4) A description of the circumstances under which bullying may be reported to a law enforcement agency.

(5) Consequences and appropriate remedial action for students who commit bullying.

(6) A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing, and responding to bullying.

(7) Annual designation of two or more people at each school campus to receive complaints and a procedure both for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

Sec. 13. IMPLEMENTATION

School boards shall adopt and implement bullying prevention policies as required by Sec. 12 of this act no later than January 1, 2013.

* * * Special Education Advisory Council * * *

Sec. 14. 16 V.S.A. § 2945(a) is amended to read:

(a) There is created an advisory council on special education that shall consist of ~~17~~ 19 members. All members of the council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either individuals with disabilities or parents of children with disabilities.

(1) ~~Fifteen~~ Seventeen of the members shall be appointed by the governor with the advice of the commissioner of education. Among the gubernatorial appointees shall be:

* * *

(J) a representative from the state child welfare department responsible for foster care; ~~and~~

(K) special education administrators; and

(L) two at-large members.

(2) In addition, two members of the general assembly shall be appointed, one from the house of representatives and one from the senate. The speaker shall appoint the house member and the committee on committees shall appoint the senate member.

Sec. 15. IMPLEMENTATION

The governor shall appoint the two at-large members required by Sec. 14, 16 V.S.A. § 2945(a)(1)(L), of this act on or before July 1, 2012, provided that the initial term of one member shall end on March 31, 2014 and the initial term of the other member shall end on March 31, 2015.

* * * Prekindergarten-16 Council; Afterschool Programs * * *

Sec. 16. 16 V.S.A. § 2905(b) is amended to read:

(b) The council shall be composed of:

* * *

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

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

(17) a representative of after-school, summer, and expanded learning programs selected by the Vermont Center for Afterschool Excellence.

* * * Regional Technical Center School Districts;
Unorganized Towns, Grants, and Gores * * *

Sec. 17. 16 V.S.A.§ 1572(b)(1) is amended to read:

(1) The makeup of the governing board. At least 60 percent of the board members shall be elected by direct vote of the voters, or chosen from member school district boards by the member school district boards, or a combination of the two. If the board is to have additional members, who may constitute up to 40 percent of the board, the additional members shall be appointed by the elected and chosen members from member school district boards for the purpose of acquiring expertise in areas they consider desirable. The appointed members may be selected from nominations submitted by the regional workforce investment board or other workforce organizations, or may be chosen without nomination by an organization. Notwithstanding any provision of law to the contrary, a resident of an unorganized town, grant, or gore that sits within the regional technical center school district who is otherwise eligible to vote under 17 V.S.A. § 2121 may vote for the board members and may be elected to or appointed as a member of the governing board;

* * * Audits * * *

Sec. 18. 16 V.S.A. § 261a(a) is amended to read:

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

(a) Duties. The board of each supervisory union shall:

* * *

(10) submit to the ~~town auditors~~ board of each member school district ~~or to the person authorized to perform the duties of an auditor for the school district~~, on or before January 15 of each year, a summary report of financial operations of the supervisory union for the preceding school year, an estimate of its financial operations for the current school year, and a preliminary budget for the supervisory union for the ensuing school year. This requirement shall not apply to a supervisory district. For each school year, the report shall show the actual or estimated amount expended by the supervisory union for special education-related services, including:

(A) ~~A~~ a breakdown of that figure showing the amount paid by each school district within the supervisory union; and

(B) ~~A~~ a summary of the services provided by the supervisory union's use of the expended funds;

*** * ***

Sec. 19. 16 V.S.A. § 323 is amended to read:

§ 323. AUDIT BY PUBLIC ACCOUNTANT

Annually, the supervisory union board shall employ ~~a~~ one or more public ~~accountant~~ accountants to audit the financial ~~statement~~ statements of the supervisory union and its member districts. The ~~audit~~ audits shall be conducted in accordance with generally accepted government auditing standards, including the issuance of a report of internal controls over financial reporting ~~that shall~~ to be provided to recipients of the financial statements. Any annual report of the supervisory union to member districts shall include notice that ~~an audit has~~ the audits have been performed and the time and place where the full report of the public accountant will be available for inspection and for copying at cost.

Sec. 20. 16 V.S.A. § 425 is amended to read:

§ 425. OTHER TOWN SCHOOL DISTRICT OFFICERS

Unless otherwise voted, the town clerk ~~and town auditors~~ shall by virtue of ~~their offices~~ the office perform the same duties for the town school district in addition to other duties assigned by this title.

Sec. 21. 16 V.S.A. § 491 is amended to read:

§ 491. ELECTION; NOTICE TO CLERK

At each annual meeting, an incorporated school district shall elect from among the legal voters of such district a moderator, collector, and treasurer~~, one or three auditors~~ and may elect a clerk. All school officers shall enter upon their duties on July 1, following their election or appointment~~, and~~. If a clerk is elected or appointed, then the clerk shall~~, within ten days after his election or appointment, give notice thereof to~~ notify the town clerk within ten days of the election or appointment.

Sec. 22. 16 V.S.A. § 492(a) is amended to read:

(a) The powers, duties, and liabilities of the collector, treasurer, ~~auditors~~, prudential committee, and clerk shall be like those of a town collector, treasurer, ~~auditors, and~~ board of school directors, and the school board clerk ~~of same~~, respectively.

Sec. 23. 16 V.S.A. § 563(10) is amended to read:

(10) Shall prepare and distribute to the electorate, not less than ten days prior to the district's annual meeting, a report of the conditions and needs of the district school system, including the superintendent's, supervisory union treasurer's, and school district treasurer's annual report for the previous school year~~,~~ and the balance of any reserve funds established pursuant to 24 V.S.A.

§ 2804~~, a summary of the town auditor's report as to fiscal years which are audited by town auditors as required by 24 V.S.A. § 1681, a summary of the public accountant's report as to fiscal years which are audited by a public accountant, and a notice of the time and place where the full report of the town auditor or the public accountant will be available for inspection and copying at cost. Each town auditor's and public accountant's report shall comply with 24 V.S.A. § 1683(a)~~. At a school district's annual meeting, the electorate may vote to provide notice of availability of the report required by this subdivision to the electorate in lieu of distributing the report. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual or special meeting.

Sec. 24. REPEAL

16 V.S.A. § 563(17) (responsibility of school boards for audits of school district finances) is repealed.

Sec. 25. 16 V.S.A. § 706m is amended to read:

§ 706m. TERMS OF OFFICE~~; ELIMINATION OF OFFICE OF AUDITOR~~

~~(a)~~ The terms of office of directors ~~and auditors~~ shall be three years after the first term and of all other officers shall be one year. ~~At the first annual meeting, one auditor shall be elected for a term of one year, one auditor for a term of two years, and one for a term of three years, or until their successors are chosen and qualified.~~

~~(b) At any annual or special meeting warned for the purpose, the electorate may vote to eliminate the office of auditor and to employ instead a public accountant annually to audit the financial statements of the union school district.~~

Sec. 26. 16 V.S.A. § 706q(a) is amended to read:

(a) The powers, duties, and liabilities of the treasurer, ~~auditor,~~ board of directors, and clerk shall be like those of a treasurer, ~~auditor,~~ board of school directors, and clerk of a town school district.

Sec. 27. 16 V.S.A. § 706q(c) is amended to read:

(c) The board of directors shall prepare an annual report concerning the affairs of the union district and have it printed and distributed to the legal voters of the union at least ten days prior to the annual union district meeting. The report shall be filed with the clerk of the union district, and the town clerk of each member district. It shall include:

(1) A statement of the board concerning the affairs of the union district;

(2) The budget proposed for the next year;

(3) A statement of the superintendent of schools for the union district concerning the affairs of the union;

(4) A treasurer's report;

(5) ~~A summary of an auditor's report prepared pursuant to subchapter 5 of chapter 51 of Title 24. The summary shall include a list of the fiscal years which are audited by the auditors and a notice of the time when and the place where the full report of the auditor will be available for inspection and copying at cost. The union district clerk shall distribute copies of the annual report as provided by 24 V.S.A. § 1173.~~ [Repealed.]

Sec. 28. 17 V.S.A. § 2651b(a) is amended to read:

(a) A town may vote by ballot at an annual meeting to eliminate the office of town auditor. If a town votes to eliminate the office of town auditor, the selectboard shall contract with a public accountant, licensed in this state, to perform an annual financial audit of all funds of the town except the funds audited pursuant to 16 V.S.A. § 323. Unless otherwise provided by law, the selectboard shall provide for all other auditor duties to be performed. A vote to eliminate the office of town auditor shall remain in effect until rescinded by majority vote of the legal voters present and voting, by ballot, at an annual meeting duly warned for that purpose.

Sec. 29. 24 V.S.A. § 1681 is amended to read:

§ 1681. AUDITORS; DUTIES; MEETING

Town auditors shall meet at least ~~twenty-five~~ 25 days before each annual town meeting~~,~~ to examine and adjust the accounts of all town ~~and town school district~~ officers and all other persons authorized by law to draw orders on the town treasurer. Such auditing shall include the account ~~which~~ that the treasurer is required to keep with the collector, the tax accounts of the collector, trust accounts where the town or any town officer, as such officer, is trustee or where the town is sole beneficiary, accounts relating to the town ~~and town school district~~ indebtedness, and accounts of any special funds in the care of any town ~~or town school district~~ official. Notice of such meeting shall be given by posting or publication ten days in advance of such meeting. ~~However, if the town has not elected to eliminate the office of auditor, and town auditors and the school board concur, the town auditors need not conduct an audit of school district accounts as to school district fiscal years which are audited by a public accountant.~~

Sec. 30. 24 V.S.A. § 1683 is amended to read:

§ 1683. CONTENTS OF REPORT

(a) The report shall show a detailed statement of the financial condition of such town ~~and school district~~ for ~~their~~ its fiscal year, a classified summary of receipts and expenditures, a list of all outstanding orders and payables more than 30 days past due, and show deficit, if any, pursuant to section 1523 of this title and such other information as the municipality shall direct. Individuals who are exempt from penalty, fees and interest by virtue of 32 V.S.A. § 4609 shall not be listed or identified in any such report, provided that they notify or cause to be notified in writing the municipal or district treasurer that they should not be so listed or identified.

(b) The fiscal year of all school districts, charter provisions notwithstanding, shall end on June 30.

(c) The fiscal year of other municipalities shall end on December 31, unless the municipality votes at an annual or special meeting duly warned for that purpose to have a different fiscal year, in which case the fiscal year so voted shall remain in effect until amended.

(d) ~~The annual report of the town auditors or the selectboard, if the town has voted to eliminate the office of auditor, shall include the report and budget of the supervisory union as required by 16 V.S.A. § 261a(10).~~ [Repealed.]

Sec. 31. 24 V.S.A. § 1686 is amended to read:

§ 1686. PENALTY

(a) At any time in their discretion, town auditors may, and if requested by the selectboard, shall, examine and adjust the accounts of any town officer authorized by law to receive money belonging to the town.

(b) If the town has voted to eliminate the office of auditor, the public accountant employed by the selectboard shall perform the duties of the town auditors under subsection (a) of this section upon request of the selectboard.

(c) Any town officer who wilfully refuses or neglects to submit his or her books, accounts, vouchers, or tax bills to the auditors or the public accountant upon request, or to furnish all necessary information in relation thereto, shall be ineligible to reelection for the year ensuing and be subject to the penalties otherwise prescribed by law.

(d) As used in this section, the term "town officer" shall not include an officer subject to the provisions of 16 V.S.A. § 323.

* * * Definitions * * *

Sec. 32. 16 V.S.A. § 11(a)(7), (10), and (18) are amended to read:

(7) "Public school" means an elementary school or secondary school ~~for which the governing board is publicly elected~~ operated by a school district. A public school may maintain evening or summer schools for its pupils and it shall be considered a public school.

(10) "School district" means town school districts, union school districts, interstate school districts, city school districts, unified union districts, and incorporated school districts, each of which is governed by a publicly elected board.

(18) ~~"Approved public school" means a public school which is approved under section 165 of this title.~~ [Repealed.]

* * * Public High School Choice * * *

Sec. 33. 16 V.S.A. § 822 is amended to read:

§ 822. SCHOOL DISTRICT TO MAINTAIN PUBLIC HIGH SCHOOLS ~~OR PAY TUITION~~; TUITION

(a) Each school district shall ~~provide, furnish, and~~ maintain one or more approved ~~high~~ schools in which it provides high school education ~~is provided~~ for its resident pupils unless:

(1) ~~The~~ the electorate authorizes the school board to ~~close an existing high school and to~~ provide for the high school education of its resident pupils solely by paying tuition ~~in accordance with law. Tuition for its pupils shall be paid~~ pursuant to this chapter to a public high school, an approved independent high school, or an independent school meeting school quality standards, to be selected by the parents or guardians of the pupil, within or ~~without~~ outside the state; or

(2) ~~The~~ the school district is organized to provide only elementary education for its pupils.

(b) ~~For purposes of this section, a school district which provides, furnishes and maintains a program of education for the first eight years of compulsory school attendance shall be obligated to pay tuition for its pupils for at least four additional years.~~ [Repealed.]

(c) ~~The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards

on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at ~~a nearby~~ another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

Sec. 34. 16 V.S.A. § 822a is added to read:

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

(1) "High school" means a public school or that portion of a public school that offers grades 7 through 12 or some subset of those grades.

(2) "Student" means a student's parent or guardian if the student is a minor or under guardianship and means a student himself or herself if the student is not a minor.

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

(c) Capacity. On or before February 1 each year, the board of a high school district shall define and announce its capacity to accept students under this section. The commissioner shall develop, review, and update guidelines to assist high school district boards to define capacity limits. Guidelines may include limits based on the capacity of the program, class, grade, school building, measurable adverse financial impact, or other factors, but shall not be based on the need to provide special education services.

(d) Lottery.

(1) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer to a school under this section, then the board of the receiving high school district shall devise a nondiscriminatory lottery system for determining which students may transfer.

(2) Subject to the provisions of subsection (f) of this section, if more than the allowable number of students wish to transfer from a school under this section, then the board of the sending high school district shall devise a nondiscriminatory lottery system for determining which students may transfer; provided, however:

(A) a board shall give preference to the transfer request of a student whose request to transfer from the school was denied in a prior year; and

(B) a board that has established limits under subsection (b) of this section may choose to waive those limits in any year.

(e) Application and notification.

(1) A high school district shall accept applications for enrollment until March 1 of the school year preceding the school year for which the student is applying.

(2) A high school district shall notify each student of acceptance or rejection of the application by April 1 of the school year preceding the school year for which the student is applying.

(3) An accepted student shall notify both the sending and the receiving high schools of his or her decision to enroll or not to enroll in the receiving high school by April 15 of the school year preceding the school year for which the student has applied.

(4) After sending notification of enrollment, a student may enroll in a school other than the receiving high school only if the student, the receiving high school, and the high school in which the student wishes to enroll agree. If the student becomes a resident of a different school district, the student may enroll in the high school maintained by the new district of residence.

(5) If a student who is enrolled in a high school other than in the school district of residence notifies the school district of residence by July 15 of the intent to return to that school for the following school year, the student shall be permitted to return to the high school in the school district of residence without requiring agreement of the receiving district or the sending district.

(f) Continued enrollment. An enrolled nonresident student shall be permitted to remain enrolled in the receiving high school without renewed applications in subsequent years unless:

(1) the student graduates;

(2) the student is no longer a Vermont resident; or

(3) the student is expelled from school in accordance with adopted school policy.

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district

shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

(2) A student transferring to a different high school under this section shall pay no tuition, fee, or other cost that is not also paid by students residing in the receiving district.

(3) A district of residence shall include within its average daily membership any student who transfers to another high school under this section; a receiving school district shall not include any student who transfers to it under this section.

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

(i) Suspension and expulsion. A sending high school district is not required to provide services to a resident student during a period of suspension or expulsion imposed by another high school district.

(j) Transportation. Jointly, the superintendent of each supervisory union shall establish and update a statewide clearinghouse providing information to students about transportation options among the high school districts.

(k) Nonapplicability of other laws. The provisions of subsections 824(b) and (c) (amount of tuition), 825(b) and (c) (maximum tuition rate), and 826(a) (notice of tuition change) and section 836 (tuition overcharge and undercharge) of this chapter shall not apply to enrollment in a high school pursuant to this section.

(l) Waiver. If a high school board determines that participation under this section would adversely affect students in its high school, then it may petition the commissioner for an exemption. The commissioner's decision shall be final.

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a

quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

Sec. 35. 16 V.S.A. § 4001(1) is amended to read:

(1) "Average daily membership" of a school district, or if needed in order to calculate the appropriate homestead tax rate, of the municipality as defined in 32 V.S.A. § 5401(9), in any year means:

(A) The full-time equivalent enrollment of pupils, as defined by the state board by rule, who are legal residents of the district or municipality attending a school owned and operated by the district, attending a public school outside the district under ~~an interdistrict agreement~~ section 822a of this title, or for whom the district pays tuition to one or more approved independent schools or public schools outside the district during the annual census period. The census period consists of the 11th day through the 30th day of the school year in which school is actually in session.

* * *

Sec. 36. REPEAL

16 V.S.A. §§ 1621 and 1622 (public high school choice regions) are repealed.

Sec. 37. REPORT

On or before January 15, 2013, the department of education shall evaluate the funding system set forth in Sec. 34 of this act at 16 V.S.A. § 822a(g) and present to the senate and house committees on education its recommendations for changes, if any.

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

Secs. 18–31 (audits) shall take effect on July 1, 2013. This section and all other sections of this act shall take effect on passage; provided, however, that Secs. 33–37 (school choice) of this act shall apply to enrollment in academic year 2013–2014 and after.

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

Senator Starr, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill ought to pass in concurrence with proposal of amendment as recommended by the Committee on Education.

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 one o'clock and thirty minutes in the afternoon.

Called to Order

The Senate was called to order by the President.

Consideration Resumed; Bill Amended; Point of Order; Third Reading Ordered; Rules Suspended Bill Messaged

H. 781.

Consideration was resumed on House bill entitled:

An act relating to making appropriations for the support of government.

Thereupon, pending the question, Shall the proposal of amendment of the Committee on Appropriations be amended as proposed by Senator Galbraith, as substituted, in the *first* and *third* proposals of amendment?, Senators Galbraith, Cummings, Flory, Ashe, Brock, Lyons, Illuzzi, Mullin, Ayer, Benning, Campbell, Carris, Doyle, Giard, Hartwell, Kitchel, MacDonald, McCormack, Nitka, Pollina, Sears, Starr, Westman, and White move to substitute the proposal of amendment of Senator Galbraith, as substituted, to the proposal of amendment of the Committee on Appropriations as follows:

First: By adding a new section to be numbered Sec. C.103 to read as follows:

Sec. C.103. 30 V.S.A. § 218 is amended to read:

§ 218. JURISDICTION OVER CHARGES AND RATES

(a) When, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter, the board may order and substitute therefor such rates, tolls, charges, or schedules, and make such changes in any regulations, measurements, practices, or acts of such company relating to its service, and may make such order as will compel the furnishing of such adequate service as shall at such hearing be found by it to be just and reasonable. This section shall not be construed to require the same rates, tolls or charges from any company subject to supervision under this chapter for like service in different parts of the state, but the board in determining these questions shall investigate local conditions and its final findings and judgment shall take cognizance thereof.

This section does not prohibit a telecommunications company from filing tariffs that condition the availability of an intrastate service upon subscription to an interstate or unregulated service from the same or an affiliated company; provided that an incumbent local exchange carrier shall provide a plan to allocate reasonably revenue between the regulated intrastate service and other services. The board shall retain the authority to review the tariff filing to determine whether it is just and reasonable.

* * *

(h) When the public service board has authorized an increase in rates expressly to prevent the bankruptcy or financial instability of a utility, any excess rates incurred above what ordinarily would have been incurred under a traditional cost-of-service methodology shall be returned to ratepayers in the form of a credit or refund, in a manner to be determined by the board, and shall not be recoverable in future rates charged to ratepayers.

Second: In Sec. F.100 by adding a new subsection (b) to read as follows:

(b) Sec. C.103 (repayment to ratepayers) is effective on passage and shall apply to any board orders pertaining to windfall-sharing mechanisms the specific terms of which have not yet been finalized by the board.

Which was agreed to on a roll call, Yeas 27, Nays 3.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, McCormack, Mullin, Nitka, Pollina, Sears, Starr, Westman, White.

Those Senators who voted in the negative were: Mazza, Miller, Snelling.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations?, Senator Sears moved to amend the proposal of amendment of the Committee on Appropriations, as amended, as follows:

By adding a new section to be numbered E.329.1 to read as follows:

Sec. E.329.1 REPORT ON ADULT PROTECTIVE SERVICES

(a) On or before December 1, 2012, the attorney general and the department of disabilities, aging, and independent living shall jointly provide a report on the status of investigations concerning the abuse, neglect, and exploitation of vulnerable adults and statistics regarding investigation backlog

to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services.

Which was agreed to.

Thereupon, pending the question, Shall the Senate propose to the House that the bill be amended as recommended by the Committee on Appropriations, as amended?, Senator Kitchel, on behalf of the Committee on Appropriations, moved to amend the proposal of amendment of the Committee on Appropriations, as amended as follows:

By adding two new sections to be numbered Sec. E.101.1 and Sec. E.101.2 to read as follows:

Sec. E.101.1 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

(a) In addition to the duties expressly set forth elsewhere by law the secretary shall:

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology which outlines the significant deviations from the previous year's information technology plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. All such plans shall be reviewed and approved by the ~~commissioner of information and innovation~~ state chief information officer prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of $100,000.00:

* * *

(B) the cost savings ~~and/or~~ and any service delivery improvements which will accrue to the public or to state government;

* * *

(10) The secretary shall annually submit to the general assembly a five-year information technology plan which indicates the anticipated information technology activities of the legislative, executive, and judicial branches of state government. For purposes of this section, "information technology activities" shall mean:

* * *

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including ~~both~~ hardware ~~and~~, software, and services which perform or are contracted under Administrative Bulletin 3.5 to perform these activities.

* * *

(g)(1) The secretary of administration shall obtain independent expert review of any recommendation for any information technology activity initiated after July 1, 1996, as information technology activity is defined by subdivision (a)(10) of this section, when its total cost is $500,000.00 or greater or when required by the state chief information officer. Documentation of ~~such~~ this independent review shall be included when plans are submitted for review pursuant to subdivisions (a)(9) and (10) of this section. The independent review shall include:

(A) an acquisition cost assessment;

(B) a technology architecture review;

(C) an implementation plan assessment;

(D) a cost analysis and a model for benefit analysis; and

(E) a procurement negotiation advisory services contract.

(2) The secretary of administration may assess the costs of ~~such reviews~~ any review to the ~~departments~~ entity making the information technology recommendations.

* * *

Sec. E.101.2 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

The department of information and innovation, created in 3 V.S.A. § 2283b, shall have all the responsibilities assigned to it by law, including the following:

* * *

(2) to manage ~~GOVnet~~ wide-area network connectivity within state government;

* * *

(4)(A) to review and approve information technology activities ~~in all departments~~ within state government with a cost in excess of $100,000.00, and annually submit to the general assembly a strategic plan and a budget for information technology as required of the secretary of administration by

3 V.S.A. § 2222(a)(9). For purposes of this section, "information technology activities" is defined in 3 V.S.A. § 2222(a)(10);

(B) to provide oversight, monitoring, and control of information technology activities within state government with a cost in excess of $100,000.00. The cost of the oversight, monitoring, and control shall be assessed to the entity requesting the activity;

(C) to review and approve in accordance with agency of administration policies the assignment of appropriate project managers for information technology activities within state government with a cost in excess of $100,000.00; and

(D) to provide standards for the management, organization, and tracking of information technology activities within state government with a cost in excess of $100,000.00;

* * *

(11) to provide technical support and services to the departments of human resources and of finance and management for the statewide central accounting and encumbrance system, the statewide budget development system, the statewide human resources management system, and other agency of administration systems as may be assigned by the secretary;

(12) to review and approve in accordance with agency of administration policies all new information technology position requests and new information technology classifications within state government.

Which was agreed to.

Thereupon, the bill was read the second time by title only pursuant to Rule 43.

Thereupon, the proposal of amendment recommended by the Committee on Appropriations, as amended, was agreed.

Thereupon, pending the question, Shall the bill be read the third time?, Senator McCormack, moved that the Senate proposal of amendment be amended as follows:

By adding a new section to be numbered Sec. 318.2 to read as follows:

Sec. 318.2 CHILD CARE PROVIDER UNIONIZATION AND WORKING GROUP

(a) Registered family day care home providers, licensed family child care home providers and legally exempt child care providers shall have the right to organize, form, join, or assist a union, and once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to child

care subsidy reimbursement rates and rules, professional development and training, grievance procedures, and a mechanism for dues collection. Such negotiations shall not constitute an antitrust violation.

(b) The provisions of chapter 19 of title 21 related to election process shall apply to this section.

(c) Child care providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization, unless otherwise permitted to do so under federal or state law.

(d)(1) There is established a child care working group, chaired by the commissioner of the department of children and families or designee, to make recommendations to the commissioner as to e whether program directors and staff working at licensed child care facilities shall have the right to choose a representative organization for purposes of negotiating with the state about the subjects set forth in subsection (a) of this section.

(2) The working group shall be established no later than July 1, 2012 and shall consist of eleven persons appointed by the Governor, one of which will be the commissioner of the department of children and families or designee, one of which shall be the executive director of the Vermont Labor Relations Board or designee, one of which shall be the executive director of Building Bright Futures or designee, two of which shall be center-based program directors, three of which shall be center-based teachers, one of which shall be a representative of a parent organization, one of which shall be a representative of Voices for Vermont's Children, and one of which shall be a representative of Kids Are Priority One Coalition

(3) The commissioner of the department of children and families shall report the working group's findings arid recommendations to the Governor and the General Assembly on or before November 1, 2012.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as moved by Senator McCormack? Senator Campbell raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senator McCormack was *not germane* to the bill and therefore could not be considered by the Senate.

The President *overruled* the point of order and ruled that the proposal of amendment was *germane* stating the proposal of amendment, related to the spending of state funds and although provisions dealt with policy, taken in its entirety and as currently drafted, was germane to the appropriations bill.

Thereupon the question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack?, Senator Snelling moved to

substitute a proposal of amendment for the proposal of amendment of Senator McCormack as follows:

By adding a new section to be numbered Sec. E.318.2 to read as follows:

Sec. E.318.2 CHILD CARE IMPROVEMENT WORKING GROUP

(a)(1) By July 1, 2012, the commissioner of the department of children and families shall convene a working group to study the following issues and to report to the general assembly regarding:

(A) How to increase state subsidies for child care services.

(B) How to increase participation by child care providers in the STARS program.

(C) How to improve participation by child care providers in the development of state child care regulations.

(D) An analysis of the number of child care providers receiving state subsidies.

(E) The projected fiscal impact of allowing child care providers to bargain collectively with the state, including the impact of such bargaining on subsidy rates, an analysis of what other states have done regarding child care provider collective bargaining and the fiscal impact of collective bargaining in those states, and an analysis of any legal implications of allowing child care providers to bargain collectively with the state.

(2) The working group may utilize the services of other state agencies and departments, the joint fiscal office, and the office of legislative council in preparing its report and recommendations.

(b) In addition to any other members appointed to the working group by the commissioner, the commissioner shall appoint the following:

(1) Two registered family day care home providers.

(2) Two licensed family child care home providers.

(3) Two legally exempt child care providers.

(4) Two employees of licensed child care centers.

(5) Two employees of nonprofit child care centers.

(6) One representative from the Vermont Business Roundtable.

(c) The working group shall submit its findings and recommendations to the house committees on appropriations, on commerce and economic development, on general, housing and military affairs, and on human services

and the senate committees on appropriations, on economic development, housing and general affairs, and on health and welfare by January 15, 2013.

Was agreed to on a roll call, Yeas 16, Nays 15.

Senator Mazza having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Brock, Campbell, Carris, Flory, Hartwell, Illuzzi, Kitchel, Mazza, Miller, Mullin, Nitka, Sears, Snelling.

Those Senators who voted in the negative were: Ashe, Baruth, Cummings, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Pollina, Starr, Westman, White.

There being a tie, the Secretary took the casting vote of the President, who voted "Yea".

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack, as substituted?, Senator Kittell moved to amend the proposal of amendment in Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by adding subsection (d) to read:

(d) On July 1, 2013, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union and, once an exclusive representative is selected, to negotiate a legally binding agreement with the state. On July 1, 2013, program directors and staff of licensed child care centers shall have the right to participate in a group that shall select a representative for the purpose of negotiating with the state an agreement to improve the delivery and quality of early education.

Thereupon, Senator Kittell requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the recurring question, Shall the Senate proposal of amendment be amended as proposed by Senator McCormack as substituted?, was decided in the affirmative, Yeas 21, Nays 9.

Senator Flory having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ayer, Benning, Brock, Campbell, Carris, Doyle, Flory, Hartwell, Illuzzi, Kitchel, Kittell,

Lyons, Mazza, McCormack, Miller, Mullin, Nitka, Sears, Snelling, Westman, White.

Those Senators who voted in the negative were: Ashe, Baruth, Cummings, Fox, Galbraith, Giard, MacDonald, Pollina, Starr.

Senator Kittell, moved that the Senate proposal of amendment be amended as follows:

In Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by adding subsection (d) to read as follows:

(d) On July 1, 2013, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union and, once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to child care subsidy reimbursement rates and rules, professional development and training, grievance procedures, and a mechanism for dues collection. On July 1, 2013, program directors and staff of licensed child care centers shall have the right to participate in a group that shall select a representative for the purpose of negotiating with the state an agreement to improve the delivery and quality of early education.

Which was agreed to on a roll call, Yeas 16, Nays 13.

Senator Kittell having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Cummings, Doyle, Fox, Galbraith, Giard, Kittell, Lyons, MacDonald, McCormack, Pollina, Starr, Westman, White.

Those Senators who voted in the negative were: Benning, Brock, Campbell, Carris, Flory, Hartwell, Illuzzi, Kitchel, Mazza, Miller, Mullin, Nitka, Snelling.

The Senator absent and not voting was: Sears.

Senator Flory, moved that the Senate proposal of amendment be amended as follows: In Sec. D.108.1(a) after the words "in fiscal year 2013" by inserting the following: and in fiscal year 2014 $3,000,000 is reserved for possible transfer to the state insurance liability fund

Which was agreed to.

Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr move that the Senate proposal of amendment be amended as follows:

First: By adding two new sections, to be numbered Secs. E.720 and E.720.1, to read as follows:

Sec. E.720. 3 V.S.A. chapter 4 is added to read:

CHAPTER 4. MORATORIUM ON NEW WIND GENERATION

§ 75. MORATORIUM ON NEW WIND GENERATION

Notwithstanding any other provision of law, no agency of the state, including the public service board and the agency of natural resources, shall issue a land use, siting, or environmental permit, certificate, or other approval authorizing the construction or operation of any wind generation plant with a plant capacity greater than 2.2 megawatts. For the purpose of this chapter, "plant" and "plant capacity" are as defined in 30 V.S.A. § 8002.

§ 76. REPEAL

This chapter shall be repealed three years from its effective date.

Sec. E.720.1. REPORT; REVIEW OF NEW WIND GENERATION PLANTS; APPROPRIATION

The secretary of natural resources, in consultation with the commissioner of public service, shall consider whether new wind generation plants with a plant capacity greater than 2.2 megawatts should be reviewed under 30 V.S.A. § 248 (new gas and electric purchases, investments and facilities; certificate of public good), under 10 V.S.A. chapter 151 (Act 250), or under another process for approving such plants that will ensure protection of the state's communities and natural resources, and if so, what the scope and criteria of that other process should be. The secretary of natural resources and the commissioner of public service shall file a report containing their findings and recommendations with the house and senate committees on natural resources and energy no later than January 15, 2013. For the purpose of this section, the sum of $5,000.00 is appropriated to the agency of natural resources for fiscal year 2013.

Second: In Sec. F.100 (effective dates; implementation), by adding a new subsection (b) to read as follows:

(b) Secs. E.720 (moratorium on new wind generation) and E.720.1 (report; review of new wind generation plants; appropriation) of this act shall take effect on passage.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Benning?, Senator Benning requested and granted leave to withdraw the proposal of amendment.

Senator Ayer, moved that the Senate proposal of amendment be amended as follows:

In Sec. E.308.1, in subsection (a), preceding "$4,400,000" by inserting at least, preceding "$1,100,000" by inserting at least, and by adding, at the end of the second sentence, before the period the following: and shall present their suggested investments for review and comment by the health access oversight committee

Which was agreed to.

Senator Illuzzi and Galbraith, moved that the Senate proposal of amendment be amended by adding Sec. C. 102 to read as follows:

C. 102. STUDY OF STATE OWNERSHIP INTEREST IN VERMONT'S TRANSMISSION ASSETS

(a) In Docket No. 7770 (regarding the acquisition of Central Vermont Public Service Corporation [CVPS] by Gaz Métro and the merger of CVPS with Green Mountain Power Corporation), the public service board shall not issue a final order until after it has received the study and recommendation required under subsection (b) of this section and, if the study recommends the state acquire an ownership interest in Vermont's high-voltage bulk electric transmission assets, which are currently owned and financed by Vermont Transco, LLC (Transco), then the board shall include in its final order a condition giving the state of Vermont the option to acquire by legislative enactment an ownership interest in those assets at fair market or book value, whichever is less. Notice of intent to exercise the option shall be provided by the General Assembly to Transco or its successor in interest not later than the end of the 72nd biennial session or June 1, 2014, whichever is sooner.

(b) The joint fiscal office shall study whether the state's financial interests would be enhanced by acquiring an ownership interest in Transco, financed in whole or in part with private activity or general obligation bonds or by acquiring or assuming an equal amount of debt and, if so, make a recommendation on a specific level of ownership. The joint fiscal office may retain the services of a financial advisor to conduct the study and make the recommendation required by this subsection. The joint fiscal office shall submit the study and recommendation to the public service board, the department of public service, and the senate committees on economic development, housing, and general affairs, on finance, and on natural resources and energy, and the house committees on commerce and economic development and on natural resources and energy not later than September 1, 2013.

(c) In fiscal year 2012, the sum of $10,000.00 shall be transferred from the general fund appropriation to the legislature to the joint fiscal office to cover the costs of the study required by this section. Any remaining reasonable costs shall be reimbursed by the petitioners in Docket No. 7770 per order of the public service board.

Which was disagreed to on a roll call Yeas, 8, Nays 20.

Senator Galbraith having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Baruth, Galbraith, Giard, Illuzzi, McCormack, Pollina, Starr.

Those Senators who voted in the negative were: Ayer, Benning, Brock, Campbell, Carris, Cummings, Doyle, Flory, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Nitka, Snelling, Westman, White.

Those Senators absent and not voting were: Fox, Sears.

****Immediately, after the vote was closed, Senator Sears upon entering the Chamber, addressed the Chair, and on motion of Senator Campbell, his remarks were ordered enter in the Journal, and are as follows:

"Mr. President:

"I would have voted no"

Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr, moved that the Senate proposal of amendment be amended as follows:

First: By adding two new sections, to be numbered Secs. E.720 and E.720.1, to read as follows:

Sec. E.720. 3 V.S.A. chapter 4 is added to read:

CHAPTER 4. MORATORIUM ON NEW WIND GENERATION

§ 75. MORATORIUM ON NEW WIND GENERATION

Notwithstanding any other provision of law, no agency of the state, including the public service board and the agency of natural resources, shall issue a land use, siting, or environmental permit, certificate, or other approval authorizing the construction or operation of any wind generation plant with a plant capacity greater than 2.2 megawatts. For the purpose of this chapter, "plant" and "plant capacity" are as defined in 30 V.S.A. § 8002.

§ 76. APPLICABILITY; REPEAL

(a) This chapter shall apply to wind generation plants for which the first application for a permit, certificate or other approval described in section 75 of this title is filed on or after May 1, 2012.

(b) This chapter shall be repealed two years from its effective date.

Sec. E.720.1. REPORT; REVIEW OF NEW WIND GENERATION PLANTS; APPROPRIATION

The secretary of natural resources, in consultation with the commissioner of public service, shall consider whether new wind generation plants with a plant capacity greater than 2.2 megawatts should be reviewed under 30 V.S.A. § 248 (new gas and electric purchases, investments and facilities; certificate of public good), under 10 V.S.A. chapter 151 (Act 250), or under another process for approving such plants that will ensure protection of the state's communities and natural resources, and if so, what the scope and criteria of that other process should be. The secretary of natural resources and the commissioner of public service shall file a report containing their findings and recommendations with the house and senate committees on natural resources and energy no later than January 15, 2013. For the purpose of this section, the sum of $5,000.00 is appropriated to the agency of natural resources from the general fund for fiscal year 2013.

Second: In Sec. F.100 (effective dates; implementation), by adding a new subsection (b) to read as follows:

(b) Secs. E.720 (moratorium on new wind generation) and E.720.1 (report; review of new wind generation plants; appropriation) of this act shall take effect on passage.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr? Senator Sears raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr was *not germane* to the bill and therefore could not be considered by the Senate.

The President *overruled* the point of order and ruled that the proposals of amendment were *germane* in that they related to the subject matter of the original bill regarding taken in its entirety, as currently drafted, the amendment was germane to the appropriation bill as it spent money and contained policy relating thereto.

Senator Sears, moved to substitute a proposal of amendment for the proposal of amendment of Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr as follows:

By striking out Sec. B.234.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Sears? Senator Galbraith raised a *point of order* under Sec. 402 of Mason's Manual of Legislative Procedure on the grounds that the proposal of amendment offered by Senator Sears was *not germane* to the amendment under consideration and therefore could not be considered by the Senate.

Thereupon, the President *sustained* the point of order and ruled that the substitute proposal of amendment offered by Senator Sears was *not germane* to the proposal of amendment.

The President thereupon declared that the substitute proposal of amendment offered by Senator Sears could *not* be considered by the Senate and the substitute proposal of amendment was ordered stricken.

Thereupon, the question, Shall the Senate proposal of amendment of Senators be amended as proposed by Senators Benning, Brock, Carris, Galbraith, Hartwell, Kitchel, McCormack and Starr, was disagreed to on a roll call, Yeas 11, Nays 18.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Benning, Brock, Campbell, Carris, Galbraith, Hartwell, Illuzzi, Kitchel, McCormack, Nitka, Starr.

Those Senators who voted in the negative were: Ashe, Ayer, Baruth, Cummings, Doyle, Flory, Giard, Kittell, Lyons, MacDonald, Mazza, Miller, Mullin, Pollina, Sears, Snelling, Westman, White.

The Senator absent and not voting was: Fox.

Thereupon, third reading of the bill was ordered on a roll call, Yeas 26, Nays 3.

Senator Sears having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Baruth, Campbell, Carris, Cummings, Doyle, Galbraith, Giard, Hartwell, Illuzzi, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Miller, Mullin, Nitka, Pollina, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: Benning, Brock, Flory.

The Senator absent and not voting was: Fox.

Thereupon, on motion of Senator Campbell, the rules were suspended and the bill was placed on all remaining stages of its passage in concurrence with proposal of amendment.

Thereupon, pending third reading of the bill, Senator Hartwell, moved that the Senate proposal of amendment be amended as follows:

In Sec. E.318.2, CHILD CARE IMPROVEMENT WORKING GROUP, by striking out subsection (d) in its entirety, and inserting in lieu thereof a new subsection (d), to read as follows:

(d) On July 1, 2013, if recommended by the child care improvement working group, registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize.

Thereupon, pending the question, Shall the Senate propose to the House to amend the bill as moved by Senator Hartwell? Senator McCormack raised a *point of order* whether the amendment violated the rule against negating a previously taken action pursuant to Senate Rule 61.

Thereupon, the President *overruled* the point of order and ruled that the proposal of amendment offered by Senator Hartwell if adopted would not substantially negate the amendment previously adopted in violation of Senate Rule 61.

Thereupon, pending the question, Shall the Senate proposal of amendment be amended as proposed by Senator Hartwell?, Senator Hartwell, requested and was granted leave to withdraw the proposal of amendment.

Thereupon, the bill was read the third time and passed in concurrence with proposal of amendment.

Thereupon, on motion of Senator Campbell, the rules were suspended, and the bill was ordered messaged to the House forthwith.

Message from the House No. 60

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

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 790. An act relating to approval of amendments to the charter of the town of Hartford.

In the passage of which the concurrence of the Senate is requested.

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

S. 215. An act relating to evaluating net costs of government purchasing.

And has passed the same in concurrence.

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

S. 181. An act relating to school resource officers.

And has concurred therein.

The House has considered Senate proposals of amendment to the following House bills:

H. 53. An act relating to the Interstate Wildlife Violator Compact.

H. 440. An act relating to creating an agency and secretary of education and clarifying the purpose of the state board.

H. 484. An act relating to amendment to the Windham solid waste district charter.

H. 550. An act relating to the Vermont administrative procedure act.

And has severally concurred therein.

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

H. 37. An act relating to telemedicine.

And has severally concurred therein with a further proposal of amendment thereto, in the adoption of which the concurrence of the Senate is requested.

The Governor has informed the House that on the April 25, 2012, he approved and signed a bill originating in the House of the following title:

H. 613. An act relating to governance of the Community High School of Vermont.

Committee Relieved of Further Consideration; Bill Committed

H. 794.

On motion of Senator Kitchel, the Committee on Appropriations was relieved of further consideration of House bill entitled:

An act relating to the management of search and rescue operations,

and the bill was committed to the Committee on Economic Development, Housing and General Affairs.

Adjournment

On motion of Senator Campbell, the Senate adjourned until nine o'clock in the morning.