House Calendar

Tuesday, March 20, 2012

78th DAY OF THE ADJOURNED SESSION

House Convenes at 10:00 a.m.

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ORDERS OF THE DAY

ACTION CALENDAR

Unfinished Business of Monday, March 19 2012

Committee Bill for Second Reading

H. 768

An act relating to ignition interlock restricted driver's licenses and civil suspensions.

(Rep. French of Shrewsbury will speak for the Committee on **Judiciary.)**

H. 769

An act relating to department of environmental conservation fees.

(Rep. Masland of Thetford will speak for the Committee on **Ways and Means.)**

Favorable with Amendment

H. 78

An act relating to wages for laid-off employees

Rep. O'Sullivan of Burlington, for the Committee on **General, Housing and Military Affairs,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 1971 is amended to read:

§ 1971. EXTENT OF LIEN

The liability of ~~a corporation~~ an employer as defined in 21 V.S.A. § 341 to ~~wage earners~~ an employee for unpaid wages which were earned in the ~~three months next~~ thirty days prior to the filing of a mortgage or other lien upon the property ~~and franchise of such corporation~~ of the employer, in all cases, shall be a first lien thereon, notwithstanding any mortgage or other lien thereon recorded after such wages were earned. ~~An individual who works for wages, salary or hire at a rate of compensation not exceeding $3,000.00 a year shall be deemed to be a wage earner within the meaning of this section.~~ Notice of the lien shall be filed with the secretary of state's office and, if applicable, in the land records by the employee or the department of labor acting on behalf of the employee. An employee who is owed wages or the department of labor acting on behalf of that employee may file an action to execute on the lien in the civil division of the superior court in the county in which the employer has its principal place of business in the state.

Sec. 2. 11A V.S.A. § 14.03 is amended to read:

§ 14.03. ARTICLES OF DISSOLUTION

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

(1) the name of the corporation;

(2) the date dissolution was authorized;

(3) if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval;

(4) if voting by voting groups was required, the information required by subdivision (3) of this subsection ~~must be~~, separately provided for each voting group entitled to vote separately on the plan to dissolve;

(5) a statement as to the settlement of debts, the distribution of property, and the status of pending litigation;

(6) a statement whether the corporation owes any unpaid wages to its employees.

(b) Subject to the provisions of section 14.09 of this title, a corporation is dissolved upon the effective date of its articles of dissolution.

(c) If a corporation owes unpaid wages to its employees, it shall also file a statement to that effect with the department of labor.

(d) A corporation's liability for unpaid wages shall not be affected by the corporation's dissolution and winding up of its affairs. The directors and shareholders of a corporation shall be individually liable in an action brought by the department of labor for any unpaid wages owed to the corporation's employees, or brought by an individual employee that is owed wages by the corporation.

(Committee Vote: 8-0-0)

H. 157

An act relating to restrictions on tanning beds

Rep. Komline of Dorset, for the Committee on **Health Care,** recommends the bill be amended as follows:

First: In Sec. 1, by striking out subsection (d) in its entirety and inserting in lieu thereof the following:

(d) Any tanning facility or operator that allows a person under 18 years of age to use any tanning equipment shall be subject to a civil penalty of not more than $100.00 for the first offense and not more than $500.00 for any subsequent offense. An action to enforce this section shall be brought in the judicial bureau pursuant to 4 V.S.A. chapter 29.

Second: In Sec. 1, by adding a subsection (f) to read as follows:

(f) A tanning facility owner, lessee, or operator shall post in a conspicuous place in each tanning facility that the individual owns, leases, or operates in this state a notice developed by the commissioner of health addressing the following:

(1) that it is unlawful for a tanning facility or operator to allow a person under the age of 18 to use any tanning equipment;

(2) that a tanning facility or operator that violates the provisions of this section shall be subject to a civil penalty;

(3) that an individual may report a violation of the provisions of this section to his or her local law enforcement agency; and

(4) the health risks associated with tanning.

Third: By adding a Sec. 2 to read as follows:

Sec. 2. 4 V.S.A. § 1102(b)(23) is added to read:

(23) Violations of 18 V.S.A. § 1513, relating to minors using tanning facilities.

(Committee Vote: 9-1-1)

H. 747

An act relating to cigarette manufacturers

Rep. Krowinski of Burlington, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 7 V.S.A. § 1003 is amended to read:

§ 1003. SALE OF TOBACCO PRODUCTS; REQUIREMENTS; PROHIBITIONS

(a) A person shall not sell or provide tobacco products, tobacco substitutes, or tobacco paraphernalia to any person younger than 18 years of age.

* * *

(d) ~~Beginning January 1, 1999, excepting contracts in existence prior to March 31, 1997, n~~No person holding a tobacco license shall display or store tobacco products or tobacco substitutes where those products are accessible to consumers without direct assistance by the sales personnel. This subsection shall not apply to the following:

(1) A display of tobacco products that is located in a commercial establishment in which by law no person younger than 18 years of age is permitted to enter at any time.

(2) Cigarettes in unopened cartons and smokeless tobacco in unopened multipack containers of 10 or more packages, any of which shall be displayed in plain view and under the control of a responsible employee so that removal of the cartons or multipacks from the display can be readily observed by that employee.

(3) Cigars and pipe tobacco stored in a humidor on the sales counter in plain view and under the control of a responsible employee so that the removal of these products from the humidor can be readily observed by that employee.

* * *

(f) No person holding a tobacco license shall sell cigarettes or little cigars ~~as defined in 32 V.S.A. § 7702(6)~~ individually or in packs that contain fewer than 20 cigarettes or little cigars.

(g) As used in this section, "little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of 32 V.S.A. § 7202(1)) and as to which 1,000 units weigh not more than three pounds.

Sec. 2. 7 V.S.A. § 1001 is amended to read:

§ 1001. DEFINITIONS

As used in this chapter:

* * *

(3) "Tobacco products" mean cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine-cut, and

other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, or for delivery into the body through inhaling heated vapor or in any other manner.

* * *

(7) "Tobacco paraphernalia" means any device used, intended for use, or designed for use in smoking, inhaling, ingesting, or otherwise introducing tobacco products into the human body, or for preparing tobacco for smoking, inhaling, ingesting, or otherwise introducing into the human body, including devices for holding tobacco, rolling paper, wraps, cigarette rolling machines, pipes, water pipes, carburetion devices, bongs, and hookahs.

(8) "Tobacco substitute" means products including electronic cigarettes or other electronic or battery-powered devices that contain and are designed to deliver nicotine or other substances into the body through inhaling vapor and that have not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes.

Sec. 3. 7 V.S.A. § 1006 is amended to read:

§ 1006. POSTING OF SIGNS

(a) A person licensed under this chapter shall post ~~a plainly printed copy of the provisions of sections 1004 and 1005 of this title~~ in a conspicuous place on the premises identified in the tobacco license ~~and on any vending machine located on the premises~~ a warning sign stating that the sale of tobacco products, tobacco substitutes, and tobacco paraphernalia to minors is prohibited. The board shall prepare the ~~signs~~ sign and make ~~them~~ it available with the license forms issued under this chapter. The sign may include information about the health effects of tobacco and tobacco cessation services. The board, in consultation with a representative of the licensees when appropriate, is authorized to change the design of the sign as needed to maintain its effectiveness.

* * *

Sec. 4. 33 V.S.A. § 1925 is added to read:

§ 1925. JOINT AND SEVERAL LIABILITY OF IMPORTERS OF NONPARTICIPATING MANUFACTURER'S BRAND FAMILIES

Each nonparticipating manufacturer located outside the United States and each importer of any nonparticipating manufacturer's brand families that are sold in the state shall bear joint and several liability for the deposit of all escrow due and payment of all penalties, costs, and attorney fees imposed

under this subchapter. The nonparticipating manufacturer, as a condition to being listed on the directory, shall provide a declaration on a form prescribed by the attorney general from each of its importers of any of its brand families to be sold in the state that the importer accepts joint and several liability for all escrow deposits due pursuant to section 1914 of this title and for all penalties, costs, and attorney fees assessed under section 1914 of this title.

Sec. 5. 33 V.S.A. § 1920 is amended to read:

§ 1920. AGENT FOR SERVICE OF PROCESS

(a) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or other business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this subchapter or subchapter 1A of this chapter, or both, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and satisfactory proof of the appointment and availability of such agent to the attorney general. Any nonparticipating manufacturer located outside the United States shall, as an additional condition to having its brand families included or retained on the directory, cause each of its importers into the United States of any of its brand families to be sold in Vermont to appoint and continuously engage without interruption the services of an agent in the state in accordance with the provisions of this section.

* * *

Sec. 6. 7 V.S.A. § 1011 is added to read:

§ 1011. COMMERCIAL CIGARETTE ROLLING MACHINES

(a) A person shall not possess or use a cigarette rolling machine for commercial purposes.

(b) A person who knowingly violates subsection (a) of this section shall be subject to the following civil penalties:

(1) The revocation or termination of any license, permit, appointment, or commission under this chapter.

(2) A civil penalty of up to $50,000.00 in any action brought by the department of taxes, the department of liquor control, or the attorney general.

(c) Penalties assessed under subsection (b) of this section shall be paid into the general fund.

(d) A person who violates subsection (a) of this section shall be imprisoned for not more than three years or fined not more than $100,000.00 or both.

(e) This section shall not apply to the possession of a cigarette rolling machine intended solely for personal use by individuals who do not intend to offer the resulting product for resale.

(f) A cigarette rolling machine capable of rolling 200 cigarettes in fewer than 15 minutes is presumed to be for commercial purposes.

Sec. 7. 7 V.S.A. § 1009 is amended to read:

§ 1009. CONTRABAND AND SEIZURE

Any cigarettes or other tobacco products that have been sold, offered for sale, or possessed for sale in violation of section 1003 of this title, 20 V.S.A. § 2757, 32 V.S.A. § 7786, or 33 V.S.A. § 1919, and any commercial cigarette rolling machines possessed or utilized in violation of section 1011 of this title, shall be deemed contraband, and shall be subject to seizure by the commissioner, the commissioner's agents or employees, the commissioner of taxes, or any agent or employee thereof, or by any peace officer of this state when directed to do so by the commissioner. All cigarettes or other tobacco products seized shall be destroyed.

(Committee Vote: 11-0-0)

Amendment to be offered by Rep. Krowinski of Burlington to H. 747

Rep. Krowinski of Burlington moves that the bill be amended by inserting a Sec. 8 to read:

Sec. 8. 32 V.S.A. § 7702 is amended to read:

§ 7702. DEFINITIONS

The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

* * *

(6) "Little cigars" means any rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subdivision (1) of this section) and as to which 1,000 units weigh not more than ~~three pounds~~ four and one-half pounds.

* * *

H. 751

An act relating to jurisdiction of delinquency proceedings

Rep. Wizowaty of Burlington, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. INTENT

The general assembly intends this act to enhance opportunities to treat youths as juveniles in the family division of the superior court while preserving the discretion of state's attorneys to bring criminal charges against youths in appropriate cases. Evidence-based practice and research clearly indicate that young people charged as juveniles are much more likely to receive the services necessary for their rehabilitation and are much less likely to reoffend, resulting in fewer corrections expenses for the state and more opportunities for the offender to change his or her behavior. This act therefore contains several measures designed to facilitate the filing of juvenile proceedings against some minors in the family division while retaining the discretion of state's attorneys to charge other minors as adults in the criminal division when the facts warrant it. By promoting the treatment of youths as juveniles in the family division rather than as adults in criminal court, the general assembly intends this act to help establish a more effective way to reduce recidivism and its attendant budgetary and societal costs.

Sec. 2. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

(a) The family division of the superior court shall have exclusive jurisdiction over all proceedings concerning a child who is or who is alleged to be a delinquent child or a child in need of care or supervision brought under the authority of the juvenile judicial proceedings chapters, except as otherwise provided in such chapters.

(b) Orders issued under the authority of the juvenile judicial proceedings chapters shall take precedence over orders in other family division proceedings and any order of another court of this state, to the extent they are inconsistent. This section shall not apply to child support orders in a divorce, parentage, or relief from abuse proceedings until a child support order has been issued in the juvenile proceeding.

(c) Except as otherwise provided by this title, jurisdiction over a child who has been adjudicated delinquent shall not be extended beyond the child's ~~18th~~ 20th birthday, provided that in no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and

families. Jurisdiction over a child in need of care or supervision shall not be extended beyond the child's 18th birthday.

(d) The court may terminate its jurisdiction over a child ~~prior to the child's 18th birthday~~ by order of the court. If the child is not subject to another juvenile proceeding, jurisdiction shall terminate automatically in the following circumstances:

(1) Upon the discharge of a child from juvenile probation, providing the child is not in the legal custody of the commissioner.

(2) Upon an order of the court transferring legal custody to a parent, guardian, or custodian without conditions or protective supervision.

(3) Upon the adoption of a child following a termination of parental rights proceeding.

Sec. 3. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

(c) Consistent with applicable provisions of Title 4, any proceeding concerning a child who is alleged to have committed an act specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title after attaining the age of 14, but not the age of 18, shall originate in ~~district or~~ the criminal division of the superior court, provided that jurisdiction may be transferred in accordance with this chapter.

* * *

Sec. 4. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was alleged to have been committed and the offense charged is not one of those specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, that court shall forthwith transfer the case to the ~~juvenile~~ family division of the superior court under the authority of this chapter.

(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title was alleged to have been committed, that court may forthwith transfer the

proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

(c) If it appears to the state's attorney that the defendant was over the age of 16 and under the age of 18 at the time the offense charged was alleged to have been committed and the offense charged is not an offense specified in ~~subsection 5204(a)~~ subdivision 5204(a)(1) of this title, the state's attorney may file charges in ~~a juvenile court or~~ the family or criminal division of the superior court. If charges in such a matter are filed in the criminal division of the superior court, the criminal division of the superior court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the person shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

* * *

Sec. 5. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the ~~juvenile~~ family division of the superior court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if:

(1) the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

~~(1)~~(A) arson causing death as defined in 13 V.S.A. § 501;

~~(2)~~(B) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

~~(3)~~(C) assault and robbery causing bodily injury as defined in 13 V.S.A. § 608(c);

~~(4)~~(D) aggravated assault as defined in 13 V.S.A. § 1024;

~~(5)~~(E) murder as defined in 13 V.S.A. § 2301;

~~(6)~~(F) manslaughter as defined in 13 V.S.A. § 2304;

~~(7)~~(G) kidnapping as defined in 13 V.S.A. § 2405;

~~(8)~~(H) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;

~~(9)~~(I) maiming as defined in 13 V.S.A. § 2701;

~~(10)~~(J) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);

~~(11)~~(K) aggravated sexual assault as defined in 13 V.S.A. § 3253; ~~or~~

~~(12)~~(L) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c); or

(2) the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivision (1) of this subsection.

(b) The state's attorney of the county where the juvenile petition is pending may move in the ~~juvenile~~ family division of the superior court for an order transferring jurisdiction under subsection (a) of this section ~~within 10 days of the filing of the petition alleging delinquency~~ at any time prior to adjudication on the merits. The filing of the motion to transfer jurisdiction shall automatically stay the time for the hearing provided for in section 5225 of this title, which stay shall remain in effect until such time as the juvenile court may deny the motion to transfer jurisdiction.

(c) Upon the filing of a motion to transfer jurisdiction under subsection (b) of this section, the juvenile court shall conduct a hearing in accordance with procedures specified in subchapter 2 of this chapter to determine whether:

(1) there is probable cause to believe that the child committed an act listed in subsection (a) of this section; and

(2) public safety and the interests of the community would not be served by treatment of the child under the provisions of law relating to juvenile courts and delinquent children.

(d) In making its determination as required under subsection (c) of this section, the court may consider, among other matters:

(1) The maturity of the child as determined by consideration of his or her age, home, environment; emotional, psychological and physical maturity; and relationship with and adjustment to school and the community.

(2) The extent and nature of the child's prior record of delinquency.

(3) The nature of past treatment efforts and the nature of the child's response to them.

(4) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.

(5) The nature of any personal injuries resulting from or intended to be caused by the alleged act.

(6) The prospects for rehabilitation of the child by use of procedures, services, and facilities available through juvenile proceedings.

(7) Whether the protection of the community would be better served by transferring jurisdiction from the ~~juvenile court~~ family division to the criminal division of the superior court.

(e) A transfer under this section shall terminate the jurisdiction of the juvenile court over the child only with respect to those delinquent acts alleged in the petition with respect to which transfer was sought.

(f)(1) The ~~juvenile court~~ family division, following completion of the transfer hearing, shall make ~~written~~ findings and, if the court orders transfer of jurisdiction from the ~~juvenile court~~ family division, shall state the reasons for that order. If the ~~juvenile court~~ family division orders transfer of jurisdiction, the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(2) Notwithstanding subdivision (1) of this subsection, the parties may stipulate to a transfer of jurisdiction from the family division at any time after a motion to transfer is made pursuant to subsection (b) of this section. The court shall not be required to make findings if the parties stipulate to a transfer pursuant to this subdivision. Upon acceptance of the stipulation to transfer jurisdiction, the court shall transfer the proceedings to the criminal division and the child shall be treated as an adult. The state's attorney shall commence criminal proceedings as in cases commenced against adults.

(g) The order granting or denying transfer of jurisdiction shall not constitute a final judgment or order within the meaning of Rules 3 and 4 of the Vermont Rules of Appellate Procedure.

(h) If a person who has not attained the age of 16 at the time of the alleged offense has been prosecuted as an adult and is not convicted of one of the acts listed in subsection (a) of this section but is convicted only of one or more lesser offenses, jurisdiction shall be transferred to the ~~juvenile~~ family division of the superior court for disposition. A conviction under this subsection shall be considered an adjudication of delinquency and not a conviction of crime, and the entire matter shall be treated as if it had remained in ~~juvenile court~~ the family division throughout. In case of an acquittal for a matter specified in this subsection and in case of a transfer to ~~juvenile court~~ the family division under this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in

subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

Sec. 6. 33 V.S.A. § 5225 is amended to read:

§ 5225. PRELIMINARY HEARING

(a) A preliminary hearing shall be held at the time and date specified on the citation or as otherwise ordered by the court. If a child is taken into custody prior to the preliminary hearing, the preliminary hearing shall be at the time of the temporary care hearing.

(b) Prior to the preliminary hearing, the child shall be afforded an opportunity to undergo a risk and needs screening, which shall be conducted by the department or by a community provider that has contracted with the department to provide risk and need screenings for children alleged to have committed delinquent acts. If the child participates in such a screening, the department or the community provider shall report the risk level result of the screening to the state's attorney. If a charge is brought in the family division, the risk level result shall be provided to the child's attorney. Except on agreement of the parties, the results shall not be provided to the court until after a merits finding has been made.

(c) Counsel for the child shall be assigned prior to the preliminary hearing.

~~(c)~~(d) At the preliminary hearing, the court shall appoint a guardian ad litem for the child. The guardian ad litem may be the child's parent, guardian, or custodian. On its own motion or motion by the child's attorney, the court may appoint a guardian ad litem other than a parent, guardian or custodian.

~~(d)~~(e) At the preliminary hearing, a denial shall be entered to the allegations of the petition, unless the juvenile, after adequate consultation with the guardian ad litem and counsel, enters an admission. If the juvenile enters an admission, the disposition case plan required by section 5230 of this title may be waived and the court may proceed directly to disposition, provided that the juvenile, the custodial parent, the state's attorney, the guardian ad litem, and the department agree.

~~(e)~~(f) The court may order the child to abide by conditions of release pending a merits or disposition hearing.

Sec. 7. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

(b) In carrying out the purposes outlined in subsection (a) of this section, the court may:

* * *

(7) Refer a child directly to a youth-appropriate community-based provider that has been approved by the department, which may include a community justice center or a balanced and restorative justice program. Referral to a community-based provider pursuant to this subdivision shall not require the court to place the child on probation. If the community-based provider does not accept the case, or if the child fails to complete the program in a manner deemed satisfactory and timely by the provider, the child shall return to the court for disposition.

* * *

Sec. 8. REPORT

On or before December 1, 2013, the court administrator, in collaboration with the department for children and families and the court diversion director, shall report statistics evidencing the result of this act to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare. The report shall identify:

(1) the number of youths 16 years of age or older on juvenile probation;

(2) the number of filings involving 16- and 17-year-olds in the family and criminal divisions of the superior court;

(3) the number of 16- and 17-year-olds referred to the diversion program;

(4) the number of violations of probation filed in the family division for person 18 years of age or older;

(5) the number of 16- and 17-year-olds referred directly to community providers at disposition hearings in the family division; and

(6) the number of persons 16 years of age or older returned to the family division after the effective date of this act as a result of either nonacceptance by a community-based provider or failure to complete either the diversion program or a program administered by a community-based provider.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee Vote: 10-1-0)

NEW BUSINESS

Committee Bill for Second Reading

H. 771

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

(Rep. Christie of Hartford will speak for the Committee on **Education.)**

H. 772

An act relating to allocation of federal rental subsidies.

(Rep. Bouchard of Colchester will speak for the Committee on **General, Housing and Military Affairs.)**

Amendment to be offered by Rep. Bouchard of Colchester to H. 772

Rep. Bouchard of Colchester moves that the bill be amended as follows:

First: In Sec. 2, 24 V.S.A. 4005, in subsection (e) by striking the words "the authority of the state" and inserting in lieu thereof "state authority"

Second: In Sec. 2, 24 V.S.A. 4005, in subsection (e) by striking the words "a state body" and inserting in lieu thereof "a state public body"

Favorable with Amendment

H. 412

An act relating to harassment and bullying in educational settings

Rep. Waite-Simpson of Essex, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 14 is amended to read:

§ 14. HARASSMENT; NOTICE AND RESPONSE

(a)(1) An educational institution that receives actual notice of alleged conduct that may constitute harassment shall promptly investigate to determine whether harassment occurred. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy, including its harassment investigation procedure, to the alleged victim and the alleged perpetrator. If either the alleged victim or the alleged perpetrator is a minor, the copy of the policy shall be provided to the person's parent or guardian. Nothing herein shall be construed to prohibit educational institutions from investigating and imposing disciplinary consequences upon students for misconduct. Elementary and secondary school officials shall strive to

implement the plan developed in accordance with subdivision 1161a(a)(6) of this title in order to prevent misconduct from escalating to the level of harassment.

~~(b) In regard to claims brought pursuant to 9 V.S.A. chapter 139, if~~

(2) If, after notice, the educational institution finds that the alleged conduct occurred and that it constitutes harassment, the educational institution shall take prompt and appropriate remedial action reasonably calculated to stop the harassment. ~~No action shall be brought~~

(b) A claim may be brought under the Fair Housing and Public Accommodations Act pursuant to 9 V.S.A. chapter 139 ~~until~~ only after the administrative remedies available to the claimant under the policy adopted by the educational institution pursuant to subsection 166(e) or 565(b) of this title or pursuant to the harassment policy of a postsecondary school have been exhausted. Such a showing shall not be necessary where the claimant demonstrates that: (1) the educational institution does not maintain such a policy; (2) a determination has not been rendered within the time limits established under subdivision 565(b)(1) of this title; (3) the health or safety of the complainant would be jeopardized otherwise; (4) exhaustion would be futile; or (5) requiring exhaustion would subject the student to substantial and imminent retaliation.

(c) To prevail in an action alleging unlawful harassment filed pursuant to this section and 9 V.S.A. chapter 139, the plaintiff shall prove both of the following:

(1) The student was subjected to unwelcome conduct based on the student's or the student's family member's actual or perceived membership in a category protected by law by 9 V.S.A. § 4502.

(2) The conduct was either so pervasive, or so severe and the cause of a continuing hostile environment, that when viewed from a reasonable person's standard, it substantially and adversely affected the student's equal access to educational opportunities or benefits provided by the educational institution.

(d) As used in this section:

(1) "Designated employee" means an employee who has been designated by an educational institution to receive complaints of harassment pursuant to subdivision 565(c)(1) of this title or in accordance with the harassment policy of a postsecondary school.

(2) "Educational institution" means a Vermont public or independent school or a postsecondary school that offers or operates a program of college or professional education for credit or degree in Vermont.

(3) "Notice" means a written complaint or oral information that harassment may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the harassment, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. If the complaint is oral, the designated employee shall promptly reduce the complaint to writing, including the time, place, and nature of the conduct, and the identity of the participants and complainant.

Sec. 2. HUMAN RIGHTS COMMISSION POSITION

(a) The human rights commission is encouraged to apply for grant funding to provide training regarding harassment and bullying prevention and response initiatives designed to educate trainers to work with school districts throughout the state.

(b) At least once annually, the human rights commission shall consult with the commissioner of education regarding the training needs of and appropriate curricula to be delivered to educators in Vermont.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

H. 440

An act relating to creating an agency and secretary of education and amending the membership and purpose of the state board of education

Rep. Donovan of Burlington, for the Committee on **Education,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. chapter 49 is added to read:

CHAPTER 49. EDUCATION

§ 2701. AGENCY AND SECRETARY CREATED

There is created an agency of education that shall be under the direction and supervision of a secretary of education.

§ 2702. SECRETARY OF EDUCATION

(a) With the advice and consent of the senate, the governor shall appoint a secretary of education from among no fewer than three candidates proposed by the state board of education.

(b) The secretary shall report directly to the governor and shall be a member of the governor's cabinet.

(c) At the time of appointment, the secretary shall have expertise in public education management and policy and demonstrated leadership and management abilities.

Sec. 2. 16 V.S.A. § 161 is amended to read:

§ 161. STATE BOARD OF EDUCATION; APPOINTMENT OF MEMBERS; TERM; VACANCY

The state board shall consist of ten members. Two of the members shall be secondary students, one of whom shall be a full member and the other of whom shall be a junior member who may not vote. All members shall be appointed by the governor with the advice and consent of the senate. In the appointment of the nonstudent members ~~consideration~~, priority shall be given to the selection of ~~such~~ persons ~~as shall adequately represent all sections of the state~~ with a demonstrated commitment to public education. To the extent possible, the members shall represent geographically diverse areas of the state.

(1) Upon the expiration of the respective terms of those members of the board previously appointed, excluding the student members, the governor shall, biennially in the month of February with the advice and consent of the senate, appoint members ~~thereto~~ for terms of ~~six~~ three years. The terms shall begin March 1 of the year in which the appointments are made. ~~A member serving a term of six years shall not be eligible for reappointment for successive terms~~ A nonstudent member is eligible for reappointment provided that the total number of years to be served will not exceed nine years.

* * *

Sec. 3. 16 V.S.A. § 164 is amended to read:

§ 164. STATE BOARD, GENERAL POWERS AND DUTIES

The state board shall ~~have supervision over, and management of the department of education and the public school system, except as otherwise provided; and shall~~ review and evaluate education policy presented by the governor and secretary, establish policies to guide the work of the agency, and engage local school board members and the broader education community. In addition to other specified duties, the board shall:

* * *

(4) ~~Biennially or as required by the governor cause to be prepared a budget for all money to be expended by the department of education~~ Guide preparation of and submit an agency budget to the governor.

* * *

(10) ~~Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices which improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment.~~ [Repealed.]

* * *

(19) ~~Develop, in consultation with the secretary of state, and make available to school boards, sample ballot language for items which may be voted on by Australian ballot and for which no statutory language exists.~~ [Repealed.]

* * *

(21) Report annually to the governor and the general assembly on the progress the board has made in establishing policies to guide the work of the agency and engaging the citizens of Vermont.

(22) Work with the secretary and agency to ensure that a new member of the board receives orientation within 60 days of appointment regarding essential elements of Vermont's education system, including an overview of education funding; school quality standards; the prekindergarten–16 continuum; the structure of education delivery, including the role of local boards and locally appointed administrators; student performance on standardized assessments; and policies governing the agency, including indicators to monitor progress and ensure accountability.

Sec. 4. 16 V.S.A. § 212(18) and (19) are added to read:

(18) Establish an information clearinghouse and accessible database to help districts share information about educational programs and practices that improve student performance. Educational programs and practices include those designed to create and sustain a safe learning environment.

(19) Develop, in consultation with the secretary of state, and make available to school boards sample ballot language for issues that may be decided by Australian ballot and for which no statutory language exists.

Sec. 5. REPEAL

16 V.S.A. § 211 (appointment of commissioner by board of education; commissioner's reports to board) is repealed.

* * * Transition * * *

Sec. 6. STATE BOARD OF EDUCATION; MEMBERSHIP; APPOINTMENT

(a) Notwithstanding the provisions of 16 V.S.A. § 161 as amended by Sec. 2 of this act, the term of any nonstudent member of the state board of education who was appointed and is a member before March 1, 2013 shall expire at the end of the original six-year term to which the member was appointed.

(b) The governor shall appoint new members pursuant to the terms of 16 V.S.A. § 161 as amended by this act upon the expiration of a term or a vacancy occurring on or after March 1, 2013.

Sec. 7. AGENCY OF EDUCATION; SECRETARY OF EDUCATION; POWERS AND DUTIES

On March 1, 2013:

(1) the secretary of education shall assume all the powers, duties, rights, and responsibilities of the commissioner of education; and

(2) the agency of education shall assume all the powers, duties, rights, and responsibilities of the department of education.

Sec. 8. LEGISLATIVE COUNCIL; PREPARATION OF A DRAFT BILL

On or before January 15, 2013, the legislative council shall prepare and submit a draft bill to the house and senate committees on education that makes statutory amendments of a technical nature and identifies all statutory sections that the general assembly must amend substantively to effect the intent of this act.

Sec. 9. EFFECTIVE DATES

(a) This section and Secs. 6 through 8 (transitional provisions) of this act shall take effect on passage.

(b) Secs. 1–5 of this act shall take effect on February 1, 2013.

and that after passage the title of the bill be amended to read: "An act relating to creating an agency and secretary of education and clarifying the purpose of the state board of education"

(Committee Vote: 10-0-1)

H. 459

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

Rep. Martin of Wolcott, for the Committee on **Government Operations,** recommends the bill be amended as follows:

First: In Sec. 2, in § 2.4 (representative town meeting), in subdivision (a)(2), after the fourth sentence ending in "who reside in Brattleboro.", by inserting a new sentence to read: "The town clerk and town treasurer shall be nonvoting ex officio members if appointed by the town manager."

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

(Committee Vote: 7-1-3)

H. 468

An act relating to a renewable portfolio standard and the Sustainably Priced Energy Enterprise Development Program

Rep. Cheney of Norwich, for the Committee on **Natural Resources and Energy,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

* * * Renewable Energy; Goals; Definitions * * *

Sec. 1. 30 V.S.A. § 8001 is amended to read:

§ 8001. RENEWABLE ENERGY GOALS

(a) The general assembly finds it in the interest of the people of the state to promote the state energy policy established in section 202a of this title by:

(1) Balancing the benefits, lifetime costs, and rates of the state's overall energy portfolio to ensure that to the greatest extent possible the economic benefits of renewable energy in the state flow to the Vermont economy in general, and to the rate paying citizens of the state in particular.

(2) Supporting development of renewable energy and related planned energy industries in Vermont, and the jobs and economic benefits associated with such development, while retaining and supporting existing renewable energy infrastructure.

(3) Providing an incentive for the state's retail electricity providers to enter into affordable, long-term, stably priced renewable energy contracts that mitigate market price fluctuation for Vermonters.

(4) Developing viable markets for renewable energy and energy efficiency projects.

(5) Protecting and promoting air and water quality by means of renewable energy programs.

(6) Contributing to reductions in global climate change and anticipating the impacts on the state's economy that might be caused by federal regulation designed to attain those reductions.

(7) ~~Supporting and providing incentives for small, distributed renewable energy generation, including~~ Providing support and incentives ~~that support locating such generation~~ to locate renewable energy plants of small and moderate size in a manner that is distributed across the state's electric grid, including locating such plants in areas that will provide benefit to the operation and management of ~~the state's electric~~ that grid through such means as reducing line losses and addressing transmission and distribution constraints.

(8) Promoting the inclusion, in Vermont's electric supply portfolio, of renewable energy plants that are diverse in plant capacity and type of renewable energy technology.

(b) The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the board and the department to implement and supervise programs pursuant to this chapter.

Sec. 2. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

For purposes of this chapter:

* * *

(2) "Renewable energy" means energy produced using a technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate.

(A) For purposes of this subdivision (2), methane gas and other flammable gases produced by the decay of sewage treatment plant wastes or landfill wastes and anaerobic digestion of agricultural products, byproducts, or wastes shall be considered renewable energy resources, but no form of solid waste, other than agricultural or silvicultural waste, shall be considered renewable.

(B) For purposes of this subdivision (2), no form of nuclear fuel shall be considered renewable.

(C) The only portion of electricity produced by a system of generating resources that shall be considered renewable is that portion generated by a technology that qualifies as renewable under this subdivision (2).

(D) After conducting administrative proceedings, the board may add technologies or technology categories to the definition of "renewable energy," provided that technologies using the following fuels shall not be considered renewable energy supplies: coal, oil, propane, and natural gas.

(E) For the purposes of this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."

(3) "Existing renewable energy" means ~~all types of~~ renewable energy ~~sold from the supply portfolio of a Vermont retail electricity provider that is not considered to be from a new renewable energy source~~ produced by a plant that came into service prior to or on December 31, 2004.

(4) "New renewable energy" means renewable energy produced by a ~~generating resource~~ specific and identifiable plant coming into service after December 31, 2004.

(A) ~~With respect to~~ Energy from within a system of generating ~~resources~~ plants that includes renewable energy~~, the percentage of the system that constitutes~~ shall not constitute new renewable energy ~~shall be determined through dividing the plant capacity of the system's generating resources coming into service after December 31, 2004 that produce renewable energy by the total plant capacity of the system~~, regardless of whether the system includes specific plants that came or come into service after December 31, 2004.

(B) "New renewable energy" also may include the additional energy from an existing renewable ~~facility~~ energy plant retrofitted with advanced technologies or otherwise operated, modified, or expanded to increase the kWh output of the ~~facility~~ plant in excess of an historical baseline established by calculating the average output of that ~~facility~~ plant for the 10-year period that ended December 31, 2004. If the production of new renewable energy through changes in operations, modification, or expansion involves combustion of the resource, the system also must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions. ~~For the purposes of this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."~~

(5) "~~Qualifying~~ SPEED resources" means contracts for ~~in-state~~ resources in the SPEED program established under section 8005 of this title

that meet the definition of ~~new~~ renewable energy under this section, whether or not ~~renewable energy credits~~ environmental attributes are attached.

(6) ~~"Nonqualifying SPEED resources" means contracts for in-state resources in the SPEED program established under section 8005 of this title that are fossil fuel-based, combined heat and power (CHP) facilities that sequentially produce both electric power and thermal energy from a single source or fuel. In addition, at least 20 percent of a facility's fuel's total recovered energy must be thermal and at least 13 percent must be electric, the design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) must be at least 65 percent, and the facility must meet air quality standards established by the agency of natural resources.~~

~~(7)~~ "Energy conversion efficiency" means the effective use of energy and heat from a combustion process.

(7) "Environmental attributes" means the characteristics of a plant that enable the energy it produces to qualify as renewable energy and include any and all benefits of the plant to the environment such as avoided emissions or other impacts to air, water, or soil that may occur through the plant's displacement of a nonrenewable energy source.

(8) "Tradeable renewable energy credits" means all of the environmental attributes associated with a single unit of energy generated by a renewable energy source where:

(A) those attributes are transferred or recorded separately from that unit of energy;

(B) the party claiming ownership of the tradeable renewable energy credits has acquired the exclusive legal ownership of all, and not less than all, the environmental attributes associated with that unit of energy; and

(C) exclusive legal ownership can be verified through an auditable contract path or pursuant to the system established or authorized by the board or any program for tracking and verification of the ownership of environmental attributes of energy legally recognized in any state and approved by the board.

(9) "Retail electricity provider" or "provider" means a company engaged in the distribution or sale of electricity directly to the public.

(10) "Board" means the public service board under section 3 of this title, except when used to refer to the clean energy development board.

(11) "Commissioned" or "commissioning" means the first time a plant is put into operation following initial construction or modernization if the costs of modernization are at least 50 percent of the costs that would be required to

build a new plant including all buildings and structures technically required for the new plant's operation. However, these terms shall not include activities necessary to establish operational readiness of a plant.

(12) "Plant" means ~~any~~ an independent technical facility that generates electricity from renewable energy. A group of newly constructed facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid.

* * *

(21) "Distributed renewable generation" means a renewable energy plant that is connected to the subtransmission or distribution system of a Vermont retail electricity provider and has a plant capacity of less than 5 MW.

(22) "Vermont composite electric utility system" means the combined generation, transmission, and distribution resources along with the combined retail load requirements of the Vermont retail electricity providers.

* * * Renewable Portfolio Standard * * *

Sec. 3. 30 V.S.A. § 8004 is amended to read:

§ 8004. RENEWABLE PORTFOLIO STANDARDS FOR SALES OF ELECTRIC ENERGY

(a) Environmental attributes; ownership. ~~Except as otherwise provided in section 8005 of this title, in order for Vermont retail electricity providers to~~ To achieve the goals established in section 8001 of this title, no retail electricity provider shall sell or otherwise provide or offer to sell or provide electricity in the state of Vermont without ownership of sufficient ~~energy produced by renewable resources as described in this chapter, or sufficient tradeable renewable energy credits that reflect the required renewable energy~~ environmental attributes as provided for in subsection (b) of this section. Such ownership may be demonstrated through possession of tradeable renewable energy credits; contracts for energy supplied by a plant to the provider if the provider's purchase from the plant includes the energy's environmental attributes; or both. In the case of members of the Vermont Public Power Supply Authority, the requirements of this chapter may be met in the aggregate.

(b) Amounts required; schedule.

(1) New renewable energy. Each retail electricity provider in Vermont shall ~~provide a certain amount of new renewable resources in its portfolio. Subject to subdivision 8005(d)(1) of this title each retail electricity provider in Vermont shall supply an amount of energy equal to its total incremental energy~~

~~growth between January 1, 2005 and January 1, 2012 through the use of electricity generated by new renewable resources. The retail electricity provider may meet this requirement through eligible new renewable energy credits, new renewable energy resources with renewable energy credits still attached, or a combination of those credits and resources. No retail electricity provider shall be required to provide in excess of a total of 10 percent of its calendar year 2005 retail electric sales with electricity generated by new renewable resources~~ own the environmental attributes of new renewable energy that is delivered or capable of delivery to Vermont in an amount that is not less than the percentages of its annual retail electric sales during each of the compliance periods shown on the table contained in this subdivision (b)(1).

Compliance Period (begins January 1 of stated year)	SPEED Goal Not Met	SPEED Goal Met
Three years commencing 2014	4 percent	4 percent
Three years commencing 2017	11 percent	8 percent
Three years commencing 2020	17 percent	14 percent
Three years commencing 2023	22 percent	19 percent
Three years commencing 2026	26 percent	26 percent
Three years commencing 2029	31 percent	31 percent
Each year commencing 2032	35 percent	35 percent

(A) If, pursuant to subdivision 8005(d)(1) (2017 SPEED goal) of this title, the board concludes that the goal of that subdivision has been met, then the percentages in the table column labeled "SPEED Goal Met" shall apply; otherwise, the percentages in the table column labeled "SPEED Goal Not Met" shall apply.

(B) A retail electricity provider shall meet the requirements of this subdivision (b)(1) in a manner reasonably consistent with subdivisions 8001(7) (small to moderate size plants; geographic distribution; benefit to electric system) and (8) (diversity of plant capacities and technologies) of this title.

(C) With respect to the compliance periods established in the table contained in this subdivision (b)(1), the board may allow a retail electricity provider to apply environmental attributes that are generated or purchased during a compliance period, and are in excess of the requirement for that period, toward meeting the requirement of the immediately succeeding compliance period. The board shall establish reasonable standards and limits to govern such application.

(2) Distributed renewable generation. Each retail electricity provider in Vermont shall own, in the amounts and allocations established under this subdivision (b)(2), the environmental attributes of new renewable energy produced by distributed renewable generation owned by any Vermont retail electricity provider or under a contract of 10 or more years to any such provider.

(A) During each year commencing January 1, 2032, the amount established under this subdivision (b)(2) shall be not less than 10 percent of a provider's annual retail electric sales.

(B) Between the effective date of this subdivision (b)(2) and January 1, 2032, the amount established under this subdivision (b)(2) shall be determined by the board. During this period, the board shall require each retail electricity provider to own the environmental attributes of eligible distributed renewable generation in increasing amounts such that each provider achieves compliance, by January 1, 2032, with the requirements of subdivision (2)(A) (2032; 10 percent) of this subsection. The board shall ensure that this determination is consistent with the pace and implementation of the standard offer program under section 8005a of this title.

(C) The board shall allocate the amounts established under this subdivision (b)(2) among different categories of renewable energy technologies. These categories shall include at least each of the following: methane derived from an agricultural operation; methane derived from a landfill; solar power; wind power with a plant capacity of 100 kW or less; wind power with a plant capacity greater than 100 kW; hydroelectric power; and biomass power using a fuel other than methane derived from an agricultural operation or landfill. In making these allocations, the board shall take into account the provisions of section 8005a (standard offer) of this title.

(D) For the purpose of this subdivision (b)(2), all net metering systems under section 219a of this title shall be considered to be under a contract of 10 or more years with the net metering customer's retail electricity provider.

(E) Energy produced by a plant used to satisfy this subdivision (b)(2) shall be applied to the requirements of subdivision (b)(1) of this section.

(F) A provider shall be exempt from the requirements of this subdivision (2) if the provider is exempt from the standard offer purchase requirements under subdivision 8005a(k)(2) of this title.

(c) ~~The requirements of subsection (b) of this section shall apply to all retail electricity providers in this state, unless the retail electricity provider demonstrates and the board determines that compliance with the standard would impair the provider's ability to meet the public's need for energy services after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs~~ Use of SPEED power. The use of energy from a plant to satisfy the requirements of section 8005 of this title shall not preclude the use of the same energy to satisfy the requirements of this section, as long as the provider possesses the energy's environmental attributes.

(d) Regulations and procedures. The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the board and the department to implement and supervise further the implementation and maintenance of a renewable portfolio standard.

(e) Alternative compliance payments. In lieu of~~, or in addition to~~ purchasing tradeable renewable energy credits to satisfy the portfolio requirements of this section, a retail electricity provider in this state may pay to the Vermont clean energy development fund established under section 8015 of this title an amount not less than the number of kWh necessary to bring the provider's portfolio into compliance with those requirements multiplied by a rate per kWh ~~as~~ established by the board. ~~As an alternative, the board may require any proportion of this amount to be paid to the energy conservation fund established under subsection 209(d) of this title.~~

(f) ~~Before December 30, 2007 and biennially thereafter through December 30, 2013, the board shall file a report with the senate committees on finance and on natural resources and energy and the house committees on commerce and on natural resources and energy. The report shall include the following:~~

~~(1) the total cumulative growth in electric energy usage in Vermont from 2005 through the end of the year that precedes the date on which the report is due;~~

~~(2) a report on the market for tradeable renewable energy credits, including the prices at which credits are being sold;~~

~~(3) a report on the SPEED program, and any projects using the program;~~

~~(4) a summary of other contracts held or projects developed by Vermont retail electricity providers that are likely to be eligible under the provisions of subsection 8005(d) of this title;~~

~~(5) an estimate of potential effects on rates, economic development and jobs, if the target established in subsection 8005(d) of this section is met, and if it is not met;~~

~~(6) an assessment of the supply portfolios of Vermont retail electricity providers, and the resources available to meet new supply requirements likely to be triggered by the expiration of major power supply contracts;~~

~~(7) an assessment of the energy efficiency and renewable energy markets and recommendations to the legislature regarding strategies that may be necessary to encourage the use of these resources to help meet upcoming supply requirements;~~

~~(8) any recommendations for statutory change related to this section, including recommendations for rewarding utilities that make substantial investments in SPEED resources; and~~

~~(9) the board's recommendations on how the state might best continue to meet the goals established in section 8001 of this title, including whether the state should meet its growth in energy usage over the succeeding 10 years by a continuation of the SPEED program.~~

* * * SPEED Program; General * * *

Sec. 4. 30 V.S.A. § 8005 is amended to read:

§ 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE DEVELOPMENT (SPEED) PROGRAM; TOTAL RENEWABLES TARGETS

(a) ~~In order to~~ Creation. To achieve the goals of section 8001 of this title, there is created the Sustainably Priced Energy Enterprise Development (SPEED) program. ~~The SPEED program shall have two categories of projects: qualifying SPEED resources and nonqualifying SPEED resources.~~

(b) Board; powers and duties. The SPEED program shall be established, by rule, order, or contract, by the board. As part of the SPEED program, the board may, and in the case of subdivisions (1), (2), and (5) of this subsection, shall:

(1) Name one or more entities to become engaged in the purchase and resale of electricity generated within the state by means of ~~qualifying~~ SPEED resources ~~or nonqualifying SPEED resources, and shall implement the standard~~

~~offer required by subdivision (2) of this subsection through this entity or entities~~. An entity appointed under this subdivision shall be known as a SPEED facilitator.

(2) Issue standard offers for ~~qualifying~~ SPEED resources ~~with a plant capacity of 2.2 MW or less~~ in accordance with section 8005a of this title. ~~These standard offers shall be available until the cumulative plant capacity of all such resources commissioned in the state that have accepted a standard offer under this subdivision (2) equals or exceeds 50 MW; provided, however, that a plant owned and operated by a Vermont retail electricity provider shall count toward this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is commissioned on or after September 30, 2009. The term of a standard offer required by this subdivision (2) shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years. The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kWh generated that shall be set as follows:~~

~~(A) Until the board determines the price to be paid to a plant owner in accordance with subdivision (2)(B) of this subsection, the price shall be:~~

~~(i) For a plant using methane derived from a landfill or an agricultural operation, $0.12 per kWh.~~

~~(ii) For a plant using wind power that has a plant capacity of 15 kW or less, $0.20 per kWh.~~

~~(iii) For a plant using solar power, $0.30 per kWh.~~

~~(iv) For a plant using hydropower, wind power with a plant capacity greater than 15 kW, or biomass power that is not subject to subdivision (2)(A)(i) of this subsection, a price equal, at the time of the plant's commissioning, to the average residential rate per kWh charged by all of the state's retail electricity providers weighted in accordance with each such provider's share of the state's electric load.~~

~~(B) In accordance with the provisions of this subdivision, the board by order shall set the price to be paid to a plant owner under a standard offer, including the owner of a plant described in subdivisions (2)(A)(i)-(iv) of this subsection.~~

~~(i) The board shall use the following criteria in setting a price under this subdivision:~~

~~(I) The board shall determine a generic cost, based on an economic analysis, for each category of generation technology that constitutes renewable energy. In conducting such an economic analysis the board shall:~~

(aa) Include a generic assumption that reflects reasonably available tax credits and other incentives provided by federal and state governments and other sources applicable to the category of generation technology. For the purpose of this subdivision (2)(B), the term "tax credits and other incentives" excludes tradeable renewable energy credits.

(bb) Consider different generic costs for subcategories of different plant capacities within each category of generation technology.

(II) The board shall include a rate of return on equity not less than the highest rate of return on equity received by a Vermont investor-owned retail electric service provider under its board-approved rates as of the date a standard offer goes into effect.

(III) The board shall include such adjustment to the generic costs and rate of return on equity determined under subdivisions (2)(B)(i)(I) of this subsection as the board determines to be necessary to ensure that the price provides sufficient incentive for the rapid development and commissioning of plants and does not exceed the amount needed to provide such an incentive.

(ii) No later than September 15, 2009, the board shall open and complete a noncontested case docket to accomplish each of the following tasks:

(I) Determine whether there is a substantial likelihood that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i).

(II) If the board determines that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute such an approximation, set interim prices that constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i). Once the board sets such an interim price, that interim price shall be used in subsequent standard offers until the board sets prices under subdivision (2)(B)(iii) of this subsection.

(iii) Regardless of its determination under subdivision (2)(B)(ii) of this subsection, the board shall proceed to set, no later than January 15, 2010, the price to be paid to a plant owner under a standard offer applying the criteria of subdivision (2)(B)(i) of this subsection.

(C) On or before January 15, 2012 and on or before every second January 15 after that date, the board shall review the prices set under subdivision (2)(B) of this subsection and determine whether such prices are providing sufficient incentive for the rapid development and commissioning of

~~plants. In the event the board determines that such a price is inadequate or excessive, the board shall reestablish the price, in accordance with the requirements of subdivision (2)(B)(i) of this subsection, for effect on a prospective basis commencing two months after the price has been reestablished.~~

~~(D) Once the board determines, under subdivision (2)(B) or (C) of this subsection, the generic cost and rate of return elements for a category of renewable energy, the price paid to a plant owner under a subsequently executed standard offer contract shall comply with that determination.~~

~~(E) A plant owner who has executed a contract for a standard offer under this section prior to a determination by the board under subdivision (2)(B) or (C) of this subsection shall continue to receive the price agreed on in that contract.~~

~~(F) Notwithstanding any other provision of this section, on and after June 8, 2010, a standard offer shall be available for a qualifying existing plant.~~

~~(i) For the purpose of this subdivision, "qualifying existing plant" means a plant that meets all of the following:~~

~~(I) The plant was commissioned on or before September 30, 2009.~~

~~(II) The plant generates electricity using methane derived from an agricultural operation and has a plant capacity of 2.2 MW or less.~~

~~(III) On or before September 30, 2009, the plant owner had a contract with a Vermont retail electricity provider to supply energy or attributes, including tradeable renewable energy credits from the plant, in connection with a renewable energy pricing program approved under section 8003 of this title.~~

~~(ii) Plant capacity of a plant accepting a standard offer pursuant to this subdivision (2)(F) shall not be counted toward the 50-MW amount under this subsection (b).~~

~~(iii) Award of a standard offer under this subdivision (2)(F) shall be on condition that the plant owner and the retail electricity provider agree to modify any existing contract between them described under subdivision (i)(III) of this subdivision (2)(F) so that the contract no longer requires energy from the plant to be provided to the retail electricity provider. Those provisions of such a contract that concern tradeable renewable energy credits associated with the plant may remain in force.~~

~~(iv) The price and term of a standard offer contract under this subdivision (2)(F) shall be the same, as of the date such a contract is executed,~~

as the price and term otherwise in effect under this subsection (b) for a plant that uses methane derived from an agricultural operation.

(G) Notwithstanding the requirement of this subsection (b) that a standard offer be available for qualifying SPEED resources, the board shall make a standard offer available under this subdivision (2) to an existing hydroelectric plant that does not exceed the 2.2 MW plant capacity limit of this subsection. To such plants, the board shall not allocate more of the cumulative 50 MW plant capacity under this subdivision (2) than exceeds the amount of such capacity that is unsubscribed as of January 1, 2012. Before making this standard offer available, the board shall notify potentially eligible plants known to it and shall publish broad public notice of the future availability of the standard offer. The notice shall direct that all potentially eligible plants shall file with the board a statement of interest in the standard offer by a date to be no less than 30 days from the date of the notice. No plant may participate in this standard offer unless it timely files such a statement. The filing of such a statement shall constitute the consent of the plant owner to produce such information as the board may reasonably require to carry out this subdivision (2)(G), including information the board deems necessary to determine a generic cost in setting the price. The board shall have authority to require the production of such information from a plant that files a statement of interest. For the purpose of this subdivision (2)(G):

(i) "Existing hydroelectric plant" means a hydroelectric plant located in the state that was in service as of January 1, 2009 and does not, as of the effective date of this subdivision (2)(G), have an agreement with the board's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and board rules adopted under that subdivision. The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement expired prior to May 25, 2011.

(ii) The provisions of subdivisions (2)(B)(i)(I) (III) of this subsection (standard offer pricing criteria) shall apply, except that:

(I) The term "generic cost," when applied by the board to determine the price of a standard offer for an existing hydroelectric plant, shall mean the cost to own, reliably operate, and maintain such a plant for the duration of the standard offer contract. In determining this cost, the board shall consider including a generic assumption with respect to rehabilitation costs based on relevant factors such as the age of the potentially eligible plants; recently constructed or currently proposed rehabilitations to such plants; the investment that a reasonably prudent person would have made in such a plant

~~to date under the circumstances of the plant, including the price received for power; and the availability for such a plant of improved technology.~~

~~(II) The incentive described under subdivision (2)(B)(i)(III) of this subsection shall be an incentive for continued safe, efficient, and reliable operation of existing hydroelectric plants.~~

(3) Maximize the benefit to rate payers from the sale of tradeable renewable energy credits or other credits that may be developed in the future~~, especially with regard to those plants that accept the standard offer issued under subdivision (2) of this subsection~~.

(4) Encourage retail electricity provider and third party developer sponsorship and partnerships in the development of in-state renewable energy projects.

(5) ~~Require~~ In accordance with section 8005a of this section, require all Vermont retail electricity providers to purchase from the SPEED facilitator~~, in accordance with subdivision (g)(2) of this section,~~ the power generated by the plants that accept the standard offer required to be issued under ~~subdivision (2) of this subsection~~ section 8005a. For the purpose of this subdivision (5), the board and the SPEED facilitator constitute instrumentalities of the state.

(6) Establish a method for Vermont retail ~~electrical~~ electricity providers to obtain beneficial ownership of the renewable energy credits associated with any SPEED projects~~, in the event that a renewable portfolio standard comes into effect under the provisions of section 8004 of this title. It shall be a condition of a standard offer required to be issued under subdivision (2) of this subsection that tradeable renewable energy credits associated with a plant that accepts the standard offer are owned by the retail electric providers purchasing power from the plant, except that in the case of a plant using methane from agricultural operations, the plant owner shall retain such credits to be sold separately at the owner's discretion~~.

(7) ~~Create a mechanism by which a retail electricity provider may establish that it has a sufficient amount of renewable energy, or resources that would otherwise qualify under the provisions of subsection (d) of this section, in its portfolio so that equity requires that the retail electricity provider be relieved, in whole or in part, from requirements established under this subsection that would require a retail electricity provider to purchase SPEED power, provided that this mechanism shall not apply to the requirement to purchase power under subdivision (5) of this subsection. However, a retail electricity provider that establishes that it receives at least 25 percent of its energy from qualifying SPEED resources that were in operation on or before September 30, 2009, shall be exempt and wholly relieved from the~~

~~requirements of subdivisions (b)(5) (requirement to purchase standard offer power) and (g)(2) (allocation of standard offer electricity and costs) of this section.~~ [Repealed.]

(8) Provide that in any proceeding under subdivision 248(a)(2)(A) of this title for the construction of a renewable energy plant, a demonstration of compliance with subdivision 248(b)(2) of this title, relating to establishing need for the ~~facility~~ plant, shall not be required if the ~~facility~~ plant is a SPEED resource and if no part of the ~~facility~~ plant is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers.

(9) Take such other measures as the board finds necessary or appropriate to implement SPEED.

(c) VEDA; eligible facilities. Developers of ~~qualifying and nonqualifying~~ in-state SPEED resources shall be entitled to classification as an eligible facility under ~~chapter 12 of Title~~ 10 V.S.A. chapter 12, relating to the Vermont Economic Development Authority.

(d) Goals and targets. To advance the goals stated in section 8001 of this title, the following goals and targets are established.

~~(1) The board shall meet on or before January 1, 2012 and open a proceeding to determine the total amount of qualifying SPEED resources that have been supplied to Vermont retail electricity providers or have been issued a certificate of public good. If the board finds that the amount of qualifying SPEED resources coming into service or having been issued a certificate of public good after January 1, 2005 and before July 1, 2012 equals or exceeds total statewide growth in electric retail sales during that time, and in addition, at least five percent of the 2005 total statewide electric retail sales is provided by qualified SPEED resources or would be provided by qualified SPEED resources that have been issued a certificate of public good, or if it finds that the amount of qualifying SPEED resources equals or exceeds 10 percent of total statewide electric retail sales for calendar year 2005, the portfolio standards established under this chapter shall not be in force. The board shall make its determination by January 1, 2013. If the board finds that the goal established has not been met, one year after the board's determination the portfolio standards established under subsection 8004(b) of this title shall take effect.~~

~~(2)~~(1) 2017 SPEED Goal. A state goal is to assure that 20 percent of total statewide electric retail sales ~~before July 1, 2017~~ during the year commencing January 1, 2017 shall be generated by SPEED resources that constitute new renewable energy. ~~The board shall report to the house and~~

~~senate committees on natural resources and energy and to the joint energy committee by December 31, 2011 with regard to the state's progress in meeting this goal. In addition, the board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2013 with regard to the state's progress in meeting this goal and, if necessary, shall include any appropriate recommendations for measures that will make attaining the goal more likely.~~ On or before January 31, 2018, the board shall meet and open a proceeding to determine, for the calendar year 2017, the total amount of SPEED resources that were supplied to Vermont retail electricity providers and the total amount of statewide retail electric sales.

~~(3)~~ For the purposes of the determination to be made under this ~~subsection,~~ subdivision (d)(1), the total amount of SPEED resources shall be the amount of electricity produced at ~~all facilities~~ SPEED resources owned by or under long-term contract to Vermont retail electricity providers~~, whether it is generated inside or outside Vermont,~~ that is new renewable energy ~~shall be counted in the calculations under subdivisions (1) and (2) of this subsection~~. A conclusion by the board that the goal of this subdivision has been met shall have the effect stated in subdivision 8004(b)(1)(A) (RPS percentages; SPEED goal) of this title.

(2) Total renewables targets. This subdivision establishes, as percentages of annual electric sales, target amounts of total renewable energy within the supply portfolio of each renewable electricity provider.

(A) The target amounts of total renewable energy established by this subsection shall be 55 percent of each retail electricity provider's annual electric sales during the year beginning January 1, 2017, increasing by an additional four percent each third January 1 thereafter, until reaching 75 percent on and after January 1, 2032.

(B) Energy and environmental attributes used to satisfy the requirements of section 8004 (renewable portfolio standards) of this title shall apply toward meeting the target amounts established by this subdivision (2). The balance of these target amounts shall be met with SPEED resources.

(C) Each retail electricity provider shall manage its supply portfolio to be reasonably consistent with the target amounts established by this subdivision (2). The board shall consider such consistency during the course of reviewing a retail electricity provider's charges and rates under this title, integrated resource plans under section 218c of this title, and petitions under section 248 (new gas and electric purchases, investments, and facilities) of this title. However, nothing in this subdivision (2) shall relieve a retail electricity

provider from the obligations of section 8004 (renewable portfolio standards) of this title.

(e) Regulations and procedures. The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the board and the department to implement, and to supervise further the implementation and maintenance of the SPEED program. These rules shall assure that decisions with respect to certificate of public good applications for construction of SPEED resources shall be made in a timely manner.

(f) Preapproval. In order to encourage joint efforts on the part of regulated companies to purchase power that meets or exceeds the SPEED standards and to secure stable, long-term contracts beneficial to Vermonters, the board may establish standards for pre-approving the recovery of costs incurred on a SPEED project that is the subject of that joint effort.

(g) ~~With respect to executed contracts for standard offers under this section:~~

~~(1) Such a contract shall be transferable. The contract transferee shall notify the SPEED facilitator of the contract transfer within 30 days of transfer.~~

~~(2) The SPEED facilitator shall distribute the electricity purchased to the Vermont retail electricity providers at the price paid to the plant owners, allocated to the providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for the electricity.~~

~~(3) The SPEED facilitator shall transfer any tradeable renewable energy credits attributable to electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection, except that in the case of a plant using methane from agricultural operations, the plant owner shall retain such credits to be sold separately at the owner's discretion.~~

~~(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection.~~

~~(5) All reasonable costs of a Vermont retail electricity provider incurred under this subsection shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits~~

~~received under subdivisions (2) and (3) of this subsection. Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.~~

~~(h) With respect to standard offers under this section, the board shall by rule or order:~~

~~(1) Determine a SPEED facilitator's reasonable expenses arising from its role and the allocation of such expenses among plant owners and Vermont retail electricity providers.~~

~~(2) Determine the manner and timing of payments by a SPEED facilitator to plant owners for energy purchased under an executed contract for a standard offer.~~

~~(3) Determine the manner and timing of payments to the SPEED facilitator by the Vermont retail electricity providers for energy distributed to them under executed contracts for standard offers.~~

~~(4) Establish reporting requirements of a SPEED facilitator, a plant owner, and a Vermont retail electricity provider.~~

~~(i) With respect to standard offers under this section, the board shall determine whether its existing rules sufficiently address metering and the allocation of metering costs, and make such rule revisions as needed to implement the standard offer requirements of this section.~~

~~(j) Wood biomass resources that would otherwise constitute qualifying SPEED resources may receive a standard offer under subdivision (b)(2) of this section only if they have a design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) of at least 50 percent.~~

~~(k) A Vermont retail electricity provider shall not be eligible for a standard offer contract under subdivision (b)(2) of this section. However, under subdivision (g)(1) of this section, a plant owner may transfer to such a provider all rights associated with a standard offer contract that has been offered to the plant without affecting the plant's status under the standard offer program. In the case of such a transfer of rights, the plant shall not be considered a utility-owned and -operated plant under subdivisions (b)(2) and (g)(2) of this section.~~

~~(l) The existence of a standard offer under subdivision (b)(2) of this section shall not preclude a voluntary contract between a plant owner and a Vermont retail electricity provider on terms that may be different from those under the standard offer. A plant owner who declines a voluntary contract may still accept a standard offer under this section.~~

~~(m)~~ State; nonliability. The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to SPEED, including costs associated with a standard offer contract under this section or section 8005a of this title or any damages arising from breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid.

~~(n) On or before January 15, 2011 and every second January 15 afterward, the board shall report to the house and senate committees on natural resources and energy concerning the status of the standard offer program under this section. In its report, the board at a minimum shall:~~

~~(1) Assess the progress made toward attaining the cumulative statewide capacity ceiling stated in subdivision (b)(2) of this section.~~

~~(2) If that cumulative statewide capacity ceiling has not been met, identify the barriers to attaining that ceiling and detail the board's recommendations for overcoming such barriers.~~

~~(3) If that cumulative statewide capacity has been met or is likely to be met within a year of the date of the board's report, recommend whether the standard offer program under this section should continue and, if so, whether there should be any modifications to the program.~~

* * * SPEED Program; Standard Offer * * *

Sec. 5. 30 V.S.A. § 8005a is added to read:

§ 8005a. SPEED; STANDARD OFFER PROGRAM

(a) Establishment. A standard offer program is established within the SPEED program. To achieve the goals of section 8001 of this title, the board shall issue standard offers for renewable energy plants that meet the eligibility requirements of this section. The board shall implement these standard offers through the SPEED facilitator.

(b) Eligibility. To be eligible for a standard offer under this section, a plant must constitute a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under section 219a of this title, and must be a new standard offer plant. For the purpose of this section, "new standard offer plant" means a renewable energy plant that is located in Vermont, that has a plant capacity of 2.2 MW or less, and that is commissioned on or after September 30, 2009.

(c) Cumulative capacity. In accordance with this subsection, the board shall issue standard offers to new standard offer plants until a cumulative plant capacity amount of 150 MW is reached.

(1) Pace. Annually commencing April 1, 2013, the board shall increase the cumulative plant capacity of the standard offer program by 10 MW until the 150-MW cumulative plant capacity of this subsection (c) is reached (the 10-MW annual increase).

(A) Of this 10-MW annual increase, 2.5 MW shall be reserved for new standard offer plants proposed by Vermont retail electricity providers (the 2.5-MW provider block) and 7.5 MW shall be reserved for new standard offer plants proposed by persons who are not providers (the 7.5-MW independent developer block).

(B) If the 2.5-MW provider block for a given year is not fully subscribed, any unsubscribed capacity within that block shall be added to the 10-MW annual increase for each following year until that capacity is subscribed and shall be made available to new standard offer plants proposed by persons who are not providers.

(C) If the 7.5-MW independent developer block for a given year is not fully subscribed, any unsubscribed capacity within that block shall be added to the 10-MW annual increase for each following year until that capacity is subscribed and:

(i) Shall be made available to new standard offer plants proposed by persons who are not providers; and

(ii) May be made available to a provider following a written request and specific proposal submitted to and approved by the board.

(2) Technology allocations. The board shall allocate the 150-MW cumulative plant capacity of this subsection among different categories of renewable energy technologies. These categories shall include at least each of the following: methane derived from a landfill; solar power; wind power with a plant capacity of 100 kW or less; wind power with a plant capacity greater than 100 kW; hydroelectric power; and biomass power using a fuel other than methane derived from an agricultural operation or landfill. The categories and allocations reasonably shall correspond to those developed by the board for the same renewable energy technologies to implement subdivision 8004(b)(2) of this title (renewable portfolio standard; distributed renewable generation).

(d) Plants outside cumulative capacity. The following categories of plants shall not count toward the cumulative capacity amount of subsection (c) of this section, and the board shall make standard offers available to them provided that they are otherwise eligible for such offers under this section:

(1) Plants using methane derived from an agricultural operation.

(2) New standard offer plants that the board determines will have substantial benefits to the operation and management of the electric grid because of their design, characteristics, and location. To enhance the ability of new standard offer plants to mitigate transmission and distribution constraints, the board shall require Vermont retail electricity providers to make sufficient information concerning these constraints available to developers who propose new standard offer plants. Nothing in this subdivision shall require the disclosure of information in contravention of federal law.

(e) Term. The term of a standard offer required by this section shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years.

(f) Price. The categories of renewable energy for which the board shall set standard offer prices shall include at least each of the categories established pursuant to subdivision (c)(2) of this section. The board by order shall set the price paid to a plant owner under a standard offer required by this section that shall include an amount for each kWh generated and that shall vary by category of renewable energy. The board shall not be required to make this determination as a contested case under 3 V.S.A. chapter 25.

(1) Avoided cost. Except as provided in subdivision (2) of this subsection, the price paid for each category of renewable energy shall be the avoided cost of the Vermont composite electric utility system.

(A) For the purpose of this subsection (f), the term "avoided cost" means the incremental cost to retail electricity providers of electric energy or capacity or both, which, but for the purchase through the standard offer, such providers would obtain from distributed renewable generation that uses the same generation technology as the category of renewable energy for which the board is setting the price. For the purpose of this subsection (f), the term "avoided cost" also includes the board's consideration of each of the following:

(i) The relevant cost data of the Vermont composite electric utility system.

(ii) The terms of the contract, including the duration of the obligation.

(iii) The availability, during the system's daily and seasonal peak periods, of capacity or energy purchased through the standard offer, and the estimated savings from mitigating peak load.

(iv) The relationship of the availability of energy or capacity purchased through the standard offer to the ability of the Vermont composite

electric utility system or a portion thereof to avoid costs.

(v) The costs or savings resulting from variations in line losses and other impacts to the transmission or distribution system from those that would have existed in the absence of purchases through the standard offer.

(vi) The supply and cost characteristics of plants eligible to receive the standard offer.

(B) The board shall establish the first set of avoided cost prices under this subdivision (1) no later than March 1, 2013 for effect on April 1, 2013. Annually thereafter, the board shall review the prices previously set under this subdivision (1) and determine whether such prices remain in compliance with the criteria of subdivision (1)(A) of this subsection. In the event the board determines that such a price must be revised to comply with those criteria, the board shall reestablish the price in accordance with the criteria for effect on a prospective basis commencing one month after the price has been reestablished. Once a standard offer price established or reestablished under this subdivision (1) goes into effect, the price set out in a subsequently executed standard offer contract shall comply with the most recently established price.

(2) Market-based mechanisms. For new standard offer projects, in the alternative to the pricing mechanism described under subdivision (1) (avoided costs) of this subsection, the board may use a market-based mechanism, such as a reverse auction or other procurement tool, to obtain a particular amount of a category of renewable energy, if it first finds that:

(A) Use of the mechanism is consistent with applicable federal law.

(B) Use of the mechanism is reasonably likely to result in prices sufficient to encourage the deployment of new standard offer projects within the applicable category of renewable energy.

(C) Use of the mechanism is reasonably likely to result in prices lower than the price that would apply under subdivision (1) of this subsection.

(3) Price stability. Once a plant owner has executed a contract for a standard offer under this section, the plant owner shall continue to receive the price agreed on in that contract regardless of whether the board subsequently changes the price applicable to the plant's category of renewable energy.

(g) Qualifying existing agricultural plants. Notwithstanding any other provision of this section, on and after June 8, 2010, a standard offer shall be available for a qualifying existing plant as defined in Sec. 3 of No. 159 of the Acts of the 2009 Adj. Sess. (2010) (Act 159). The provisions of 30 V.S.A. § 8005(b)(2), as they existed on June 4, 2010, the effective date of Act 159,

shall govern a standard offer under this subsection. Standard offers for these plants shall not be subject to subsection (c) of this section (cumulative capacity; new standard offer plants).

(h) Application process. The board shall administer the process of applying for and obtaining a standard offer contract in a manner that ensures that the resources and capacity of the standard offer program are used for plants that are reasonably likely to achieve commissioning.

(i) Interconnection application. No contract under this section for a new standard offer plant shall be executed unless and until the plant owner submits a complete application to interconnect the plant to the subtransmission or distribution system of the applicable retail electricity provider.

(j) Termination; reallocation. In the event a proposed plant accepting a standard offer fails to meet the requirements of the program in a timely manner, the plant's standard offer contract shall terminate, and any capacity reserved for the plant within the program shall be reallocated to one or more eligible plants.

(1) For the purpose of this subsection, the requirements of the program shall include commissioning of all new standard offer plants, except plants using methane derived from an agricultural operation, within the following periods after execution of the plant's standard offer contract:

(A) 24 months if the plant is solar power or is wind power with a plant capacity of 100 kW or less; and

(B) 36 months if the plant uses a fuel source not described in subdivision 1(A) of this subsection (j) or is wind power of greater than 100 kW capacity.

(2) At the request of a plant owner, the board may extend a period described in subdivision (1) of this subsection (j) if it finds that the plant owner has proceeded diligently and in good faith and that commissioning of the plant has been delayed because of litigation or appeal or because of the need to obtain an approval the timing of which is outside the board's control.

(k) Executed standard offer contracts; transferability; allocation of benefits and costs. With respect to executed contracts for standard offers under this section:

(1) A contract shall be transferable. The contract transferee shall notify the SPEED facilitator of the contract transfer within 30 days of transfer.

(2) The SPEED facilitator shall distribute the electricity purchased to the Vermont retail electricity providers at the price paid to the plant owners, allocated to the providers based on their pro rata share of total Vermont retail

kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for the electricity. However, during any given calendar year, a retail electricity provider shall be exempt and wholly relieved from the requirements of this subdivision and subdivision 8005(b)(5) (requirement to purchase standard offer power) of this title if, during the immediately preceding 12-month period ending October 31, the amount of renewable energy supplied to the provider by generation owned by or under contract to the provider, regardless of whether the provider owned the energy's environmental attributes, was not less than the amount of energy sold by the provider to its retail customers.

(3) The SPEED facilitator shall transfer the environmental attributes, including any tradeable renewable energy credits, of electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection (k), except that in the case of a plant using methane from agricultural operations, the plant owner shall retain such attributes and credits to be sold separately at the owner's discretion. Environmental attributes transferred to a retail electricity provider under this section shall be included in assessing the provider's compliance with section 8004 (renewable portfolio standards) of this title.

(4) The SPEED facilitator shall transfer all capacity rights attributable to the plant capacity associated with the electricity purchased under standard offer contracts to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (2) of this subsection (k).

(5) All reasonable costs of a Vermont retail electricity provider incurred under this subsection shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits received under subdivisions (3) and (4) of this subsection (k). Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.

(l) SPEED facilitator; expenses; payments. With respect to standard offers under this section, the board shall by rule or order:

(1) Determine a SPEED facilitator's reasonable expenses arising from its role and the allocation of the expenses among plant owners and Vermont retail electricity providers.

(2) Determine the manner and timing of payments by a SPEED facilitator to plant owners for energy purchased under an executed contract for

a standard offer.

(3) Determine the manner and timing of payments to the SPEED facilitator by the Vermont retail electricity providers for energy distributed to them under executed contracts for standard offers.

(4) Establish reporting requirements of a SPEED facilitator, a plant owner, and a Vermont retail electricity provider.

(m) Metering. With respect to standard offers under this section, the board shall make rule revisions concerning metering and the allocation of metering costs as needed to implement the standard offer requirements of this section.

(n) Wood biomass. Wood biomass resources that would otherwise constitute qualifying SPEED resources may receive a standard offer under this section only if they have a design system efficiency (the sum of full load design thermal output and electric output divided by the heat input) of at least 50 percent.

(o) Voluntary contracts. The existence of a standard offer under this section shall not preclude a voluntary contract between a plant owner and a Vermont retail electricity provider on terms that may be different from those under the standard offer. A plant owner who declines a voluntary contract may still accept a standard offer under this section.

Sec. 6. STANDARD OFFER; PRIOR CAPACITY; INTERCONNECTION APPLICATION

(a) Prior capacity included. In Sec. 5 (SPEED; standard offer program) of this act, the cumulative capacity amount of 150 MW contained in 30 V.S.A. § 8005a(c) includes the 50 MW of capacity previously authorized for the standard offer program under 30 V.S.A. § 8005(b)(2) as it existed immediately prior to the effective date of Sec. 5. Portions of this previously authorized 50-MW capacity that become available after that effective date shall be made immediately available to other eligible new standard offer projects, as defined in Sec. 5 of this act, in addition to the 10-MW annual increase under 30 V.S.A. § 8005a(c)(1) (standard offer; pace). Such capacity:

(1) Shall be made available to new standard offer plants proposed by persons who are not providers; and

(2) May be made available to a provider following a written request and specific proposal submitted to and approved by the board.

(b) Prior capacity; pricing. In a standard offer contract under 30 V.S.A. chapter 89, the board shall use the price that would apply under 30 V.S.A. § 8005(b)(2) as it existed immediately prior to the effective date of Sec. 5 (SPEED; standard offer program) of this act, if both of the following apply:

(1) The contract pertains to capacity within the standard offer program as it existed immediately prior to that effective date.

(2) The capacity becomes available and the contract is executed prior to April 1, 2013.

(c) Interconnection application.

(1) No later than September 1, 2012, each owner of a new standard offer plant, as defined in Sec. 5 of this act, that executed or executes a standard offer contract under 30 V.S.A. chapter 89 prior to the effective date of this section shall submit a complete application to interconnect the plant to the subtransmission or distribution system of the applicable retail electricity provider. Failure to file such an application or to remit any required interconnection fees or deposits shall terminate the contract.

(2) The purpose of this subsection is to provide assurance that any reserved capacity within the standard offer program under 30 V.S.A. chapter 89 is allocated to proposed plants that are likely to be commissioned within the meaning of 30 V.S.A. § 8002.

* * * Renewable Energy; Reporting * * *

Sec. 7. 30 V.S.A. § 8005b is added to read:

§ 8005b. RENEWABLE ENERGY PROGRAMS; BIENNIAL REPORT

(a) On or before January 15, 2013 and no later than every second January 15 thereafter through January 15, 2033, the board shall file a report with the general assembly in accordance with this section. The board shall prepare the report in consultation with the department. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(b) The report under this section shall include at least each of the following:

(1) The retail sales, in kWh, of electricity in Vermont during the preceding calendar year. The report shall include the statewide total and the total sold by each retail electricity provider.

(2) The amount of environmental attributes of renewable energy owned by the Vermont retail electricity providers, expressed as a percentage of retail kWh sales. The report shall include the statewide total and the total owned by each retail electricity provider and shall discuss the progress of each provider in meeting the requirements of section 8004 (renewable portfolio standards) of this title. The requirements of this subdivision (b)(2) shall not apply to the report to be filed under this section on or before January 15, 2013 and shall

apply to all reports to be filed subsequently under this section.

(3) The amount of SPEED resources owned by the Vermont retail electricity providers, expressed as a percentage of retail kWh sales. The report shall include the statewide total and the total owned by each retail electricity provider and shall discuss the progress of each provider toward achieving the goals and targets of subsection 8005(d) (SPEED) of this title. The report to be filed under this subsection on or before January 15, 2019 shall discuss and attach the board's determination under subdivision 8005(d)(1) (2017 SPEED goal) of this title.

(4) A summary of the activities of the SPEED program under section 8005 of this title, including the name, location, plant capacity, and average annual energy generation, of each SPEED resource within the program.

(5) A summary of the activities of the standard offer program under section 8005a of this title, including the number of plants participating in the program, the prices paid by the program, and the plant capacity and average annual energy generation of the participating plants. The report shall present this information as totals for all participating plants and by category of renewable energy technology. The report also shall identify the number of applications received, the number of participating plants under contract, and the number of participating plants actually in service.

(6) A report on the market for tradeable renewable energy credits, including the prices at which credits are being sold.

(7) An assessment of the energy efficiency and renewable energy markets and recommendations to the general assembly regarding strategies that may be necessary to encourage the use of these resources to help meet upcoming supply requirements.

(8) Any recommendations for statutory change related to sections 8004, 8005, and 8005a of this title.

* * * Renewable Energy Statutes; Technical Corrections * * *

Sec. 8. 30 V.S.A. § 8009 is amended to read:

§ 8009. BASELOAD RENEWABLE POWER PORTFOLIO REQUIREMENT

(a) In this section:

(1) "Baseload renewable power" means a plant that generates electricity from renewable energy; that, during normal operation, is capable of taking all or part of the minimum load on an electric transmission or distribution system; and that produces electricity essentially continuously at a constant rate.

(2) "Baseload renewable power portfolio requirement" means an annual average of 175,000 MWh of baseload renewable power from an in-state woody biomass plant that was commissioned prior to September 30, 2009, has a nominal capacity of 20.5 MW, and was in service as of January 1, 2011.

(3) "Biomass" means organic nonfossil material of biological origin constituting a source of renewable energy within the meaning of ~~30 V.S.A. §~~ subdivision 8002(2) of this title.

(4) ~~"Vermont composite electric utility system" means the combined generation, transmission, and distribution resources along with the combined retail load requirements of the Vermont retail electricity providers.~~

(b) ~~Notwithstanding subsection 8004(a) and subdivision 8005(d)(1) of this title, commencing~~ Commencing November 1, 2012, the electricity supplied by each Vermont retail electricity provider to its customers shall include the provider's pro rata share of the baseload renewable power portfolio requirement, which shall be based on the total Vermont retail kWh sales of all such providers for the previous calendar year. The obligation created by this subsection shall cease on November 1, 2022.

* * *

(f) With respect to a plant used to satisfy the baseload renewable power portfolio requirement:

(1) The SPEED facilitator shall purchase the baseload renewable power, and the electricity purchased and any associated costs shall be allocated by the SPEED facilitator to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay those costs.

(2) Any environmental attributes, including tradeable renewable energy credits ~~attributable to~~, of the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection.

* * *

Sec. 9. 30 V.S.A. § 8015 is amended to read:

§ 8015. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of each of the following:

(A) The proceeds due the state under the terms of the memorandum of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.

(B) All payments made by a retail electricity provider pursuant to subsection 8004(e) (alternative compliance payments) of this title.

(C) Any other monies that may be appropriated to or deposited into the fund.

(2) Balances in the fund shall be expended solely for the purposes set forth in this subchapter and shall not be used for the general obligations of government. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund. This fund is established in the state treasury pursuant to ~~subchapter 5 of chapter 7 of Title~~ 32 V.S.A. chapter 7, subchapter 5.

* * *

Sec. 10. STATUTORY REVISION

(a) The office of legislative council shall reorganize 30 V.S.A. § 8002 (definitions) so that the definitions are in alphabetical order.

(b) In the Vermont Statutes Annotated, the office of legislative council shall revise each cross-reference to a definition contained in 30 V.S.A. § 8002 so that it refers to the definition as reorganized under subsection (a) of this section.

* * * Net Metering; Environmental Attributes * * *

Sec. 11. 30 V.S.A. § 219a(n) is added to read:

(n) An electric company shall own the environmental attributes of all net metering systems that interconnect with the company's distribution system. The company shall not sell these environmental attributes and shall apply them toward the requirements of section 8004 (renewable portfolio standards) of this title. For the purpose of this subsection, "environmental attributes" shall have the same meaning as under section 8002 (renewable energy chapter; definitions) of this title.

* * * Utility Planning and Implementation; Consistency with Renewable Energy Goals and Targets * * *

Sec. 12. 30 V.S.A. § 218c is amended to read:

§ 218c. LEAST COST INTEGRATED PLANNING

(a)(1) A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs. Economic costs shall be ~~determined~~ assessed with due regard to:

(A) the greenhouse gas inventory developed under the provisions of 10 V.S.A. § 582;

(B) the state's progress in meeting its greenhouse gas reduction goals; ~~and~~

(C) the value of the financial risks associated with greenhouse gas emissions from various power sources; and

(D) consistency with section 8001 (renewable energy goals) of this title.

(2) "Comprehensive energy efficiency programs" shall mean a coordinated set of investments or program expenditures made by a regulated electric or gas utility or other entity as approved by the board pursuant to subsection 209(d) of this title to meet the public's need for energy services through efficiency, conservation or load management in all customer classes and areas of opportunity which is designed to acquire the full amount of cost effective savings from such investments or programs.

(b) Each regulated electric or gas company shall prepare and implement a least cost integrated plan for the provision of energy services to its Vermont customers. ~~Proposed plans shall be submitted~~ At least every third year on a schedule directed by the public service board, each such company shall submit a proposed plan to the department of public service and the public service board. The board, after notice and opportunity for hearing, may approve a company's least cost integrated plan if it determines that the company's plan complies with the requirements of subdivision (a)(1) of this section, is reasonably consistent with achieving the goals and targets of subsection 8005(d) (2017 SPEED goal; total renewables targets) of this title and, if the plan is submitted by an electric company on or after January 1, 2014, demonstrates that the company is and will be in compliance with the requirements of section 8004 (renewable portfolio standard) of this title.

* * *

Sec. 13. 30 V.S.A. § 248(b) is amended to read:

(b) Before the public service board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment or construction:

* * *

(2) is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including but not limited to those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title. In determining whether this criterion is met, the board shall assess the environmental and economic costs of the purchase, investment, or construction in the manner set out under subdivision 218c(a)(1) (least cost integrated plan) of this title;

* * *

* * * Total Energy * * *

Sec. 14. TOTAL ENERGY; REPORT

(a) The general assembly finds that, in the comprehensive energy plan issued in December 2011, the department of public service recommends that Vermont achieve, by 2050, a goal that 90 percent of the energy consumed in the state be renewable energy. This goal would apply across all energy sectors in Vermont, including electricity consumption, thermal energy, and transportation (total energy).

(b) The commissioner of public service shall convene an interagency and stakeholder working group to study and report to the general assembly on policies and funding mechanisms that would be designed to achieve the goal described in subsection (a) of this section in an integrated and comprehensive manner. The study and report shall include consideration of a total energy standard that would work with and complement the mechanisms enacted in Secs. 3 (renewable portfolio standards), 4 (SPEED; total renewables targets); and 5 (SPEED; standard offer program) of this act. The group's report shall include its recommended policy and funding mechanisms and the reasons for the recommendations. The report shall be submitted to the general assembly by December 15, 2013.

(c) Prior to submitting the report to the general assembly, the group shall offer an opportunity to submit information and comment to affected and interested persons such as business organizations, consumer advocates, energy efficiency entities appointed under Title 30, energy and environmental advocates, fuel dealers, relevant state agencies, transportation-related

organizations, and Vermont electric and gas utilities.

* * * Greenhouse Gas Accounting * * *

Sec. 15. 10 V.S.A. § 582 is amended to read:

§ 582. GREENHOUSE GAS INVENTORIES; REGISTRY; ACCOUNTING

* * *

(e) Rules. The secretary may adopt rules to implement the provisions of this section and shall review existing and proposed international, federal, and state greenhouse gas emission reporting programs and make reasonable efforts to promote consistency among the programs established pursuant to this section and other programs, and to streamline reporting requirements on greenhouse gas emission sources. ~~Nothing~~ Except as provided in subsection (g) of this section, nothing in this section shall limit a state agency from adopting any rule within its authority.

(f) Participation by government subdivisions. The state and its municipalities may participate in the inventory for purposes of registering reductions associated with their programs, direct activities, or efforts, including the registration of emission reductions associated with the stationary and mobile sources they own, lease, or operate.

(g) Greenhouse gas accounting. In consultation with the department of public service created under 30 V.S.A. § 1, the secretary shall research and adopt by rule greenhouse gas accounting protocols that achieve transparent and accurate life cycle accounting of greenhouse gas emissions, including emissions of such gases from the use of fossil fuels and from renewable fuels such as biomass. On adoption, such protocols shall be the official protocols to be used by any agency or political subdivision of the state in accounting for greenhouse gas emissions.

* * * Energy Efficiency * * *

Sec. 16. 30 V.S.A. § 209(d)(7) is amended to read:

(7) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2) of this subsection shall be deposited into the electric efficiency fund established by this section. Any such net revenues not transferred to the state PACE reserve fund under 24 V.S.A. § 3270(c) shall be used by the entity appointed under subdivision (2) of this subsection to deliver heating and process-fuel energy efficiency services to Vermont consumers of such fuel on a whole-buildings basis to help meet the state's building efficiency goals

established by 10 V.S.A. § 581. In delivering such services with respect to heating systems, the entity shall give priority to incentives for the installation of ~~woody~~ high efficiency biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. For the purpose of this subdivision (7), "~~woody~~ biomass" means organic nonfossil material ~~from trees or woody plants~~ constituting a source of renewable energy within the meaning of subdivision 8002(2) of this title. ~~Provision of an incentive under this subdivision (7) for a woody biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.~~

Sec. 17. EFFECTIVE DATES; IMPLEMENTATION

(a) This section and Secs. 1 (renewable energy chapter; goals), 2 (renewable energy chapter; definitions), 3 (renewable portfolio standards), 4 (SPEED; total renewables targets); 5 (SPEED; standard offer program), 6 (standard offer; prior capacity; interconnection application), and 14 (total energy; report) of this act shall take effect on passage.

(b) All sections of this act not referenced in subsection (a) of this section shall take effect on July 1, 2012.

(c) The public service board shall:

(1) No later than March 1, 2013, adopt rules or orders sufficient to implement 30 V.S.A. § 8005a(d)(3) (new standard offer plants; transmission and distribution constraints).

(2) No later than July 1, 2013, adopt rules or orders sufficient to implement 30 V.S.A. § 8004 (renewable portfolio standards) as amended by Sec. 3 of this act.

(d) No later than September 1, 2013, the secretary of natural resources shall adopt rules pursuant to Sec. 15 of this act, 10 V.S.A. § 582(g) (greenhouse gas accounting).

and that after passage the title of the bill be amended to read: "An act relating to the Vermont Energy Act of 2012"

(Committee Vote: 10-0-1)

H. 484

An act relating to amendment to the Windham solid waste district charter

Rep. Higley of Lowell, for the Committee on **Government Operations,** recommends the bill be amended as follows:

First: In Sec. 2, 24 App. V.S.A. chapter 417, § 2, by striking "organic waste" where it appears in the first sentence and inserting in lieu thereof

"organic material"

Second: In Sec. 2, 24 App. V.S.A. chapter 417, § 5, in subdivision 13, by striking "or environmental" where it appears

And in subdivision 20, by striking "whether operated by or on behalf of the ~~district~~ District" where it appears

And in subdivision 28, by striking "organic waste" where it appears and inserting in lieu thereof "organic material"

Third: In Sec. 2, 24 App. V.S.A. chapter 417, § 37, by striking "from time to time" where it appears in the third sentence

Fourth: In Sec. 2, 24 App. V.S.A. chapter 417, § 39, by striking "from time to time" where it appears in the second sentence

Fifth: In Sec. 2, 24 App. V.S.A. chapter 417, § 43, in the first new sentence, after "disposal fees and service charges" and before "for the purpose of generating" by inserting "for the district's own facility or facilities"

Sixth: In Sec. 2, 24 App. V.S.A. chapter 417, § 60, by striking the phrase "from time to time" where it appears in the first sentence of subsection (c)

(Committee Vote: 8-0-3)

H. 498

An act relating to parity for primary mental health care services

Rep. Spengler of Colchester, for the Committee on **Health Care,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 8 V.S.A. § 4089b(c) is amended to read:

(c) A health insurance plan shall provide coverage for treatment of a mental health condition and shall:

(1) not establish any rate, term, or condition that places a greater burden on an insured for access to treatment for a mental health condition than for access to treatment for other health conditions, including no greater co-payment for primary mental health care or services than the co-payment applicable to care or services provided by a primary care physician under an insured's policy and no greater co-payment for specialty mental health care or services than the co-payment applicable to care or services provided by a specialist physician under an insured's policy;

* * *

Sec. 2. RULEMAKING

To carry out the purposes of this act, the commissioner of banking, insurance, securities, and health care administration shall adopt rules pursuant to 3 V.S.A. chapter 25, distinguishing between primary and specialty mental health services, taking into consideration factors such as mental health care providers' scope of practice and patterns of patient visitation.

Sec. 3. EFFECTIVE DATES

(a) This act shall take effect on passage.

(b) Sec. 1 of this act shall apply to health insurance plans on or after July 1, 2013, on such date as a health insurer issues, offers, or renews the health insurance plan, but in no event later than July 1, 2014.

(Committee Vote: 8-0-3)

H. 550

An act relating to the Vermont administrative procedure act

Rep. Townsend of Randolph, for the Committee on **Government Operations,** recommends the bill be amended as follows:

In Sec. 2, 3 V.S.A. § 817, by striking out subsections (e) and (f) in their entirety and inserting in lieu thereof a new subsection (e) to read:

(e) At any time following its consideration of a final proposal under section 841 of this title, the committee, by majority vote of the entire committee, may request that any standing committees of the general assembly review the issues or questions presented therein which are outside the jurisdiction of the committee but are within the jurisdiction of the standing committees. On receiving a request for review under this subsection, a standing committee may at its discretion review the issues or questions and act on them. The committee's request for review shall not affect the review or review period of a final proposal.

(Committee Vote: 8-0-3)

H. 627

An act relating to an opiate addiction treatment system

Rep. Mrowicki of Putney, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 93 is added to read:

CHAPTER 93. TREATMENT OF OPIOID ADDICTION

§ 4751. PURPOSE

It is the purpose of this chapter to authorize the department of health to establish a regional system of opioid addiction treatment.

§ 4752. OPIOID ADDICTION TREATMENT SYSTEM

(a) The department of health shall establish by rule a regional system of opioid addiction treatment.

(b) The rules shall include the following requirements:

(1) Patients shall receive appropriate, comprehensive assessment and therapy from a licensed clinical professional with clinical experience in addiction treatment, including a psychiatrist, master's- or doctorate-level psychologist, mental health counselor, clinical social worker, or drug and alcohol abuse counselor.

(2) A medical assessment shall be conducted to determine whether pharmacological treatment, which may include methadone, buprenorphine, and other federally approved medications to treat opioid addiction, is medically appropriate.

(3) A routine medical assessment of the appropriateness for the patient of continued pharmacological treatment based on protocols designed to encourage cessation of pharmacological treatment as medically appropriate for the individual treatment needs of the patient.

(4) Controlled substances for use in federally approved pharmacological treatments for opioid addiction shall be dispensed only by:

(A) a treatment program authorized by the department of health; or

(B) a physician who is not affiliated with an authorized treatment program but who meets federal requirements for use of controlled substances in the pharmacological treatment of opioid addiction.

(5) Comprehensive education and training requirements shall apply for physicians, pharmacists, and the licensed clinical professionals listed in subdivision (1) of this subsection, including relevant aspects of therapy and pharmacological treatment.

(6) Patients shall abide by rules of conduct, violation of which may result in discharge from the treatment program, including:

(A) provisions requiring urinalysis at such times as the program may direct;

(B) restrictions on medication dispensing designed to prevent diversion of medications and to diminish the potential for patient relapse; and

(C) such other rules of conduct as a provider authorized to provide treatment under subdivision (4) of this subsection may require.

(c) No later than January 15 of each year from 2013 through 2016, inclusive, the commissioner shall report to the house committees on human services and on health care and the senate committee on health and welfare regarding the regional system of opioid addiction treatment, including the system's effectiveness.

Sec. 2. REPEAL

Sec. 132 of No. 66 of the Acts of 2003 (Opiate addiction treatment) is repealed on passage of this act.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to an opioid addiction treatment system"

(Committee Vote: 10-1-0)

H. 640

An act relating to promoting tourism and marketing

Rep. Ralston of Middlebury, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds:

(1) Vermont's economy remains heavily reliant on successful four-season tourism. According to Economic and Policy Resources (*A Benchmark Study of the Economic Impact of Visitor Expenditures on the Vermont Economy*, 2009), direct spending by visitors totals $1.42 billion annually, visitor spending supports 33,530 (11.5 percent) jobs, and tourism accounts for nearly $200 million of state revenue from lodging, meals, gas, and property taxes.

(2) Vermont enjoys the tremendous advantage of being within a day's drive of 80 million people in the surrounding metropolitan markets. We share this advantage with our neighboring states and provinces, and, with more visitors opting to stay closer to home and forgo the trip to an airline-dependent destination, it is critically important that we more effectively compete with our neighbors when marketing to our core markets.

(3) Our neighboring states and provinces, with which Vermont competes in a similar arena, outpace Vermont in per-capita tourism spending.

(4) The state annually funds a tourism budget to promote Vermont's travel, recreation, and cultural opportunities to markets within and beyond our borders. As a steward of the Vermont brand, the department of tourism and marketing uses this funding to promote Vermont as a preferred destination. This money is leveraged with both public and private sector partners to enhance the efforts of the travel and tourism industry as a whole.

(5) The recent examples of the expansion of Porter Airlines to Burlington and the need for additional marketing following the damage from Tropical Storm Irene, demonstrated the need for a flexible funding source for marketing resources that can be deployed rapidly when needed.

(6) Flexible and timely promotional funding will encourage a healthy tourism sector and, in turn, deliver additional tax revenue to Vermont, as well as help grow Vermont businesses and employment opportunities.

(7) Beyond tourism and marketing, the state should evaluate whether it could significantly benefit from a source of flexible funding, whether through a fast action fund or similar mechanism, to enable a rapid and meaningful response to specific economic development opportunities as they arise.

Sec. 2. COMPREHENSIVE STUDY OF TOURISM FUNDING

(a) The agency of commerce and community development, in collaboration with the department of finance and management and the joint fiscal office, shall conduct a comprehensive study to evaluate the optimal structure of tourism and marketing funding, specifically including an evaluation of performance-based, incrementally increased funding for both annual base funding and "fast action" funding for targeted opportunities.

(b) For both base funding and "fast action" funding, the study group shall consider specific performance measures and outcomes designed to gauge the success of tourism funding mechanisms and to trigger incremental increases in funding based on performance.

(c) For the "fast action fund" or similar mechanism, the study group shall consider the appropriate size, project criteria, and process for replenishing the fund, as well as the necessary internal and external controls on the management and deployment of the fund, including an appropriate procedural framework for reasonable review and oversight by the general assembly.

(d) The intent of this study shall be for the agency of commerce and community development to develop strategies that will lead to greater support for tourism funding and growth in Vermont's tourism economy.

Sec. 3. ECONOMIC DEVELOPMENT FAST ACTION FUND

(a) In addition to the study conducted pursuant to Sec. 2 of this act, the agency of commerce and community development, in collaboration with the department of finance and management and the joint fiscal office, shall conduct a study to evaluate the establishment of a "fast action fund" or similar mechanism designed to provide a rapid and meaningful response to specific economic development opportunities as they arise.

(b) The study group shall consider specific performance measures and outcomes designed to gauge the success of the fund, the appropriate size, project criteria, and process for replenishing the fund, as well as the necessary internal and external controls on the management and deployment of the fund, including an appropriate procedural framework for reasonable review and oversight by the general assembly.

Sec. 4. REPORT

On or before January 15, 2013, the agency of commerce and community development shall submit the results of the studies conducted pursuant to Secs. 2 and 3 of this act, including specific legislative and policy recommendations, to the house committees on commerce and economic development and on agriculture and to the senate committees on economic development, housing and general affairs and on agriculture.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

and that when so amended the bill ought to pass.

(Committee Vote: 9-0-2)

H. 679

An act relating to creating a uniform generation tax for renewable energy plants

Rep. Cheney of Norwich, for the Committee on **Natural Resources and Energy,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 32 V.S.A. chapter 215 is added to read:

CHAPTER 215. RENEWABLE ENERGY

§ 8701. UNIFORM CAPACITY TAX

(a) For the purpose of this section, the terms "kW," "plant," "plant capacity," and "renewable energy" shall be as defined in 30 V.S.A. § 8002.

(b) There is assessed on any renewable energy plant in Vermont generating electricity by use of solar power an annual tax of $4.00 per kW plant capacity. The tax shall be paid to the department of taxes no later than April 15 of each year, for energy generated in the preceding year, and accompanied by a return with such information as the department of taxes may require. The department of taxes shall deposit the taxes collected under this section into the education fund. The department of taxes may adopt procedures and rules necessary to implement the tax in this section.

(c) A renewable energy plant that generates electricity from solar power shall be exempt from taxation under this section if it has a plant capacity equal to or less than 10 kW.

Sec. 2. 32 V.S.A. § 3802(17) is added to read:

(17) Real and personal property composing a renewable energy plant generating electricity from solar power, if the plant is exempt from taxation under chapter 215 of this title.

Sec. 3. 32 V.S.A. § 5401(10)(J) is amended to read:

(J) Buildings and fixtures of:

(i) wind-powered electric generating facilities taxed under section 5402c of this title; and

(ii) renewable energy plants generating electricity from solar power that are taxed under section 8701 of this title.

Sec. 4. PROSPECTIVE REPEAL; REPORT

32 V.S.A. §§ 8701(c) and 3802(17) (exemptions for small renewable energy plants) shall be repealed on January 1, 2023. By January 15, 2021, the department of taxes shall report to the senate committees on finance and on natural resources and energy, and the house committees on ways and means and on natural resources and energy with a recommendation on whether the exemptions in 32 V.S.A. §§ 8701(c) and 3802(17) should be retained or allowed to be repealed.

Sec. 5. 32 V.S.A. § 5402c(a) is amended to read:

(a) A facility certified by the commissioner of public service as a facility which produces electrical energy for resale, generated solely from wind power, which has an installed capacity of at least ~~five megawatts~~ one megawatt, which was placed in service after January 1, 2007, and which holds a valid certificate of public good issued under 30 V.S.A. § 248, shall be assessed an alternative education property tax on its buildings and fixtures used directly and exclusively in the generation of electrical energy from wind power.

Sec. 6. 32 V.S.A. § 3101 is amended to read:

§ 3101. POWERS AND DUTIES OF COMMISSIONER

(a) The department of taxes shall be administered by a commissioner of taxes.

(b) The commissioner shall:

* * *

(11) from time to time prepare and publish statistics reasonably available with respect to the operation of this title including amounts collected, classification of taxpayers, tax liabilities and such other facts as the commissioner or the general assembly considers pertinent~~.~~;

(12) ~~[Repealed.]~~

(13) from time to time provide municipalities with recommended methods for determining, for municipal tax purposes, the fair market value of renewable energy plants that are subject to taxation under section 8701 of this title.

Sec. 7. EFFECTIVE DATE

This act shall take effect on January 1, 2013.

(Committee Vote: 11-0-0)

H. 691

An act relating to prohibiting collusion as an antitrust violation

Rep. French of Shrewsbury, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

The Committee on Judiciary to which was referred House Bill No. 691 entitled "An act relating to prohibiting collusion as an antitrust violation" respectfully reports that it has considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. § 2451 is amended to read:

§ 2451. PURPOSE

The purpose of this chapter is to complement the enforcement of federal statutes and decisions governing unfair methods of competition, ~~and~~ unfair or deceptive acts or practices, and anti-competitive practices in order to protect the public~~,~~ and to encourage fair and honest competition.

Sec. 2. 9 V.S.A. § 2451a is amended to read:

§ 2451a. DEFINITIONS

For the purposes of this chapter:

(a) "Consumer" means any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for his or her use or benefit or the use or benefit of a member of his or her household, or in connection with the operation of his or her household or a farm whether or not the farm is conducted as a trade or business, or a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for the use or benefit of his or her business or in connection with the operation of his or her business.

(b) "Goods" or "services" shall include any objects, wares, goods, commodities, work, labor, intangibles, courses of instruction or training, securities, bonds, debentures, stocks, real estate, or other property or services of any kind. The term also includes bottled liquified petroleum (LP or propane) gas.

* * *

(h) "Collusion" means an agreement, contract, combination in the form of trusts or otherwise, or conspiracy to engage in price fixing, bid rigging, or market division or allocation of goods or services between or among persons.

Sec. 3. 9 V.S.A. § 2453a is added to read:

§ 2453a. PRACTICES PROHIBITED; CRIMINAL ANTITRUST VIOLATIONS

(a) Collusion is hereby declared to be a crime.

(b) Subsection (a) of this section shall not be construed to apply to activities of or arrangements between or among persons which are permitted, authorized, approved, or required by federal or state statutes or regulations.

(c) It is the intent of the general assembly that in construing this section and subsection 2451a(h) of this title, the courts of this state shall be guided by the construction of federal antitrust law and the Sherman Act, as amended (15 U.S.C. § 1), as interpreted by the courts of the United States.

(d) Nothing in this section limits the power of the attorney general or a state's attorney to bring civil actions for antitrust violations under section 2453 of this title.

(e) A violation of this section shall be punished by a fine of not more than $100,000.00 for an individual or $1,000,000.00 for any other person or by imprisonment not to exceed 10 years or both.

Sec. 4. 9 V.S.A. § 2453b is added to read:

§ 2453b. RETALIATION PROHIBITED

No person shall retaliate against, coerce, intimidate, threaten, or interfere with any other person who:

(1) has opposed any act or practice of the person which is collusive or in restraint of trade;

(2) has lodged a complaint or has testified, assisted, or participated in any manner with the attorney general or a state's attorney in an investigation of acts or practices which are collusive or in restraint of trade;

(3) is known by the person to be about to lodge a complaint or testify, assist, or participate in any manner in an investigation of acts or practices which are collusive or in restraint of trade; or

(4) is believed by the person to have acted as described in subdivision (1), (2), or (3) of this subsection.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 10-0-1)

H. 699

An act relating to scrap metal processors

Rep. Russell of Rutland City, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 9 V.S.A. chapter 82 is amended to read:

CHAPTER 82. SCRAP METAL PROCESSORS

§ 3021. DEFINITIONS

As used in this chapter:

* * *

(7) "Scrap metal processor" means:

(A) a salvage yard, as defined in 24 V.S.A. § 2241(7), but not including a salvage yard described in 24 V.S.A. § 2248(e); or

(B) a person authorized to conduct a business that processes and manufactures scrap metal into prepared grades for sale as raw material to mills, foundries, and other manufacturing facilities.

§ 3022. PURCHASE OF NONFERROUS SCRAP, METAL ARTICLES, AND PROPRIETARY ARTICLES

(a) A scrap metal processor may purchase nonferrous scrap, metal articles, and proprietary articles directly from an authorized scrap metal seller or the seller's authorized agent or employee.

(b) A scrap metal processor may purchase nonferrous scrap, metal articles, and proprietary articles from a person who is not an authorized scrap metal seller or the seller's authorized agent or employee, ~~provided~~ only if the scrap processor complies with all the following procedures at the time of purchase:

(1) ~~At the time of sale, requires~~ Requires the seller to provide a current government-issued photographic identification that indicates the seller's full name, current address, and date of birth, and records in a permanent ledger the identification information of the seller, the time and date of the transaction, the license number of the seller's vehicle, and a description of the items received from the seller. ~~This information shall be retained for at least five years at the processor's normal place of business or other readily accessible and secure location. On request, this information shall be made available to any law enforcement official or authorized security agent of a governmental entity who provides official credentials at the scrap metal processor's business location during regular business hours.~~

(2) Requests documentation from the seller of the items offered for sale, such as a bill of sale, receipt, letter of authorization, or similar evidence that establishes that the seller lawfully owns the items to be sold.

(3) After purchasing an item from a person who fails to provide documentation pursuant to subdivision (2) of this subsection ~~(b) of this section~~, submits to the ~~local law enforcement agency~~ department of public safety no later than the close of the following business day a report that describes the item and the seller's identifying information required in subdivision (1) of this subsection~~, and~~.

(4) ~~holds~~ Holds the proprietary article for at least 15 days following purchase.

(c) The information collected by a scrap metal processor pursuant to this section shall be retained for at least five years at the processor's normal place of business or other readily accessible and secure location. On request, this information shall be made available to any law enforcement official or

authorized security agent of a governmental entity who provides official credentials at the scrap metal processor's business location during regular business hours.

(d) It shall be unlawful for any seller to refuse to furnish the information required by this section or to furnish incorrect or incomplete information.

§ 3023. PENALTIES

(a) A scrap metal processor who violates any provision of this chapter for the first time may be assessed a civil penalty not to exceed $1,000.00 for each transaction.

(b) A scrap metal processor who violates any provision of this chapter for a second or subsequent time shall be fined not more than $25,000.00 for each transaction.

Sec. 2. REPORTING SCRAP METAL SALES

The department of public safety, in collaboration with the department of environmental conservation, shall develop:

(1) a uniform, electronic form and reporting system through which scrap metal processors may submit to the department of public safety the report required for purchases pursuant to 9 V.S.A. § 3022(b)(3); and

(2) an implementation and public outreach process to inform scrap metal processors that the electronic form and reporting system are available for use.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee Vote: 9-0-2)

H. 730

An act relating to miscellaneous consumer protection laws

Rep. Marcotte of Coventry, for the Committee on **Commerce and Economic Development,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. REDESIGNATION

The office of legislative council shall redesignate 9 V.S.A. chapter 65 as a new 9 V.S.A. chapter 60 and shall redesignate the sections located within the current 9 V.S.A. chapter 65, sections 2481–2492, as new sections 2381–2392 to be located within the new 9 V.S.A. chapter 60. All references in statute and in administrative rules adopted pursuant to authority granted in statute shall be redesignated to reflect the changes in this section.

Sec. 2. 9 V.S.A. chapter 63, subchapter 5 is added to read:

Subchapter 5. Cause-Related Marketing

§ 2481a. DEFINITIONS

In this chapter:

(1) "Charitable sales promotion" means an advertising or sales campaign conducted in this state by a commercial coventurer in which it is represented to the public that an amount per unit of goods or services purchased or used by the public or an amount based on aggregate purchases or use by the public will benefit a charitable organization or charitable purpose. "Charitable sales promotion" does not include:

(A) A promotion in which 100 percent of the amount paid for the goods or services will benefit a charitable organization or charitable purpose;

(B) A promotion in which a commercial coventurer does not generate a net profit; or

(C) A promotion that does not involve the sale or lease of goods or services.

(2) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce in this state other than in connection with the raising of funds for charitable purposes and who represents to the public that an amount per unit of goods or services purchased or used by the public or an amount based on aggregate purchases or use by the public will benefit a charitable organization or charitable purpose.

(3) "Representation" means an advertisement, commercial, or other communication to the public in any medium.

§ 2481b. REQUIRED DISCLOSURES

Every commercial coventurer shall disclose the following information in a clear and conspicuous manner in close proximity to any representation, in connection with a charitable sales promotion, that an amount per unit of goods or services purchased or used by the public, or an amount based on aggregate purchases or use by the public, will benefit a charitable organization or charitable purpose:

(1) The name of the charitable organization or purpose which is to benefit from the charitable sales promotion;

(2) The amount per unit of goods or services purchased or used that will benefit the charitable organization or purpose or, if not known, the estimated amount, in either case expressed as a dollar amount or a percentage of the

amount paid for the purchase or use, except that if the amount is based on aggregate purchases or use, that amount and how it will be calculated shall be disclosed; and

(3) Any maximum amount that will benefit the charitable organization or purpose.

2481c. RECORD-KEEPING

A commercial coventurer shall maintain records that are sufficient to demonstrate compliance with the requirements of this chapter and the disclosed terms of a charitable sales promotion.

2481d. VIOLATIONS

(a) A violation of this subchapter is deemed to be a violation of section 2453 of this title. This section shall not be construed to limit a commercial coventurer's liability under any other law.

(b) The attorney general has the same authority to make rules, conduct civil investigations, and bring civil actions with respect to the acts and practices of a commercial coventurer as is provided under subchapter 1 of this chapter.

Sec. 3. 9 V.S.A. § 2463 is amended to read:

§ 2463. CREDIT BILLING FOR CERTAIN HOME SOLICITATION SALES

In the case of any home solicitation sale solicited or consummated by a seller in whole or in part by telephone that is paid for by means of an open-end consumer credit plan within the meaning of the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., the issuer of the credit card on which the consumer has charged the purchase shall, for ~~three years~~ one year from the date of the sale, or within any other time period available under applicable network operating rules in effect at the time of the sale, whichever is greater, and for the purpose of a disputed charge and reimbursement to the consumer, be subject to the claim or defense that the seller failed to comply with the disclosure requirements of section 2454(b) of this chapter and engaged in a related unfair or deceptive act or practice under subsection 2453(a) of this title, regardless of the amount of the purchase, the location of the seller in the United States or Canada, or the amount, if any, already paid by the consumer. ~~The issuer of the credit card shall not be liable for amounts already paid by the consumer and not reimbursed by the seller or the seller's merchant bank.~~ Where a consumer has raised such a claim or defense, the issuer shall not report any negative information on the purchase to any consumer reporting agency as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(f), unless there is a judicial

determination that the consumer's defense or claim is without merit, except that the issuer may report that there is a dispute with respect to the charge.

Sec. 4. FINDINGS – REGULATION OF LEAD IN FOOD AND IN VITAMINS AND OTHER SUPPLEMENTS

The general assembly finds:

(1) Lead is highly toxic to humans, particularly to young children.

(2) Ingesting lead can cause irreversible damage that results in long-lasting, permanent neurological damage, such as a decrease in I.Q.

(3) The effects of lead exposure are cumulative, and a child may be harmed by ingesting very small amounts of lead.

(4) Over the years there have been public reports of lead in certain food products, including fruit juices, honey, candy, chocolate, and eggs.

(5) The current statutory definition of "children's products" includes food, vitamins, and supplements.

(6) Although there is no single governmental limit on lead in food, such limits as do exist are much lower than the 100 parts per million (ppm) limit on lead in "children's products" under Vermont law. For example, the federal Food and Drug Administration has set a 0.005 ppm limit on lead in bottled water and has recommended a 0.1 ppm limit on lead in candy.

(7) The attorney general should exercise his or her authority under the Consumer Fraud Act to protect the children of Vermont from the potential harm caused by lead in food, vitamins, and supplements.

Sec. 5. 9 V.S.A. § 2470e is amended to read:

§ 2470e. DEFINITIONS

As used in this subchapter:

(1) "Children's product" means any consumer product marketed for use by children under the age of 12, or whose substantial use or handling by children under 12 years of age is reasonably foreseeable, including toys, furniture, jewelry, ~~vitamins and other supplements,~~ personal care products, clothing, ~~food,~~ and food containers and packaging.

* * *

Sec. 6. 9 V.S.A. § 4401 is amended to read:

§ 4401. RIGHTS OF RECIPIENT OF ~~MERCHANDISE~~ UNSOLICITED GOODS OR SERVICES~~; DEFINITION~~

~~(a) When personal property is mailed or caused to be delivered or when services are rendered to another by a person who knows the property or services to be unsolicited merchandise or services, the person to whom the merchandise is sent or delivered or for whom the services are rendered may refuse to accept delivery of the same, or he may deem it to be a gift and may use it or dispose of it in any manner without obligation to the person sending or delivering it.~~

~~(b) For purposes of this section, "unsolicited merchandise or services" shall mean any tangible personal property or services, not requested by the recipient, which is intended for personal, family or household use, and not for commercial, industrial, agricultural, or professional use.~~

(a) Except as provided in subsection (b) of this section, if a seller delivers unsolicited goods to a recipient, the recipient may:

(1) refuse the unsolicited goods; or

(2) deem the unsolicited goods to be a gift and dispose of them in any manner without obligation to the seller; provided that, in the case of a recipient who is not a natural person, before disposing of the goods, the recipient shall make a reasonable effort to notify the seller that it has received the unsolicited goods.

(b) If a seller delivers goods to a recipient in error and notifies the recipient of the error within 20 days, or before the recipient has used or disposed of the unsolicited goods, whichever is sooner, then:

(1) The seller shall provide, within 20 days of the notification of error, for the pick-up or return shipment of any remaining portion of the unsolicited goods at the seller's expense and risk, during which time the recipient shall take reasonable care of the remaining unsolicited goods. The recipient need not tender the remaining goods at any place other than the place of delivery or the location of the remaining goods at the time of the notification of error. If the recipient refuses to relinquish any remaining portion of the unsolicited goods to the seller, or agrees to relinquish the remaining unsolicited goods to the seller and fails to do so, the recipient shall be liable for the cost of the unsolicited goods not relinquished to the seller.

(2) The seller may discontinue services to the recipient. The recipient shall not be liable for any services delivered or used prior to the discontinuance of service.

(c) In this section:

(1) "Recipient" means a person who receives unsolicited goods, whether or not he or she was the intended recipient of them.

(2) "Seller" means a person who delivers, renders, or causes to be delivered or rendered unsolicited goods to a recipient, whether or not the seller intends to charge the recipient for the unsolicited goods.

(3) "Unsolicited goods" means any personal property or services delivered, rendered, or caused to be delivered or rendered by a seller to a recipient that are not requested by the recipient, whether or not the recipient and the seller have an existing business relationship.

Sec. 7. 8 V.S.A. chapter 81 is amended to read:

CHAPTER 81. GIFT CERTIFICATES

§ 2701. DEFINITIONS

As used in this chapter:

(1) "Account" means a demand deposit or share draft (checking) account, savings account, or other comparable consumer asset account (other than an occasional or incidental credit balance in a credit plan) regularly maintained by the consumer at a financial institution or at a credit union.

(2) "Financial institution" means an institution as defined in subdivision 11101(32) of this title.

(3) "Gift certificate" means a record evidencing a promise made for consideration by the seller or issuer of the record that money, goods, or services will be provided to the holder of the record for the value shown in the record. A "gift certificate" includes, but is not limited to, a record that contains a microprocessor chip, magnetic strip, or other means for the storage of information that is prefunded and for which the value is decremented upon each use; a gift card; an electronic gift card; a stored-value card or certificate; a store card; or a similar record or card. A gift certificate does not include an access device such as a debit card, code, or other means of access to a consumer's account regularly maintained at a financial institution or credit union that may be used by the consumer to access the funds in his or her account to initiate a withdrawal or to initiate an electronic funds transfer from the consumer's account.

(4) "Loyalty, award, or promotional gift certificate" means a gift certificate that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program and that is redeemable upon presentation to one or more merchants for goods or services or that is usable at automated teller machines.

(5) "Paid value" means the value of any money or other thing of value given in exchange for a gift certificate.

(6) "Promotional value" means any value shown on a gift certificate in excess of the paid value of the gift certificate.

§ 2702. EXPIRATION DATE

The paid value of a gift certificate sold or offered to be sold shall be valid for not less than ~~three~~ five years after its date of issuance or after the date funds were last loaded onto the gift certificate, whichever is later. The date of issuance and the expiration date shall be clearly identified on its face, or, if an electronic card with a banked dollar value, clearly printed upon a sales receipt transferred to the purchaser of the electronic card upon the completed transaction, or otherwise made available to the purchaser or holder of the electronic card through means of an ~~internet~~ Internet site or a toll free information telephone line. A gift certificate not clearly marked with an expiration date or for which the expiration date is not otherwise made available as provided in this section shall be deemed to have no expiration date. Following the expiration date of the gift certificate, the unused portion of the paid value of the gift certificate shall be returned to the holder of the gift certificate, if requested.

§ 2702a. LOYALTY, AWARD, OR PROMOTIONAL GIFT CERTIFICATE

A loyalty, award, or promotional gift certificate shall clearly and legibly set forth the following disclosures, as applicable:

(1) A statement indicating that the gift certificate is issued for loyalty, award, or promotional purposes, which shall be included on the front of the gift certificate;

(2) The expiration date for both the paid value of the gift certificate, if any, and the promotional value of the gift certificate, if any, which shall be included on the front of the gift certificate;

(3) The amount of any fees that may be imposed in connection with the gift certificate and the conditions under which they may be imposed, which shall be provided on or with the gift certificate; and

(4) If any fee is assessed against the gift certificate, a toll-free telephone number and, if one is maintained, a website address that a consumer may use to obtain fee information, which shall be included on the gift certificate.

* * *

§ 2707. EXEMPTION

~~The~~ Except as provided in this section, the provisions of this chapter shall not apply to the following:

(1) A loyalty, award, or promotional gift certificate ~~issued pursuant to an awards or loyalty program~~ where no money or other thing of value is given in exchange for the gift certificate, provided that the ~~expiration date is clearly and legibly disclosed on the~~ gift certificate complies with section 2702a of this title.

(2) The promotional value of a loyalty, award, or promotional gift certificate issued in exchange for paid value, provided that the gift certificate complies with sections 2702 and 2702a of this title.

(3) A gift certificate donated to a charitable organization and used for fund-raising activities of a charitable organization, without any money or other thing of value being given in exchange for the gift certificate by the charitable organization, provided that the expiration date is clearly and legibly printed on the gift certificate.

~~(3)~~(4) Prepaid calling cards issued solely to provide an access number and authorization code for prepaid calling services.

~~(4) A gift certificate for a food product, provided the expiration date is clearly and legibly printed on the front or the face of the gift certificate or printed on the back of the gift certificate in at least 10-point font.~~

(5) A season pass, a discount ski card, or a record sold for admission to any seasonal recreational activity.

(6) A payroll card account issued pursuant to and in full compliance with 21 V.S.A. § 342(c).

* * *

Sec. 8. 9 V.S.A. chapter 63, subchapter 7 is added to read:

Subchapter 7. Unlicensed Loan Transactions

§ 2481w. UNLICENSED LOAN TRANSACTIONS

(a) In this subchapter:

(1) "Financial account" means a checking, savings, share, stored value, prepaid, payroll card, or other depository account.

(2) "Lender" means a person engaged in the business of making loans of money, credit, goods, or things in action and charging, contracting for, or receiving on any such loan interest, a finance charge, a discount, or consideration.

(3) "Process" or "processing" includes printing a check, draft, or other form of negotiable instrument drawn on or debited against a consumer's financial account, formatting or transferring data for use in connection with the

debiting of a consumer's financial account by means of such an instrument or an electronic funds transfer, or arranging for such services to be provided to a lender.

(4) "Processor" means a person who engages in processing, as defined in subdivision (3) of this subsection.

(b) It is an unfair and deceptive act and practice in commerce for a lender directly or through an agent to solicit or make a loan to a consumer by any means unless the lender is in compliance with all provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the requirements of 8 V.S.A. chapter 73.

(c) It is an unfair and deceptive act and practice in commerce for a processor, other than a federally insured depository institution, to process a check, draft, other form of negotiable instrument, or an electronic funds transfer from a consumer's financial account in connection with a loan solicited or made by any means to a consumer unless the lender is in compliance with all provisions of 8 V.S.A. chapter 73 or is otherwise exempt from the requirements of 8 V.S.A. chapter 73.

(d) It is an unfair and deceptive act and practice in commerce for any person, including the lender's financial institution as defined in 8 V.S.A. § 10202(5), but not including the consumer's financial institution as defined in 8 V.S.A. § 10202(5), to provide substantial assistance to a lender or processor when the person or the person's authorized agent receives notice from a regulatory, law enforcement, or similar governmental authority, or knows from its normal monitoring and compliance systems, or consciously avoids knowing that the lender or processor is in violation of subsection (b) or (c) of this section or is engaging in an unfair or deceptive act or practice in commerce.

Sec. 9. 8 V.S.A. chapter 114 is added to read:

CHAPTER 114. PORTABLE ELECTRONICS INSURANCE

§ 4257. DEFINITIONS

As used in this chapter:

(1) "Portable electronics" means electronic devices that are portable in nature, their accessories, and services related to the use of such devices.

(2) "Portable electronics insurance" means insurance which may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy that provides coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss. The term does not include a service

contract governed by subchapter 4 of chapter 113 of this title, a policy of insurance covering a seller's or a manufacturer's obligations under a warranty, or a homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

(3) "Portable electronics vendor" means a person in the business of selling or leasing portable electronics directly or indirectly.

§ 4258. PREMIUM BILLINGS

The charges for portable electronics insurance coverage may be billed and collected by a portable electronics vendor. Any charge to a customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics, a portable electronics vendor shall clearly and conspicuously disclose to the customer that the portable electronics insurance coverage is included with the portable electronics. A portable electronics vendor billing and collecting such charges shall not be required to maintain such funds in a segregated account, provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the insurer or the producer appointed by the insurer to supervise the administration of a portable electronics insurance program within 60 days of receipt. All funds received by a portable electronics vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Portable electronics vendors may receive compensation for billing and collection services.

§ 4259. TERMINATION AND MODIFICATION REQUIREMENTS

Notwithstanding any other provision of law, the terms for the termination or modification of a policy of portable electronics insurance shall be as set forth in the policy.

§ 4260. NOTICE REQUIREMENTS

(a) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy or is otherwise required by law, it shall be in writing. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this section. If the notice or correspondence is mailed, it shall be sent to the portable electronics vendor at the vendor's mailing address specified for such purpose and to its affected customers' last known mailing address on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United

States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the portable electronics vendor at the vendor's electronic mail address specified for such purpose and to its affected customers' last known electronic mail address as provided by each customer to the insurer or vendor of portable electronics. For purposes of this subsection, a customer's provision of an electronic mail address to the insurer or vendor of portable electronics shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was sent.

(b) Notice or correspondence required pursuant to a policy of portable electronics insurance or otherwise required by law may be sent on behalf of the insurer or vendor by an insurance producer appointed by the insurer to supervise the administration of a portable electronics insurance program.

§ 4261. RULEMAKING; LICENSING; CLAIMS; SALES

The commissioner shall adopt rules establishing a business entity limited lines producer license for the sale of portable electronics insurance as well as requirements for the sale of portable electronics insurance by a vendor and its employees and authorized representatives and standards for the adjusting of claims under a policy of portable electronics insurance by a supervising entity.

Sec. 10. 8 V.S.A. § 4813a is amended to read:

§ 4813a. DEFINITIONS

For purposes of this subchapter:

* * *

(10) "Portable electronics insurance" shall have the same meaning as in subdivision 4257(2) of this title.

(11) "Portable electronics vendor" shall have the same meaning as in subdivision 4257(3) of this title.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

~~(11)~~(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

~~(12)~~(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

~~(13)~~(15) "Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

~~(14)~~(16) "Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

Sec. 11. 8 V.S.A. § 4813d is amended to read:

§ 4813d. EXCEPTIONS TO LICENSING

(a) Nothing in this subchapter shall be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(b) A license as an insurance producer shall not be required of the following:

* * *

(8) A person selling or offering portable electronics insurance who is an employee or authorized representative of a portable electronics vendor licensed as a limited lines insurance producer to sell, solicit, or negotiate portable electronics insurance in accordance with rules adopted by the commissioner pursuant to section 4261 of this title.

* * *

Sec. 12. PROTECTION OF OLDER CONSUMERS

On or before January 15, 2013, in collaboration with appropriate state agencies, including the department of disabilities, aging, and independent living; advocacy organizations; and other interested persons and commercial entities, the attorney general shall submit legislative and policy recommendations and rationales to the house committee on commerce and economic development on the advisability and appropriate age limits for establishing appropriate consumer protections to protect older Vermonters.

Sec. 13. 33 V.S.A. § 2607 is amended to read:

§ 2607. PAYMENTS TO FUEL SUPPLIERS

(a) The secretary of human services or designee shall certify fuel suppliers, excluding firewood and wood pellet suppliers, to be eligible to participate in the home heating fuel assistance program. Beneficiaries may use their seasonal fuel assistance benefit to obtain home heating fuel or energy only from a fuel supplier certified by the director, except that beneficiaries who heat

with firewood or wood pellets may obtain their firewood or wood pellets from any supplier they choose.

(b) Certified fuel suppliers shall agree to conduct reasonable efforts in order to inform and assist beneficiaries in their service areas, maintain records of amounts and costs of all fuel deliveries, send periodic statements to customers receiving home heating fuel assistance informing them of their account's credit or debit balance as of the last statement, deliveries or usage since that statement and the charges for such, payments made or applied, indicating their source, since that statement, and the ending credit or debit balance. Certified fuel suppliers shall also agree to provide the secretary of human services or designee such information deemed necessary for the efficient administration of the program~~, including information required to pay the beneficiary's benefits to the certified supplier after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed~~.

(c) Certified fuel suppliers shall not disclose the beneficiary status of recipients of home heating fuel assistance benefits, the names of recipients, or other information pertaining to recipients to anyone, except for purposes directly connected with administration of the home heating fuel assistance program or when required by law.

(d) Certified fuel suppliers shall also agree to enter into budget agreements with beneficiaries for annualized monthly payments for fuel supplies provided the beneficiary meets accepted industry credit standards, and shall grant program beneficiaries such cash discounts, preseason delivery savings, automatic fuel delivery agreements, and any other discounts granted to any other heating fuel customer or as the secretary of human services or designee may negotiate with certified fuel suppliers.

(e) The secretary of human services or designee shall provide each certified fuel supplier with a list of the households who are its customers and have been found eligible for annual home heating fuel assistance for the current year, the total amount of annual home heating fuel assistance that has been authorized for each household, and how the total amount has been allocated over the heating season. Each authorized amount shall function as a line of credit for each eligible household. The secretary or designee shall disburse authorized home heating fuel assistance benefits to certified fuel suppliers on behalf of eligible households ~~after fuel is delivered or, for metered fuel and regulated utilities, after the beneficiary's account has been billed~~. Authorized benefits for oil, propane, kerosene, dyed diesel, and coal shall be paid after fuel is delivered and invoiced to the secretary or designee. Authorized benefits for electricity and natural gas shall be paid in full and credited to the eligible

household's account at the same time benefit notices are issued to the eligible household.

(f) The secretary of human services or designee shall negotiate with one or more certified fuel suppliers to obtain the most advantageous pricing and~~,~~ payment terms, and delivery methods possible for eligible households.

Sec. 14. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 3 (credit billing for certain home solicitation sales) shall take effect one year from the date of passage.

(Committee Vote: 9-0-2)

H. 745

An act relating to the Vermont prescription monitoring system

Rep. Trieber of Rockingham, for the Committee on **Human Services,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

It is the purpose of this act to maximize the effectiveness and appropriate utilization of the Vermont prescription monitoring system, which serves as an important tool in promoting public health by providing opportunities for treatment for and prevention of abuse of controlled substances without interfering with the legal medical use of those substances.

Sec. 1a. 18 V.S.A. § 4201(26) is amended to read:

(26) "Prescription" means an order for a regulated drug made by a physician, dentist, or veterinarian licensed under this chapter to prescribe such a drug which shall be in writing except as otherwise specified ~~herein~~ in this subdivision. Prescriptions for such drugs shall be made to the order of an individual patient, dated as of the day of issue and signed by the prescriber. The prescription shall bear the full name ~~and~~, address, and date of birth of the patient, or if the patient is an animal, the name and address of the owner of the animal and the species of the animal. Such prescription shall also bear the full name, address, and registry number of the prescriber and shall be written with ink, indelible pencil, or typewriter; if typewritten, it shall be signed by the physician. A prescription for a controlled substance, as defined in 21 C.F.R. Part 1308, shall contain the quantity of the drug written both in numeric and word form.

Sec. 2. 18 V.S.A. § 4215b is added to read:

§ 4215b. IDENTIFICATION

Prior to dispensing a prescription for a Schedule II, III, or IV controlled substance, a pharmacist shall require the individual receiving the drug to provide a signature and show valid and current government-issued photographic identification as evidence that the individual is the patient for whom the prescription was written, the owner of the animal for which the prescription was written, or the bona fide representative of the patient or animal owner. If the individual does not have valid, current government-issued photographic identification, the pharmacist may request alternative evidence of the individual's identity, as appropriate.

Sec. 3. 18 V.S.A. § 4218 is amended to read:

§ 4218. ENFORCEMENT

* * *

(d) Nothing in this section shall authorize the department of public safety and other authorities described in subsection (a) of this section to have access to VPMS (Vermont prescription monitoring system) created pursuant to chapter 84A of this title, except as provided in that chapter.

(e) Notwithstanding subsection (d) of this section, a drug diversion investigator, as defined in section 4282 of this title, with a warrant may request VPMS data from the department of health pursuant to subdivision 4284(b)(2)(F) of this title.

Sec. 4. 18 V.S.A. § 4223 is amended to read

§ 4223. FRAUD OR DECEIT

*** * ***

(j) A practitioner or pharmacist shall respond to an inquiry from a drug diversion investigator, as defined in section 4282 of this title, by providing all relevant information, including protected health information, that the practitioner or pharmacist believes in good faith constitutes evidence of diversion of a controlled substance.

Sec. 5. 18 V.S.A. § 4282 is amended to read:

§ 4282. DEFINITIONS

As used in this chapter:

* * *

(5) "Delegate" means an individual employed by a health care facility or pharmacy or in the office of the chief medical examiner and authorized by a

health care provider or dispenser or by the chief medical examiner to request information from the VPMS relating to a bona fide current patient of the health care provider or dispenser or to a bona fide investigation or inquiry into an individual's death.

(6) "Department" means the department of health.

(7) "Drug diversion investigator" means an employee of the department of public safety whose primary duties include investigations involving violations of laws regarding prescription drugs or the diversion of prescribed controlled substances, and who has completed a training program established by the department of health by rule that is designed to ensure that officers have the training necessary to use responsibly and properly any information that they receive from the VPMS.

Sec. 6. 18 V.S.A. § 4283 is amended to read:

§ 4283. CREATION; IMPLEMENTATION

(a) ~~Contingent upon the receipt of funding, the~~ The department ~~may establish~~ shall maintain an electronic database and reporting system for monitoring Schedules II, III, and IV controlled substances, as defined in 21 C.F.R. Part 1308, as amended and as may be amended, that are dispensed within the state of Vermont by a health care provider or dispenser or dispensed to an address within the state by a pharmacy licensed by the Vermont board of pharmacy.

* * *

(e) It is not the intention of the department that a health care provider or a dispenser shall have to pay a fee or tax or purchase hardware or proprietary software required by the department specifically for the use, establishment, maintenance, or transmission of the data. The department shall seek grant funds and take any other action within its financial capability to minimize any cost impact to health care providers and dispensers.

*** * ***

Sec. 7. 18 V.S.A. § 4284 is amended to read:

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

(a) The data collected pursuant to this chapter and all related information and records shall be confidential, except as provided in this chapter, and shall not be subject to public records law. The department shall maintain procedures to protect patient privacy, ensure the confidentiality of patient information collected, recorded, transmitted, and maintained, and ensure that information is not disclosed to any person except as provided in this section.

(b)(1) The department shall ~~be authorized to provide data to only~~ allow only the following persons to query the VPMS:

~~(1) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.~~

~~(2)~~(A) A health care provider ~~or~~, dispenser, or delegate who ~~requests information~~ is registered with the VPMS and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient.

(B) The commissioner of health and the deputy commissioner for alcohol and drug abuse programs.

(C) Personnel or contractors, as necessary for establishing and maintaining the VPMS.

(D) The medical director of the department of Vermont health access, for the purposes of Medicaid quality assurance, utilization, and federal monitoring requirements with respect to Medicaid recipients for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

(E) A medical examiner from the office of the chief medical examiner, for the purpose of conducting an investigation or inquiry into the cause, manner, and circumstances of an individual's death.

(F) A health care provider or medical examiner licensed to practice in another state, to the extent necessary to provide appropriate medical care to a Vermont resident or to investigate the death of a Vermont resident.

(2) The department shall provide reports of data available to the department through the VPMS only to the following persons:

(A) A patient or that person's health care provider, or both, when VPMS reveals that a patient may be receiving more than a therapeutic amount of one or more regulated substances.

~~(3)~~(B) A designated representative of a board responsible for the licensure, regulation, or discipline of health care providers or dispensers pursuant to a bona fide specific investigation.

~~(4)~~(C) A patient for whom a prescription is written, insofar as the information relates to that patient.

~~(5)~~(D) The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that

are the evidence for the suspected fraudulent or illegal activity to a ~~trained law enforcement officer~~ drug diversion investigator.

~~(6)~~(E)(i) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, if the commissioner of health, personally, or the deputy commissioner for alcohol and drug abuse programs, personally, makes the disclosure, has consulted with at least one of the patient's health care providers, and believes that the disclosure is necessary to avert a serious and imminent threat to a person or the public.

(ii) The commissioner of public safety, personally, or the deputy commissioner of public safety, personally, when he or she requests data from the commissioner of health, and the commissioner of health believes, after consultation with at least one of the patient's health care providers, that disclosure is necessary to avert a serious and imminent threat to a person or the public.

(iii) The commissioner or deputy commissioner of public safety may disclose such data received pursuant to this subdivision (E) as is necessary, in his or her discretion, to avert the serious and imminent threat.

~~(7) Personnel or contractors, as necessary for establishing and maintaining the VPMS.~~

(F) A drug diversion investigator, as defined in section 4282 of this section, with a warrant.

(G) A prescription monitoring system or similar entity in another state pursuant to a reciprocal agreement to share prescription monitoring information with the Vermont department of health as described in section 4288 of this title.

(c) A person who receives data or a report from VPMS or from the department shall not share that data or report with any other person or entity not eligible to receive that data pursuant to subsection (b) of this section, except as necessary and consistent with the purpose of the disclosure and in the normal course of business. Nothing shall restrict the right of a patient to share his or her own data.

(d) The commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS. Training may be provided in collaboration with professional associations representing health care providers and dispensers.

(e) A ~~trained law enforcement officer~~ drug diversion investigator who may receive information pursuant to this section shall not have access to VPMS

except for information provided to the ~~officer~~ investigator by the licensing or certification authority.

(f) The department is authorized to use information from VPMS for research and public health promotion purposes provided that data are aggregated or otherwise de-identified.

(g) Knowing disclosure of transmitted data to a person not authorized by subsection (b) of this section, or obtaining information under this section not relating to a bona fide specific investigation, shall be punishable by imprisonment for not more than one year or a fine of not more than $1,000.00, or both, in addition to any penalties under federal law.

(h) All information and correspondence relating to the disclosure of information by the commissioner to a patient's health care provider pursuant to subdivision (b)(2)(A) of this section shall be confidential and privileged, exempt from the public access to records law, immune from subpoena or other disclosure, and not subject to discovery or introduction into evidence.

(i) Each request for disclosure of data pursuant to subdivision (b)(2)(B) of this section shall document a bona fide specific investigation and shall specify the name of the person who is the subject of the investigation.

(j) Each request for disclosure of data pursuant to a warrant or to subdivision (b)(2)(E) of this section shall document a bona fide specific investigation and shall specify the name of the person who is the subject of the investigation.

Sec. 8. 18 V.S.A. § 4286 is amended to read:

§ 4286. ADVISORY COMMITTEE

(a)(1) The commissioner shall establish an advisory committee to assist in the implementation and periodic evaluation of VPMS.

(2) The department shall consult with the committee concerning any potential operational or economic impacts on dispensers and health care providers related to transmission system equipment and software requirements.

(3) The committee shall develop guidelines for use of VPMS by dispensers ~~and~~, health care providers, and delegates, and shall make recommendations concerning under what circumstances, if any, the department shall or may give VPMS data, including data thresholds for such disclosures, to law enforcement personnel. The committee shall also review and approve advisory notices prior to publication.

(4) The committee shall make recommendations regarding ways to improve the utility of the VPMS and its data.

(5) The committee shall have access to aggregated, de-identified data from the VPMS.

* * *

(d) The committee shall issue a report to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services no later than January 15th in 2008, 2010, ~~and~~ 2012, and 2014.

(e) This section shall sunset on July 1, ~~2012~~ 2014 and thereafter the committee shall cease to exist.

Sec. 9. 18 V.S.A. § 4287 is amended to read:

§ 4287. RULEMAKING

The department shall adopt rules for the implementation of VPMS as defined in this chapter consistent with 45 C.F.R. Part 164, as amended and as may be amended, that limit the disclosure to the minimum information necessary for purposes of this act ~~and shall keep the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services advised of the substance and progress of initial rulemaking pursuant to this section~~.

Sec. 10. 18 V.S.A. § 4288 is added to read:

§ 4288. RECIPROCAL AGREEMENTS

The department of health may enter into reciprocal agreements with other states that have prescription monitoring programs so long as access under such agreement is consistent with the privacy, security, and disclosure protections in this chapter.

Sec. 11. 18 V.S.A. § 4289 is added to read:

§ 4289. STANDARDS AND GUIDELINES FOR HEALTH CARE PROVIDERS AND DISPENSERS

(a) Each professional licensing authority for health care providers shall develop evidence-based standards to guide health care providers in the appropriate prescription of Schedules II, III, and IV controlled substances for different medical conditions.

(b)(1) Each health care provider who prescribes any Schedule II, III, or IV controlled substances shall register with the VPMS.

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the commissioner of health shall notify such provider by mail

of the provider's registration requirement pursuant to subdivision (1) of this subsection.

(3) The commissioner of health shall develop additional procedures to ensure that all health care providers who prescribe controlled substances are registered in compliance with subdivision (1) of this subsection.

(c) Each dispenser who dispenses any Schedule II, III, or IV controlled substances shall register with the VPMS.

(d)(1) Each professional licensing authority for health care providers and dispensers authorized to prescribe or dispense Schedules II, III, and IV controlled substances shall adopt standards regarding the frequency and circumstances under which their respective licensees shall query the VPMS.

(2) Each professional licensing authority for dispensers shall adopt standards regarding the frequency and circumstances under which its licensees shall report to the VPMS, which shall be no less than once every seven days.

(3) A health care provider or dispenser who fails to comply with the standards adopted by the applicable licensing authority shall be subject to discipline by the licensing authority.

(4) No later than January 15, 2013, each professional licensing authority subject to this subsection shall submit its standards to the VPMS advisory committee established in section 4286 of this title.

Sec. 12. 18 V.S.A. § 4290 is added to read:

§ 4290. REPLACEMENT PRESCRIPTIONS AND MEDICATIONS

(a) As used in this section, "replacement prescription" means an unscheduled prescription request in the event that the document on which a patient's prescription was written or the patient's prescribed medication is reported to the prescriber as having been lost or stolen.

(b) When a patient or a patient's parent or guardian requests a replacement prescription for a Schedule II, III, or IV controlled substance, the patient's health care provider shall query the VPMS prior to writing the replacement prescription to determine whether the patient may be receiving more than a therapeutic dosage of the controlled substance.

(c) When a health care provider writes a replacement prescription pursuant to this section, the provider shall clearly indicate as much by writing the word "REPLACEMENT" on the face of the prescription.

(d) When a dispenser fills a replacement prescription, the dispenser shall report the required information to the VPMS and shall indicate that the prescription is a replacement by completing the VPMS field provided for such

purpose. In addition, the dispenser shall report to the VPMS the name of the person picking up the replacement prescription, if not the patient.

(e) The VPMS shall create a mechanism by which individuals authorized to access the system pursuant to section 4284 of this title may search the database for information on all or a subset of all replacement prescriptions.

Sec. 13. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL

(a) There is hereby created a unified pain management system advisory council for the purpose of advising the commissioner of health on matters relating to the appropriate use of controlled substances in treating chronic pain and addiction and in preventing prescription drug abuse.

(b) The unified pain management system advisory council shall consist of the following members:

(1) the commissioner of health or designee, who shall serve as chair;

(2) the deputy commissioner of health for alcohol and drug abuse programs or designee;

(3) the commissioner of mental health or designee;

(4) the director of the Blueprint for Health or designee;

(5) the chair of the board of medical practice or designee, who shall be a clinician;

(6) a representative of the Vermont state dental society, who shall be a dentist;

(7) a representative of the Vermont board of pharmacy, who shall be a pharmacist;

(8) a faculty member from the academic detailing program at the University of Vermont's College of Medicine;

(9) a faculty member from the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

(10) a representative of the Vermont Medical Society, who shall be a primary care clinician;

(11) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

(12) a representative of the Vermont Ethics Network;

(13) a representative of the Hospice and Palliative Care Council of Vermont;

(14) a representative of the office of the health care ombudsman;

(15) the medical director for the department of Vermont health access;

(16) a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;

(17) a member of the Vermont board of nursing subcommittee on APRN practice, who shall be an advanced practice registered nurse;

(18) a representative from the Vermont Assembly of Home Health and Hospice Agencies;

(19) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who is a member of the American Academy of Pain Management and has experience in treating chronic pain, to be selected by the board of psychological examiners;

(20) a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the deputy commissioner of health for alcohol and drug abuse programs; and

(21) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain.

(c) Advisory council members who are not employed by the state shall be entitled to per diem and expenses as provided by 32 V.S.A. § 1010.

(d) A majority of the members of the advisory council shall constitute a quorum. The advisory council shall act only by vote of a majority of its entire membership and only at meetings called by the chair or by any three of the members.

(e) To the extent funds are available, the advisory council shall have the following duties:

(1) to develop and recommend principles and components of a unified pain management system, including the appropriate use of controlled substances in treating non cancer-related chronic pain and addiction and in preventing prescription drug abuse; and

(2) to identify and recommend components of evidence-based training modules and minimum requirements for the continuing education of all licensed health care providers in the state who treat chronic pain or addiction

or prescribe controlled substances in Schedule II, III, or IV consistent with a unified pain management system.

(f) The commissioner of health may designate subcommittees as appropriate to carry out the work of the advisory council.

(g) On or before January 15, 2013, the advisory council shall submit its recommendations to the senate committee on health and welfare, the house committee on human services, and the house committee on health care.

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM

No later than January 15, 2013, the commissioners of health and of public safety shall establish a drug disposal program for unused over-the-counter and prescription drugs, which program shall be available to Vermont residents throughout the state at no charge to the consumer. The commissioners shall take steps to publicize the program and to make all Vermont residents aware of opportunities to avail themselves of it.

Sec. 15. ADVISORY COMMITTEE REPORT

No later than January 15, 2013, the VPMS advisory committee established in 18 V.S.A. § 4286 shall provide recommendations to the house committee on human services and the senate committee on health and welfare regarding ways to maximize the effectiveness and appropriate use of the VPMS database, including adding new reporting capabilities, in order to improve patient outcomes and avoid prescription drug diversion;

Sec. 16. SPENDING AUTHORITY

Providing financial support for the unified pain management system advisory council established in Sec. 13 of this act, upgrading the VPMS software, and implementing enhancements to the VPMS shall all be acceptable uses of the monies in the evidence-based education and advertising fund established in 33 V.S.A. § 2004a. The commissioner of health shall seek excess receipts authority to make expenditures as needed from the evidence-based education and advertising fund for these purposes.

Sec. 17. EFFECTIVE DATES

(a) This section and Sec. 8 of this act (18 V.S.A. § 4286) shall take effect on passage and shall apply retroactively as of January 15, 2012.

(b) The remaining sections of this act shall take effect on July 1, 2012.

(Committee Vote: 10-0-1)

Rep. Lippert of Hinesburg, for the Committee on **Judiciary,** recommends the bill ought to pass when amended as recommended by the Committee on **Human Services** and when further amended as follows:

First: In Sec. 3 by adding a subsection (f) to read as follows:

(f) The department of public safety shall adopt a written policy and protocols for accessing pharmacy records through the authority granted in this section. These policies and protocols shall be a public record.

Second: By adding a Sec. 3a to read as follows:

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING POLICIES AND PROTOCOLS

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written policy and protocols used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the policy and protocols are substantively amended by the department, it shall submit the amended policy and protocols to the same committees as soon as practicable.

Third: By striking Sec. 4 in its entirety and inserting in lieu thereof the following:

Sec. 4. 18 V.S.A. § 4223a is added to read:

§ 4223a. REQUEST FOR INFORMATION BY A DRUG DIVERSION INVESTIGATOR

(a) A practitioner or pharmacist shall respond to a patient-specific, legitimate inquiry from a drug diversion investigator, as defined in section 4282 of this title, by providing all requested information, including protected health information, if the practitioner or pharmacist believes in good faith that the information constitutes evidence of diversion of a controlled substance. An inquiry shall be considered legitimate under this section provided that:

(1) The information sought is relevant and material to a legitimate law enforcement purpose; and

(2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

(b) For purposes of this section, "practitioner" shall apply only if the practitioner is providing or has provided services to the patient for whom information is sought.

Fourth: In Sec. 7, by striking 18 V.S.A. § 4284(b)(1)(B) and by relettering the remaining subdivisions to be alphabetically correct.

Fifth: In Sec. 17, subsection (b), by striking "July 1, 2012" and inserting in lieu thereof "October 1, 2012"

(Committee Vote: 8-2-1)

H. 759

An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment

Rep. Martin of Springfield, for the Committee on **Judiciary,** recommends the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 7620 is amended to read:

§ 7620. APPLICATION FOR CONTINUED TREATMENT

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the commissioner believes that the condition of the patient is such that the patient continues to require treatment, the commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

(d) If the commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility.

(e) As used in this chapter:

(1) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A.

§ 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time.

(2) "Secure," when describing a residential facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

Sec. 2. 18 V.S.A. § 7621 is amended to read:

§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT; ORDERS

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(b) If the court finds that the patient is a patient in need of further treatment and requires hospitalization it shall order hospitalization for up to one year.

(c) If the court finds that the patient is a patient in need of further treatment but does not require hospitalization, it shall order nonhospitalization for up to one year. If the treatment plan proposed by the commissioner for a patient in need of further treatment includes admission to a secure residential recovery facility, the court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the secure residential recovery facility.

* * *

Sec. 3. 18 V.S.A. § 7624 is amended to read:

§ 7624. PETITION FOR INVOLUNTARY MEDICATION

(a) The commissioner may commence an action for the involuntary medication of a person who is refusing to accept psychiatric medication and meets any one of the following three conditions:

(1) has been placed in the commissioner's care and custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

(2) has previously received treatment under an order of hospitalization and is currently under an order of nonhospitalization, including a person on an order of nonhospitalization who resides in a secure residential recovery facility; or

(3) has been committed to the custody of the commissioner of corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for

whom the department of corrections and the department of mental health have jointly determined that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H).

* * *

Sec. 4. 33 V.S.A. § 7102(11) is amended to read:

(11) "Therapeutic community residence" means a place, however named, excluding a hospital as defined by statute or the Vermont state hospital, which provides, for profit or otherwise, ~~short-term~~ transitional individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

Sec. 5. RULE MAKING

The department of disabilities, aging, and independent living shall adopt rules pursuant to 3 V.S.A. chapter 25 amending the licensing requirements for therapeutic community residences to provide for the operation of secure residential recovery facilities. Such licensing requirements shall ensure by rule that residents of a secure residential recovery facility have rights at least equal to those provided to patients at the former Vermont State Hospital. The department shall solicit input on the proposed rule from the mental health oversight committee.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

(Committee Vote: 9-1-1)

Rep. French of Randolph, for the Committee on **Human Services,** recommends the bill ought to pass when amended as recommended by the Committee on **Judiciary** and when further amended as follows:

First: By inserting new Secs. 1 and 2 to read as follows:

Sec. 1. 18 V.S.A. § 7315 is added to read:

§ 7315. DEFINITION

As used in this chapter, the term "hospital" shall include a secure residential recovery facility as defined in subsection 7620(e) of this title.

Sec. 2. 18 V.S.A. § 7401 is amended to read:

§ 7401. POWERS AND DUTIES

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the commissioner shall be charged with its administration. The commissioner may:

* * *

(22) oversee and seek to have patients receive treatment in secure residential recovery facilities as defined in subsection 7620(e) of this title.

Second: In Sec. 1, 18 V.S.A. § 7620, in subdivision (e)(1), after the period, by inserting the following: A secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.

Third: By striking Sec. 5 in its entirety and inserting in lieu thereof a new Sec. 5 to read as follows:

Sec. 5. RULE MAKING

(a) The department of disabilities, aging, and independent living shall adopt rules pursuant to 3 V.S.A. chapter 25 amending the licensing requirements for therapeutic community residences. Such rules shall include specific requirements for the operation of secure residential recovery facilities and shall ensure that residents of a secure residential recovery facility have rights at least equal to those provided to patients at the former Vermont State Hospital.

(b)(1) If the rules required by this section are proposed before adjournment sine die of the 2011 adjourned session (2012) of the general assembly or after convening of the 2013 session of the general assembly, the department shall solicit input on the proposed rules from the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare.

(2) If the rules required by this section are proposed after adjournment sine die of the 2011 adjourned session (2012) of the general assembly and before convening of the 2013 general assembly, the department shall solicit input on the proposed rules from the mental health oversight committee and the health access oversight committee.

and by renumbering all sections to be numerically correct

(Committee Vote: 11-0-0)

Favorable

H. 467

An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use

Rep. Strong of Albany, for the Committee on **Judiciary,** recommends the bill ought to pass.

(Committee Vote: 10-0-1)

H. 770

An act relating to the state's transportation program.

(Rep. Brennan of Colchester will speak for the Committee on **Transportation.)**

Rep. Helm of Fair Haven, for the Committee on **Appropriations,** recommends the bill ought to pass.

(Committee Vote: 11-0-0)

Senate Proposal of Amendment

H. 512

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

The Senate proposes to the House to amend the bill as follows:

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

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

(b) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation and feasibility study which includes a description of the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer, together with such additional information as the commissioner may reasonably require. In considering and approving the risk retention group's plan of operation and any subsequent amendments thereto, the commissioner may limit the net amount of risk retained by a risk retention group. The risk retention group shall submit for approval by the commissioner an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, including any material change in the information called for in subsection (c) of this section, but excluding the identity of policyholders and any changes in rates or rating classification systems. The group shall not offer any additional kinds of liability insurance, in this state or in any other state, until a revision of such plan or study is approved by the commissioner. The risk retention group shall inform the commissioner of any material changes in rates or rating classification systems, within 30 days of the adoption of such change.

(For text see House Journal 2/16/2012)

Public Hearings

Wednesday, March 21, 2012 - Room 11 - 6:00-8:00 PM - S. 199, Immunizations/Philosophical Exemption - House Health Care Committee

Information Notice

Deadline for Introducing Bills

Pursuant to Rule 40(b) of the Rules and Orders of the Vermont House of Representatives, during the second year of the biennium, except with the prior consent of the Committee on Rules, no member may introduce a bill into the House drafted in standard form after the last day of January. Bills may be introduced in Short Form until the second Friday after Town Meeting Day.

In order to meet this deadline all sign out sheets must be submitted to the Legislative Council no later than the close of business on Friday, January 27, 2012. Requests for short form bills may be made until Wednesday, February 15, 2012.

Pursuant to Rule 40(c) during the second year of the biennium, except with the prior consent of the Committee on Rules, no committee, except the Committees on Appropriations, Ways and Means or Government Operations, may introduce a bill drafted in standard form after the last day of March. The Committees on Appropriations, Ways and Means bills may be drafted in standard form at any time, and Government Operations bills, pertaining to city or town charter changes, may be drafted in standard form at any time.