

**From:** Michele Childs [MCHILDS@leg.state.vt.us]  
**Sent:** Monday, February 08, 2016 5:14 PM  
**To:** Pepper, James; Tim Ashe  
**CC:** Michael O'Grady  
**Subject:** RE: Additional statutory language for S.241  
**Attachments:** Finance S.241.pdf

Please see attached and whether it meets their needs with exception of condemnation. Has to be read in conjunction with Judiciary amendment for other rulemaking for DPS re: topics in Sec. 12.

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**From:** Pepper, James [mailto:James.Pepper@vermont.gov]  
**Sent:** Monday, February 08, 2016 5:10 PM  
**To:** Michele Childs; Tim Ashe  
**Subject:** Additional statutory language for S.241

Hi Michele –

I just met with the Agency of Ag to discuss their needs related to testing/inspections if the proposed amendment passes. They believe the amendment needs additional language expressly granting:

- Condemnation authority over all cannabis products-when deemed adulterated [contaminated]
- Authority for laboratory standards [establishing standards for the private testing laboratories]

Just thought I'd pass that suggestion along. Sorry for the late notice.

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**James Pepper**  
Office of the Governor  
Director of Intergovernmental Affairs and Policy Advisor  
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1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred Senate Bill No. 241  
3 entitled “An act relating to personal possession and cultivation of cannabis and  
4 the regulation of commercial cannabis establishments” respectfully reports that  
5 it has considered the same and recommends that the bill be amended as  
6 follows:

7 First: By striking out Sec. 2 in its entirety and inserting in lieu thereof the  
8 following:

9 Sec. 2. MARIJUANA YOUTH EDUCATION AND PREVENTION

10 (a)(1) Relying on lessons learned from tobacco and alcohol prevention  
11 efforts, the Department of Health, in collaboration with the Department of  
12 Public Safety, the Agency of Education, and the Governor’s Highway Safety  
13 Program, shall develop and administer an education and prevention program  
14 focused on use of marijuana by youth under 25 years of age. In so doing, the  
15 Department shall consider at least the following:

16 (A) Community- and school-based youth and family-focused  
17 prevention initiatives that strive to:

18 (i) expand the number of school-based grants for substance abuse  
19 services to enable each Supervisory Union to develop and implement a plan for  
20 comprehensive substance abuse prevention education in a flexible manner that  
21 ensures the needs of individual communities are addressed;

1                   (ii) improve the Screening, Brief Intervention and Referral to  
2 Treatment (SBIRT) practice model for professionals serving youth in schools  
3 and other settings; and

4                   (iii) expand family education programs.

5                   (B) An informational and counter-marketing campaign using a public  
6 website, printed materials, mass and social media, and advertisements for the  
7 purpose of preventing underage marijuana use.

8                   (C) Education for parents and health care providers to encourage  
9 screening for substance use disorders and other related risks.

10                  (D) Expansion of the use of SBIRT among the State’s pediatric  
11 practices and school-based health centers.

12                  (2) On or before March 15, 2017, the Department shall adopt rules to  
13 implement the education and prevention program described in subsection (a) of  
14 this section and implement the program no later than September 15, 2017.

15                  (b) The Department shall include questions in its biannual Youth Risk  
16 Behavior Survey to monitor the use of marijuana by youth in Vermont and to  
17 understand the source of marijuana used by this population.

18                  (c) Any data collected by the Department on the use of marijuana by youth  
19 shall be maintained and organized in a manner that enables the pursuit of  
20 future longitudinal studies.

1        Second: By adding a Sec. 8a to read as follows: (effective July 1, 2018)

2        Sec. 8a. 18 V.S.A. § 4230 is amended to read:

3        § 4230. MARIJUANA

4        (a) Possession and cultivation.

5            (1)(A) No person shall knowingly and unlawfully possess more than one  
6        ounce of marijuana or more than five grams of hashish ~~or cultivate marijuana.~~  
7        For a first offense under this subdivision (A), a person shall be provided the  
8        opportunity to participate in the Court Diversion Program unless the prosecutor  
9        states on the record why a referral to the Court Diversion Program would not  
10       serve the ends of justice. A person convicted of a first offense under this  
11       subdivision shall be imprisoned not more than six months or fined not more  
12       than \$500.00, or both.

13            (B) A person convicted of a second or subsequent offense of  
14        knowingly and unlawfully possessing more than one ounce of marijuana or  
15        more than five grams of hashish ~~or cultivating marijuana~~ shall be imprisoned  
16        not more than two years or fined not more than \$2,000.00, or both.

17            (C) Upon an adjudication of guilt for a first or second offense under  
18        this subdivision, the court may defer sentencing as provided in 13 V.S.A.  
19        § 7041 except that the court may in its discretion defer sentence without the  
20        filing of a presentence investigation report and except that sentence may be  
21        imposed at any time within two years from and after the date of entry of

1 deferment. The court may, prior to sentencing, order that the defendant submit  
2 to a drug assessment screening which may be considered at sentencing in the  
3 same manner as a presentence report.

4 (2) A person knowingly and unlawfully possessing two ounces or more  
5 of marijuana or 10 grams or more of hashish or knowingly and unlawfully  
6 cultivating ~~more than three plants of~~ marijuana shall be imprisoned not more  
7 than three years or fined not more than \$10,000.00, or both.

8 (3) A person knowingly and unlawfully possessing one pound or more  
9 of marijuana or 2.8 ounces or more of hashish or knowingly and unlawfully  
10 cultivating more than 10 plants of marijuana shall be imprisoned not more than  
11 five years or fined not more than \$100,000.00, or both.

12 (4) A person knowingly and unlawfully possessing 10 pounds or more  
13 of marijuana or one pound or more of hashish or knowingly and unlawfully  
14 cultivating more than 25 plants of marijuana shall be imprisoned not more than  
15 15 years or fined not more than \$500,000.00, or both.

16 \* \* \*

17 Third: In Sec. 12, 18 V.S.A. § 4505(a)(2), in the second sentence, after the  
18 words “municipal permits” by adding under this subsection (a)

19 Fourth: In Sec. 12, after “Subchapter 2.” by striking out the words  
20 “Department of Public Safety” and inserting in lieu thereof the word  
21 Administration

1 Fifth: In Sec. 12 18 V.S.A. § 4511, before the words “For the purpose of”  
2 by adding (a) and by adding subsections (b) and (c) to read as follows:

3 (b)(1) For the purpose of regulating the cultivation and testing of marijuana  
4 in accordance with this chapter, the Agency of Agriculture, Food and Markets  
5 shall have the following authority and duties:

6 (A) rulemaking in accordance with this chapter and 3 V.S.A.  
7 chapter 25; and

8 (B) inspection of licensed marijuana cultivators and testing of  
9 marijuana.

10 (2) The authority and duties of the Agency shall be in addition to, and  
11 not a substitute for, the authority and duties of the Department.

12 (c)(1) There is established a Marijuana Advisory Board for the purpose of  
13 advising and assisting the Department and other administrative agencies and  
14 departments with implementation of this chapter. The Board shall composed  
15 of the following members:

16 (A) the Commissioner of Public Safety or designee;

17 (B) the Secretary of Agriculture, Food and Markets or designee;

18 (C) the Commissioner of Health or designee;

19 (D) the Commissioner of Taxes or designee; and

20 (E) a member of local law enforcement appointed by the Governor.

21 (2) The Board shall cease to exist on July 1, 2019.

1        Sixth: In Sec. 12, 18 V.S.A. § 4512, in the first sentence before the words  
2        “The Department” by adding (a) and by striking out “(1)–(3)” and inserting in  
3        lieu thereof (1)–(4)

4        Seventh: In Sec. 12, 18 V.S.A. § 4512 by striking out subdivision (1)(K) in  
5        its entirety and by inserting in lieu thereof the following:

6                    (K) procedures for seed to sale traceability of marijuana, including  
7                    any requirements for tracking software;

8        Eighth: In Sec. 12, 18 V.S.A. § 4512 by striking out subdivisions  
9        (2)(A)–(C) in their entirety and by relettering the remaining subdivisions to be  
10        alphabetically correct

11        Ninth: In Sec. 12, 18 V.S.A. § 4512 by striking out subdivisions (4)(B) and  
12        (C) in their entirety and in subdivision (4)(A) after “samples;” by adding the  
13        word and, and by relettering the remaining subdivision to be alphabetically  
14        correct

15        Tenth: In Sec. 12, 18 V.S.A. § 4512 by adding a subsection (b) to read as  
16        follows:

17                    (b) In addition to the rules adopted by the Department pursuant to  
18                    subdivision (1) of this subsection, the Agency of Agriculture, Food and  
19                    Markets shall adopt rules regarding the cultivation and testing of marijuana  
20                    regulated pursuant to this chapter as follows:

1           (1) restrictions on the use of pesticides by cultivators that are injurious  
2 to human health;

3           (2) standards for both the indoor and outdoor cultivation of marijuana,  
4 including environmental protection requirements;

5           (3) procedures and standards for testing marijuana for contaminants and  
6 potency and for quality assurance and control;

7           (4) requirements of a testing laboratory operating manual; and

8           (5) inspection requirements for cultivators and testing laboratories.

9           Eleventh: In Sec. 12, 18 V.S.A. § 4513(b)(2) by striking out “January 1,  
10 2018” and inserting in lieu thereof January 2, 2018

11           Twelfth: In Sec. 12, 18 V.S.A. § 4513(c)(1)(B) by striking out the word  
12 “and” and in subdivision (c)(1)(C) by striking out “.” and by inserting in lieu  
13 thereof ; and and by adding a subdivision (D) to read as follows:

14                   (D) a minimum of 20 and a maximum of 40 retailer licenses.

15           Thirteenth: In Sec. 12, 18 V.S.A. § 4513(c)(2), in the first sentence by  
16 striking out “cultivator licenses in a number and size that provides sufficient  
17 amounts of marijuana to licensed retailers” and by inserting in lieu thereof  
18 licenses in a number and size for the purpose of competing with and  
19 undercutting the illegal market based on available data and recommendations  
20 of the Marijuana Program Review Commission

1        Fourteenth: In Sec. 12, 18 V.S.A. § 4522(c)(1) by inserting a subdivision  
2        (G) to read as follows:

3                (G) how the applicant will meet its operation’s need for energy  
4        services at the lowest present value life-cycle cost, including environmental  
5        and economic costs, through a strategy combining investments and  
6        expenditures on energy efficiency and energy supply;

7        and by relettering the remaining subdivisions to be alphabetically correct

8        Fifteenth: In Sec. 12, 18 V.S.A. § 4524(e) after the words “drug-related” by  
9        adding the word criminal

10        Sixteenth: In Sec. 12, 18 V.S.A. § 4525(d) after the word “Department” by  
11        adding the words and Agency of Agriculture, Food and Markets

12        Seventeenth: In Sec. 12, by striking out 18 V.S.A. § 4528 in its entirety and  
13        inserting in lieu thereof the following:

14        § 4528. FEES

15                (a) The Department of Public Safety shall charge and collect initial license  
16        application fees and annual license renewal fees for each type of marijuana  
17        license under this chapter. Fees shall be due and payable at the time of license  
18        application or renewal.

19                (b)(1) The **nonrefundable** fee accompanying an application for a cultivator  
20        license pursuant to section 4525 of this chapter shall be determined as follows:

1           (A) For a cultivator license that permits a cultivation space of not  
2           more than 5,000 square feet, the application fee shall be \$5,000.00.

3           (B) For a cultivator license that permits a cultivation space of  
4           5,001–10,000 square feet, the application fee shall be \$10,000.00.

5           (C) For a cultivator license that permits a cultivation space of  
6           10,001–20,000 square feet, the application fee shall be \$15,000.00.

7           (2) The nonrefundable fee accompanying an application for a retailer  
8           license pursuant to section 4526 of this chapter shall be \$5,000.00.

9           (3) The nonrefundable fee accompanying an application for a marijuana  
10          testing laboratory license pursuant to section 4527 of this chapter shall be  
11          \$500.00.

12          (c)(1) The initial annual license fee and subsequent annual renewal fee for  
13          a cultivator license pursuant to section 4525 of this chapter shall be shall be  
14          determined as follows:

15               (A) For a cultivator license that permits a cultivation space of not  
16               more than 5,000 square feet, the annual license renewal fee shall be \$5,000.00.

17               (B) For a cultivator license that permits a cultivation space of  
18               5,001–10,000 square feet, the annual license renewal fee shall be \$10,000.00.

19               (C) For a cultivator license that permits a cultivation space of  
20               10,001–20,000 square feet, the annual license renewal fee shall be \$15,000.00.

1           (2) The initial annual license fee and subsequent annual renewal fee for  
2           a retailer license pursuant to section 4526 of this chapter shall be \$5,000.00.

3           (3) The initial annual license fee and subsequent annual renewal fee for  
4           a marijuana testing laboratory license pursuant to section 4527 of this chapter  
5           shall be \$2,000.00.

6           (d) The following administrative fees shall apply:

7                   (1) Change of corporate structure fee (per person) shall be \$1,000.00

8                   (2) Change of name fee shall be \$1,000.00.

9                   (3) Change of location fee shall be \$1,000.00.

10                  (4) Modification of license premises fee shall be \$250.00.

11                  (5) Duplicate license fee shall be \$100.00.

12           Eighteenth: In Sec. 12, 18 V.S.A. chapter 87, by striking out subchapter 4  
13           in its entirety and by redesignating subchapter 5 to be subchapter 4

14           Nineteenth: In Sec. 12, 18 V.S.A. § 4546(b)(5) after the word “public” by  
15           inserting , one of whom shall have expertise in public health,

16           Twentieth: In Sec. 12, 18 V.S.A. § 4547(a) in subdivision (7) by striking  
17           out the word “and” and in subdivision (8) by striking out “;” and inserting in  
18           lieu thereof “;” and by striking out subdivision (10) in its entirety and inserting  
19           in lieu thereof the following:

20                   (10) monitor the extent to which marijuana is accessed through both the  
21           legal and illegal market by persons under 21 years of age;



1       **(b) The tax imposed by this section is separate from the general sales and**  
2       **use tax imposed by chapter 233 of this title.** The tax imposed under this  
3       section shall be separately itemized from any State and local retail sales tax on  
4       the sales receipt provided to the buyer.

5       (c) The following sales shall be exempt from the tax imposed under this  
6       section:

7             (1) sales under any circumstances in which the State is without power to  
8             impose the tax; and

9             (2) sales made by any dispensary, provided the marijuana will be  
10            provided only to registered qualifying patients directly or through their  
11            registered caregivers.

12       **§ 7902. LIABILITY FOR TAX AND PENALTIES**

13       (a) Any tax collected under this chapter shall be deemed to be held by the  
14       retailer in trust for the State of Vermont. Any tax collected under this chapter  
15       shall be accounted for separately so as to clearly indicate the amount of tax  
16       collected, and that the tax receipts are the property of the State of Vermont.

17       (b) Every retailer required to collect the tax imposed by this chapter shall  
18       be personally and individually liable for the amount of tax together with such  
19       interest and penalty as has accrued under this title. If the retailer is a  
20       corporation or other entity, the personal liability shall extend to any officer or  
21       agent of the corporation or entity who as an officer or agent of the same has the

1 authority to collect the tax and transmit it to the Commissioner of Taxes as  
2 required in this chapter.

3 (c) A retailer shall have the same rights in collecting the tax from his or her  
4 purchaser or regarding nonpayment of the tax by the purchaser as if the tax  
5 were a part of the purchase price of the marijuana and payable at the same  
6 time; provided, however, if the retailer required to collect the tax has failed to  
7 remit any portion of the tax to the Commissioner of Taxes, the Commissioner  
8 of Taxes shall be notified of any action or proceeding brought by the retailer to  
9 collect the tax and shall have the right to intervene in such action or  
10 proceeding.

11 (d) A retailer required to collect the tax may also refund or credit to the  
12 purchaser any tax erroneously, illegally, or unconstitutionally collected. No  
13 cause of action that may exist under State law shall accrue against the retailer  
14 for the tax collected unless the purchaser has provided written notice to a  
15 retailer, and the retailer has had 60 days to respond.

16 (e) To the extent not inconsistent with this chapter, the provisions for the  
17 assessment, collection, enforcement, and appeals of the sales and use taxes in  
18 chapter 233 of this title shall apply to the tax imposed by this chapter.

1 **§ 7903. BUNDLED TRANSACTIONS**

2 (a) Except as provided in subsection (b) of this section, a retail sale of a  
3 bundled transaction that includes marijuana is subject to the tax imposed by  
4 this subchapter on the entire selling price of the bundled transaction.

5 (b) If the selling price is attributable to products that are taxable and  
6 products that are not taxable under this subchapter, the portion of the price  
7 attributable to the nontaxable products are subject to the tax imposed by this  
8 subchapter unless the retailer can identify by reasonable and verifiable  
9 standards the portion that is not subject to tax from its books and records that  
10 are kept in the regular course of business.

11 (c) As used in this section, “bundled transaction” means:

12 (1) the retail sale of two or more products where the products are  
13 otherwise distinct and identifiable, are sold for one nonitemized price, and at  
14 least one of the products includes marijuana subject to the tax under this  
15 subchapter; or

16 (2) marijuana provided free of charge with the required purchase of  
17 another product.

18 **§ 7904. RETURNS**

19 (a) Any retailer required to collect the tax imposed by this section shall, on  
20 or before the 15th day of every month, return to the Department of Taxes,  
21 under oath of a person with legal authority to bind the retailer, a statement

1 containing its name and place of business, the amount of marijuana sales  
2 subject to the excise tax imposed by this subchapter sold in the preceding  
3 month, and any other information required by the Department of Taxes, along  
4 with the tax due.

5 (b) Every retailer shall maintain, for not less than three years, accurate  
6 records showing all transactions subject to tax liability under this subchapter.  
7 These records are subject to inspection by the Department of Taxes at all  
8 reasonable times during normal business hours.

9 § 7905. LICENSES

10 (a) Every retailer required to collect the tax imposed by this chapter shall  
11 apply for a marijuana excise tax license in the manner prescribed by the  
12 Commissioner of Taxes. The Commissioner shall issue, without charge, to  
13 each registrant a license empowering him or her to collect the marijuana excise  
14 tax. Each license shall state the place of business to which it is applicable.  
15 The license shall be prominently displayed in the place of business of the  
16 registrant. The licenses shall be nonassignable and nontransferable and shall  
17 be surrendered to the Commissioner immediately upon the registrant's ceasing  
18 to do business at the place named. A license to collect marijuana excise tax  
19 shall be in addition to the licenses required by sections 9271 (meals and rooms  
20 tax) and 9707 (sales and use tax) of this title and any license required by the  
21 Department of Public Safety.



1 after January 1, 1986 as interest income from State and local obligations, other  
2 than obligations of Vermont and its political subdivisions, and any dividends  
3 or other distributions from any fund to the extent such dividend or distribution  
4 is attributable to such Vermont State or local obligations;

5 (III) the amount of any deduction for a federal net operating  
6 loss; and

7 (ii) decreased by:

8 (I) the “gross-up of dividends” required by the federal Internal  
9 Revenue Code to be taken into taxable income in connection with the  
10 taxpayer’s election of the foreign tax credit; ~~and~~

11 (II) the amount of income which results from the required  
12 reduction in salaries and wages expense for corporations claiming the Targeted  
13 Job or WIN credits; and

14 (III) any federal deduction that the taxpayer would have been  
15 allowed for the cultivation, testing, processing, or sale of marijuana, as  
16 authorized under 18 V.S.A. chapter 86 or 87, but for 26 U.S.C. § 280E.

17 \* \* \*

18 (21) “Taxable income” means federal taxable income determined  
19 without regard to 26 U.S.C. § 168(k) and:

20 (A) Increased by the following items of income (to the extent such  
21 income is excluded from federal adjusted gross income):

1 (i) interest income from non-Vermont state and local obligations;

2 (ii) dividends or other distributions from any fund to the extent

3 they are attributable to non-Vermont state or local obligations;

4 (iii) the amount of State and local income taxes deducted from

5 federal adjusted gross income for the taxable year, but in no case in an amount

6 that will reduce total itemized deductions below the standard deduction

7 allowable to the taxpayer; and

8 (iv) the amount of total itemized deductions, other than deductions

9 for State and local income taxes, medical and dental expenses, or charitable

10 contributions, deducted from federal adjusted gross income for the taxable

11 year, that is in excess of two and one-half times the standard deduction

12 allowable to the taxpayer; and

13 (B) Decreased by the following items of income (to the extent such

14 income is included in federal adjusted gross income):

15 (i) income from United States government obligations;

16 (ii) with respect to adjusted net capital gain income as defined in

17 26 U.S.C. § 1(h) reduced by the total amount of any qualified dividend

18 income: either the first \$5,000.00 of such adjusted net capital gain income; or

19 40 percent of adjusted net capital gain income from the sale of assets held by

20 the taxpayer for more than three years, except not adjusted net capital gain

21 income from:

1 (I) the sale of any real estate or portion of real estate used by  
2 the taxpayer as a primary or nonprimary residence; or

3 (II) the sale of depreciable personal property other than farm  
4 property and standing timber; or stocks or bonds publicly traded or traded on  
5 an exchange, or any other financial instruments; regardless of whether sold by  
6 an individual or business;

7 and provided that the total amount of decrease under this  
8 subdivision (21)(B)(ii) shall not exceed 40 percent of federal taxable  
9 income; ~~and~~

10 (iii) recapture of State and local income tax deductions not taken  
11 against Vermont income tax; and

12 (iv) any federal deduction that the taxpayer would have been  
13 allowed for the cultivation, testing, processing, or sale of marijuana, as  
14 authorized under 18 V.S.A. chapter 86 or 87, but for 26 U.S.C. § 280E.

15 \* \* \*

16 Twenty-third: By adding a Sec. 12c to read as follows:

17 Sec. 12c. 32 V.S.A. § 9741(51) is added to read:

18 (51) Marijuana sold by a dispensary as authorized under 18 V.S.A.  
19 chapter 86 or by a retailer as authorized under 18 V.S.A. chapter 87.





1 this chapter shall be credited to a special fund which shall be established and  
2 managed pursuant to 32 V.S.A. chapter 7, subchapter 5, and which shall be  
3 available to the Agency to offset the cost of providing the services.

4 § 123. REGULATED DRUGS

5 (a) Except as provided in subsection (b) of this section, the provisions of  
6 18 V.S.A. chapter 84 shall not apply to the Secretary or designee in the  
7 otherwise lawful performance of his or her official duties requiring the  
8 possession or control of regulated drugs.

9 (b) The central testing laboratory shall obtain a certificate of approval from  
10 the Department of Health pursuant to 18 V.S.A. § 4207.

11 (c) As used in this section, “regulated drug” shall have the same meaning  
12 as in 18 V.S.A. § 4201.

13 Twenty-seventh: By striking out Sec. 30 (effective dates) in its entirety and  
14 inserting in lieu thereof the following:

15 Sec. 31. EFFECTIVE DATES

16 (a) This section and Secs. 1, 2, 12, 12a, 18a, and 29a shall take effect on  
17 passage.

18 (b) Secs. 7, 11, 13 through 18, and 19 through 29 shall take effect on  
19 July 1, 2016.

20 (c) Sec. 12b shall take effect January 1, 2017 and shall apply to taxable  
21 year 2017 and after.

1        (d) Secs. 6, 8, 9, 10, 12c, and 30 shall take effect on January 2, 2018.

2        (e) Sec. 8a shall take effect on July 1, 2018.

3

4        (Committee vote: \_\_\_\_\_)

5

\_\_\_\_\_

6

Senator \_\_\_\_\_

7

FOR THE COMMITTEE