House Calendar

Wednesday, April 25, 2012

114th DAY OF THE ADJOURNED SESSION

House Convenes at 9:30 A.M.

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Favorable

Senate Proposal of Amendment

Ordered to Lie

ORDERS OF THE DAY

ACTION CALENDAR

Action Postponed Until April 25, 2012

Third Reading

S. 115

An act relating to ineffective assistance claims against assigned counsel

Amendment to be offered by Rep. Kilmartin of Newport City to S. 115

Rep. Kilmartin of Newport City moves that the bill be amended by striking Sec. 1 in its entirety and inserting in lieu thereof a new Sec. 1 to read as follows:

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

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same matters. Failure to prevail in a claim for post-conviction relief based upon ineffective assistance of counsel shall bar any claim against the attorney based upon the attorney's representation in the same matters.

Senate Proposal of Amendment

H. 503

An act relating to eliminating the ability of the sergeant at arms to employ a traffic control officer and requiring the certification of capitol police officers

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

Sec. 1. 2 V.S.A. § 64 is amended to read:

§ 64. EMPLOYMENT OF ASSISTANTS; ~~TRAFFIC CONTROL;~~ CAPITOL POLICE; TRAINING; UNIFORMS AND EQUIPMENT

* * *

(c) ~~The sergeant at arms may employ a traffic control officer whose duties shall include, but not be limited to, overseeing necessary security measures and the control of traffic about the capitol building. The traffic control officer shall be an exempt state employee. The sergeant at arms with the approval of the joint rules committee shall fix the terms and compensation of the traffic control~~

~~officer, who shall be entitled to receive the same annual salary adjustments available to classified employees in comparable salary ranges.~~ At state expense and with the approval of the sergeant at arms, ~~the traffic control officer and~~ capitol police officers shall be provided with training, and furnished uniforms and equipment necessary in the performance of their duties, and such items shall remain the property of the state.

Sec. 2. 2 V.S.A. § 70 is amended to read:

§ 70. CAPITOL POLICE DEPARTMENT

(a) Creation. A capitol police department is created within the office of the sergeant at arms. The sergeant at arms shall appoint and may remove, at his or her pleasure, individuals as capitol police officers, one of whom shall be appointed to serve as chief. All such positions shall be exempt state employees. ~~The traffic control officer and any other employee of the sergeant at arms may, in addition to other positions and duties, be appointed as a capitol police officer.~~ The chief shall supervise the officer force under the direction of the sergeant at arms. Such appointments and all oaths or affirmations shall be in writing and filed with the sergeant at arms. An officer shall also serve as a deputy sergeant at arms and as a notary public pursuant to 24 V.S.A. § 442.

(b) Powers; training.

(1) Capitol police officers shall have all the same powers and authority as sheriffs and other law enforcement officers anywhere in the state, which shall include the authority to arrest persons and enforce the civil and criminal laws, keep the peace, provide security, and to serve civil and criminal process. For this purpose, capitol police officers shall subscribe to the same oaths required for sheriffs.

(2) ~~Capitol police officers who are not certified in either the full-time or part-time certification program of the Vermont criminal justice training council (VCJTC) shall meet qualification and certification standards prescribed by the sergeant at arms in consultation with the executive director of the VCJTC. In setting the standards, the sergeant at arms shall consider the part-time certification program provided to other law enforcement officers by the VCJTC.~~

~~(3) As an alternative, in the sole discretion of the sergeant at arms, capitol police officers shall be certified pursuant to the part-time certification program of the VCJTC.~~

~~(4) The VCJTC shall make training available to capitol police officers at no expense to the sergeant at arms, and the VCJTC shall certify those officers as capitol police officers if they meet the certification standards set by the~~

~~sergeant at arms, or as a regular law enforcement officer if the requirements of the part-time certification program are met, regardless of the number of hours or weeks worked by the capitol police officer.~~

~~(5)~~ Notwithstanding any other provision of law to the contrary, a capitol police officer shall be a law enforcement officer ~~as if~~ certified by the Vermont criminal justice training council pursuant to the provisions of 20 V.S.A. chapter 151 ~~of Title 20~~.

(c) Coordination of capitol complex security: The capitol police department shall coordinate security within the state house and assist the commissioner of buildings and general services in providing security and law enforcement services within the capitol complex, as delineated in a memorandum of understanding signed by the commissioner and the sergeant at arms no later than June 30, 2000, and as subsequently amended. In all other areas of the capitol complex, except the space occupied by the supreme court, the security, control of traffic, and coordination of law enforcement activity shall be under the direction of the commissioner of buildings and general services, with which the capitol police department may assist.

Sec. 3. 20 V.S.A. § 2351 is amended to read:

§ 2351. PURPOSE; DEFINITION

In order to promote and protect the health, safety, and welfare of the public, it is in the public interest to provide for the creation of "the Vermont criminal justice training council." The council is created to encourage and assist municipalities, counties, and governmental agencies of this state in their efforts to improve the quality of law enforcement and citizen protection by maintaining a uniform standard of recruit and in-service training for law enforcement officers, including members of the department of public safety, capitol police officers, municipal police officers, constables, ~~corrections~~ correctional officers, prosecuting personnel, motor vehicle inspectors, state investigators employed on a full-time basis by the attorney general, fish and game wardens, sheriffs and their deputies who exercise law enforcement powers pursuant to the provisions of ~~sections 311 and 307(a) of Title~~ 24 V.S.A. §§ 307 and 311, and railroad police commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8. The council shall offer continuing programs of instruction in up-to-date methods of law enforcement and the administration of criminal justice. It is the responsibility of the council to encourage the participation of local governmental units in the program and to aid in the establishment of adequate training facilities.

Sec. 4. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

(a) Unless waived by the council under standards adopted by rule, and notwithstanding any statute or charter to the contrary, no person shall exercise law enforcement authority:

(1) as a part-time law enforcement officer without completing a basic training course within a time prescribed by rule of the council; or

(2) as a full-time law enforcement officer without either:

(A) completing a basic training course in the time and manner prescribed by the council; or

(B) having received, before July 1, 1968, permanent full-time appointment as a law enforcement officer, and completing a basic training course before July 1, 1982.

(3) as a full or part-time law enforcement officer without completing annual in-service training requirements as prescribed by the council.

(b) All programs required by this section shall be approved by the council. Completion of a program shall be established by a certificate to that effect signed by the executive director of the council.

(c) For the purposes of this section:

(1) "Law enforcement officer" means a member of the department of public safety who exercises law enforcement powers, a member of the state police, a capitol police officer, a municipal police officer, a constable who exercises law enforcement powers, a motor vehicle inspector, an employee of the department of liquor control who exercises law enforcement powers, an investigator employed by the secretary of state, board of medical practice investigators employed by the department of health, attorney general, or a state's attorney, a fish and game warden, a sheriff, or deputy sheriff who exercises law enforcement powers, or a railroad police officer commissioned pursuant to ~~30 V.S.A. chapter 45, subchapter 8~~ 5 V.S.A. chapter 68, subchapter 8.

(2) "Full-time law enforcement officer" means a law enforcement officer with duties of a predictable and continuing nature which require more than 32 hours per week and more than 25 weeks per year.

(3) "Part-time law enforcement officer" means a law enforcement officer who is not employed full time.

(d) The council may determine whether a particular position is full-time or part-time. Any requirements in this section shall be optional for any elected official.

Sec. 5. Sec. 13 of No. 195 of the 2007 Adj. Sess. (2008), as amended by Sec. 11 of No. 108 of the Acts of the 2009 Adj. Sess. (2010), is amended to read:

Sec. 13. EFFECTIVE DATE

Secs. 8 and 9 of this act shall take effect on ~~July 1, 2012~~ July 1, 2013.

Sec. 6. REPORT

On or before December 15, 2012, the law enforcement advisory board, in consultation with the criminal justice training council, shall report to the senate and house committees on judiciary and on government operations recommendations for how constables may be certified as law enforcement officers as required by Sec. 5 of this act. The report shall include recommendations for how constables may complete the program's field training officer program.

Sec. 7. INTERIM STUDY OF LEGISLATIVE PARKING

(a) Creation of committee. There is created an interim study of legislative parking to study the issue of parking space availability as it affects members of the general assembly.

(b) Membership. The study shall be conducted by the sergeant at arms, the commissioner of buildings and general services, and the operations manager of the legislative council in consultation with members of senate and house leadership.

(c) Powers and duties. The study shall:

(1) evaluate the available parking spaces available within and around the capitol complex and, in particular, the parking spaces available for members of the general assembly;

(2) survey members of the 2011–2012 general assembly on whether there should be assigned parking spaces and, if so, the best manner in making those assignments;

(3) consider whether it is feasible to reserve 180 parking spaces for the exclusive use of members of the general assembly, taking into consideration:

(A) how those parking spaces would be allotted, such as by lottery or by seniority;

(B) the preservation of parking spaces for members who are reelected to the 2013–2014 general assembly and who currently have a parking space reserved due to having a special need, holding a leadership position, or for other circumstances; and

(C) the impact the reservations would have upon the remaining

spaces currently available for capitol police, legislative staff, and others.

(d) Report. By January 15, 2013, the committee shall report to the general assembly its findings and any recommendations for change from current practice.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(No House Amendments)

Amendment to be offered by Rep. Lippert of Hinesburg to H. 503

Rep. Lippert of Hinesburg moves that the House concur in the Senate proposal of amendment with further amendments as follows:

By striking out Secs. 5 through 8 in their entirety and inserting in lieu thereof the following:

Sec. 5. CONSTABLES; LAW ENFORCEMENT AUTHORITY

Notwithstanding the effective date of the amendment to 20 V.S.A. § 2358(d) set forth in Sec. 8 of No. 195 of the Acts of the 2007 Adj. Sess. (2008), any constable who, as of May 1, 2012, has commenced a basic training course in order to obtain certification through the Vermont criminal justice training council pursuant to 20 V.S.A. § 2358 and who is not prohibited from exercising law enforcement authority pursuant to 24 V.S.A. § 1936a shall have until July 1, 2013 to complete that training and may exercise his or her law enforcement authority until July 1, 2013. Thereafter, such a constable shall comply with the provisions of 20 V.S.A. § 2358 in order to exercise law enforcement authority.

Sec. 6. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL;

CONSTABLE FIELD TRAINING

By a date that will allow those constables meeting the criteria set forth in Sec. 5 of this act (constables; law enforcement authority) to obtain certification through the Vermont criminal justice training council pursuant to

20 V.S.A. § 2358 by July 1, 2013, the council shall provide the field training necessary in order for those constables to become certified or shall provide to those constables an alternative source that will provide that field training, which may include the provision of field training by a constable of a different municipality who is a qualified field training officer and who is indemnified by the municipality of the constable receiving the field training. By January 15, 2014, the council shall report to the house and senate committees on judiciary and on government operations the sources from which constables received

field training pursuant to this section.

Sec. 7. INTERIM STUDY OF AND PROPOSED PLAN FOR LEGISLATIVE PARKING

(a) Creation of committee. There is created an interim study of legislative parking to study the issue of parking space availability as it affects members of the general assembly.

(b) Membership. The study shall be conducted by the sergeant at arms, the commissioner of buildings and general services, and the operations manager of the legislative council in consultation with members of senate and house leadership.

(c) Powers and duties. The study shall:

(1) evaluate the available parking spaces available within and around the capitol complex and, in particular, the parking spaces available for members of the general assembly;

(2) survey members of the 2011–2012 general assembly on whether there should be assigned parking spaces and, if so, the best manner in making those assignments;

(3) consider whether it is feasible to reserve 180 parking spaces for the exclusive use of members of the general assembly, taking into consideration:

(A) how those parking spaces would be allotted, such as by lottery or by seniority;

(B) the preservation of parking spaces for members who are reelected to the 2013–2014 general assembly and who currently have a parking space reserved due to having a special need, holding a leadership position, or for other circumstances; and

(C) the impact the reservations would have upon the remaining spaces currently available for capitol police, legislative staff, and others.

(d) Report. By November 15, 2012, the committee shall report electronically to the speaker of the house; the president pro tempore of the senate; the chairs of the house committee on corrections and institutions and the senate committee on institutions; and to each member of the general assembly its findings and a proposed plan that may be implemented by January 9, 2013.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

and that after passage the title of the bill be amended to read: "An act relating to the certification of capitol police and constables and to legislative traffic control and parking"

H. 759

An act relating to permitting the use of secure residential recovery facilities for continued involuntary treatment

The Senate proposes to the House to amend the bill as follows:

First: By striking out Sec. 1 in its entirety and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. chapter 175 is amended to read:

CHAPTER 175. THE BOARD OF MENTAL HEALTH

* * *

§ 7304. PERSONS NOT HOSPITALIZED OR RESIDING IN A SECURE RESIDENTIAL RECOVERY FACILITY

The board shall have general jurisdiction of the mentally retarded and the mentally ill who have been discharged from a hospital, secure residential recovery facility, or training school by authority of the board. It shall also have jurisdiction of the mentally ill and mentally retarded of the state ~~not,~~ who are neither hospitalized nor residing in a secure residential recovery facility so far as concerns their physical and mental condition and their care, management, and medical treatment and shall make such orders therein as each case duly brought to its attention requires.

§ 7305. POWERS OF BOARD

The board may administer oaths, summon witnesses before it in a case under investigation, and discharge by its order, in writing, any person confined as a patient in a hospital or in a secure residential recovery facility whom it finds on investigation to be wrongfully hospitalized or residing in a secure residential recovery facility or in a condition to warrant discharge. The board shall discharge patients, not criminals, who have eloped from a hospital or secure residential recovery facility and have not been apprehended at the expiration of six months from the time of their elopement. The board shall not order the discharge of a patient without giving the superintendent of the hospital or secure residential recovery facility an opportunity to be heard.

§ 7309. REFERRALS FROM GOVERNOR

The governor may refer the case of a patient in a hospital or secure residential recovery facility to the board for its investigation. The board shall

investigate the case and by its order grant such relief as each case requires. If the board is without power to grant the necessary relief it shall cause proceedings to be commenced in a court of competent jurisdiction at the expense of the state, in order to obtain the necessary relief and promote the ends of justice and humanity.

§ 7310. PETITION FOR INQUIRY

The attorney or guardian of a patient or any other interested party may apply to the board to inquire into the treatment and hospitalization or placement at a secure residential recovery facility of a patient, and the board shall take appropriate action upon the application.

§ 7311. INVESTIGATION

If, in the judgment of the board, an investigation is necessary, it shall appoint a time and place for hearing and give the patient's attorney, guardian and spouse, parent or adult child or interested party, if any, in that order, and the head of the hospital or secure residential recovery facility reasonable notice thereof. At the time appointed it shall conduct a hearing and make any lawful order the case requires.

* * *

§ 7313. BOARD SHALL VISIT INSTITUTION

The board shall ascertain by examination and inquiry whether the laws relating to individuals in custody or control are properly observed and may use all necessary means to collect all desired information. It shall carefully inspect every part of the hospital, secure residential recovery facility, or training school visited with reference to its cleanliness and sanitary condition, determine the number of patients or students in seclusion or restraint, the diet of the patients or students and any other matters which it considers material. It shall offer to every patient or student an opportunity for an interview with its visiting members or agents, and shall investigate those cases which in its judgment require special investigation, and particularly shall ascertain whether any individuals are retained at any hospital, secure residential recovery facility, or training school who ought to be discharged.

* * *

§ 7315. DEFINITION

As used is this chapter, the term "secure residential recovery facility" shall be defined as in subsection 7620(e) of this title.

Second: In Sec. 3, 18 V.S.A. § 7620, subsection (e), by striking out "§ 7102(11)" and inserting in lieu thereof § 7102

(For text see House Journal 3/20/2012)

NEW BUSINESS

Third Reading

S. 89

An act relating to Medicaid for Working Persons with Disabilities

S. 200

An act relating to the reporting requirements of health insurers

Amendment to be offered by Rep. Copeland-Hanzas of Bradford to S. 200

Rep. Copeland-Hanzas of Bradford moves that the House propose to the Senate to amend the report of the Committee on Health Care in Sec. 5, 24 V.S.A. § 2689, in subsection (a), by inserting "health insurance" preceding "policy" each time it appears and by inserting "health" preceding "insurer"

S. 244

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

S. 251

An act relating to miscellaneous amendments to laws pertaining to motor vehicles

NOTICE CALENDAR

Favorable with Amendment

H. 718

An act relating to the department of public service and the public service board

Rep. Shand of Weathersfield, 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:

* * * Effective Date of the CBES * * *

Sec. 1. 21 V.S.A. § 268 is amended to read:

§ 268. COMMERCIAL BUILDING ENERGY STANDARDS

* * *

(c) Revision and interpretation of energy standards. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building

construction must be designed and constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings. These amendments shall be effective ~~three months~~ one year after final adoption and shall apply to construction commenced on and after the date they become effective. At least every three years after January 1, 2011, the commissioner of public service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. Prior to final adoption of each required revision of the CBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner of public service with additional recommendations for revision of the CBES.

* * *

(2) ~~Except for the amendments required by this subsection to be adopted by January 1, 2011, each~~ Each time the CBES are amended by the commissioner of public service, the amended CBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than ~~three months~~ one year after the date of adoption. Except for the amendments required by this subsection to be adopted by January 1, 2011, persons submitting an application for any local permit authorizing commercial construction, or an application for construction plan approval by the commissioner of public safety pursuant to 20 V.S.A. chapter 173, before the effective date of the amended CBES shall have the option of complying with the applicable provisions of the earlier or the amended CBES. After the effective date of the original or the amended CBES, any person submitting such an application for commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

* * *

Sec. 2. RETROACTIVE APPLICATION

Sec. 1 of this act shall apply to rules adopted under 21 V.S.A. § 268 (commercial building energy standards) on or after September 1, 2011. The department of public service shall conform to the provisions of Sec. 1 of this act, the effective date contained in those rules under 21 V.S.A. § 268 most

recently adopted prior to the effective date of this section. The department shall file a conforming copy of the rules with the secretary of state and the legislative committee on administrative rules. The filing shall be deemed to comply with 3 V.S.A. § 843 (filing of adopted rules) as long as the sole rule revision contained in the filing is the change in the effective date required by this section.

* * * Coordination of Energy Planning * * *

Sec. 3. 30 V.S.A. § 202 is amended to read:

§ 202. ELECTRICAL ENERGY PLANNING

(a) The department of public service, through the director for regulated utility planning, shall constitute the responsible utility planning agency of the state for the purpose of obtaining for all consumers in the state proper utility service at minimum cost under efficient and economical management consistent with other public policy of the state. The director shall be responsible for the provision of plans for meeting emerging trends related to electrical energy demand, supply, safety and conservation.

(b) The department, through the director, shall prepare an electrical energy plan for the state. The plan shall be for a 20-year period and shall serve as a basis for state electrical energy policy. The electric energy plan shall be based on the principles of "least cost integrated planning" set out in and developed under section 218c of this title. The plan shall include at a minimum:

(1) an overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for electrical energy, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, modifications in housing types and design, conservation and other trends and factors which, as determined by the director, will significantly affect state electrical energy policy and programs;

(2) an assessment of all energy resources available to the state for electrical generation or to supply electrical power, including among others, fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy and strategies for minimizing the economic and environmental costs of energy supply, including the production of pollutants, by means of efficiency and emission improvements, fuel shifting, and other appropriate means;

(3) estimates of the projected level of electrical energy demand;

(4) a detailed exposition, including capital requirements and the estimated cost to consumers, of how such demand shall be met based on the assumptions made in subdivision (1) of this subsection and the policies set out in subsection (c) of this section; and

(5) specific strategies for reducing electric rates to the greatest extent possible in Vermont over the most immediate ~~five-year~~ six-year period, for the next succeeding ~~five-year~~ six-year period, and long-term sustainable strategies for achieving and maintaining the lowest possible electric rates over the full 20-year planning horizon consistent with the goal of maintaining a financially stable electric utility industry in Vermont.

(c) In developing the plan, the department shall take into account the protection of public health and safety; preservation of environmental quality; the potential for reduction of rates paid by all retail electricity customers; the potential for reduction of electrical demand through conservation, including alternative utility rate structures; use of load management technologies; efficiency of electrical usage; utilization of waste heat from generation; and utility assistance to consumers in energy conservation.

(d) In establishing plans, the director shall:

(1) Consult with:

(A) the public;

(B) Vermont municipal utilities;

(C) Vermont cooperative utilities;

(D) Vermont investor-owned utilities;

(E) Vermont electric transmission companies;

(F) environmental and residential consumer advocacy groups active in electricity issues;

(G) industrial customer representatives;

(H) commercial customer representatives;

(I) the public service board;

(J) an entity designated to meet the public's need for energy efficiency services under subdivision 218c(a)(2) of this title;

(K) other interested state agencies; and

(L) other energy providers.

(2) To the extent necessary, include in the plan surveys to determine needed and desirable plant improvements and extensions and coordination between utility systems, joint construction of facilities by two or more utilities, methods of operations, and any change that will produce better service or reduce costs. To this end, the director may require the submission of data by each company subject to supervision, of its anticipated electrical demand,

including load fluctuation, supplies, costs, and its plan to meet that demand and such other information as the director deems desirable.

(e) The department shall conduct public hearings on the final draft and shall consider the evidence presented at such hearings in preparing the final plan. The plan shall be adopted no later than January 1, ~~2004~~ 2012 and readopted in accordance with this section by every sixth January 1 thereafter, and shall be submitted to the general assembly each time the plan is adopted or readopted. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the submission to be made under this subsection.

(f) After adoption by the department of a final plan, any company seeking board authority to make investments, to finance, to site or construct a generation or transmission facility or to purchase electricity or rights to future electricity, shall notify the department of the proposed action and request a determination by the department whether the proposed action is consistent with the plan. In its determination whether to permit the proposed action, the board shall consider the department's determination of its consistency with the plan along with all other factors required by law or relevant to the board's decision on the proposed action. If the proposed action is inconsistent with the plan, the board may nevertheless authorize the proposed action if it finds that there is good cause to do so. The department shall be a party to any proceeding on the proposed action, except that this section shall not be construed to require a hearing if not otherwise required by law.

(g) The director shall annually review that portion of a plan extending over the next ~~five~~ six years. The department, through the director, shall ~~annually~~ biennially extend the plan by ~~one~~ two additional ~~year~~ years; and from time to time, ~~but in no~~ and in any event ~~less than~~ every ~~five years~~ sixth year, institute proceedings to review a plan and make revisions, where necessary. The ~~five year~~ six-year review and any interim revisions shall be made according to the procedures established in this section for initial adoption of the plan. The six-year review and any revisions made in connection with that review shall be performed contemporaneously with readoption of the comprehensive energy plan under section 202b of this title.

(h) The plans adopted under this section ~~shall be submitted to the energy committees of the general assembly and~~ shall become the electrical energy portion of the state energy plan.

(i) It shall be a goal of the electrical energy plan to assure, by 2028, that at least 60 MW of power are generated within the state by combined heat and power (CHP) facilities powered by renewable fuels or by nonqualifying SPEED resources, as defined in section 8002 of this title. In order to meet this goal, the plan shall include incentives for development and strategies to

identify locations in the state that would be suitable for CHP. The plan shall include strategies to assure the consideration of CHP potential during any process related to the expansion of natural gas services in the state.

Sec. 4. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

(a) The department of public service, in conjunction with other state agencies designated by the governor, shall prepare a comprehensive state energy plan covering at least a 20-year period. The plan shall seek to implement the state energy policy set forth in section 202a of this title. The plan shall include:

(1) A comprehensive analysis and projections regarding the use, cost, supply and environmental effects of all forms of energy resources used within Vermont.

(2) Recommendations for state implementation actions, regulation, legislation, and other public and private action to carry out the comprehensive energy plan.

(b) In developing or updating the plan's recommendations, the department of public service shall seek public comment by holding public hearings in at least five different geographic regions of the state on at least three different dates, and by providing notice through publication once a week and at least seven days apart for two or more successive weeks in a newspaper or newspapers of general circulation in the regions where the hearings will be held, and by delivering notices to all licensed commercial radio and television stations with transmitting facilities within the state, plus Vermont Public Radio and Vermont Educational Television.

(c) The department shall adopt a state energy plan by ~~no later than~~ January 1, ~~1994~~ 2012 and shall readopt the plan by every sixth January 1 thereafter. On adoption or readoption, the plan shall be submitted to the general assembly. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to such submission.

(1) Upon adoption of the plan, analytical portions of the plan may be updated ~~annually~~ and published biennially.

(2) Every fourth year after the adoption or readoption of a plan under this section, the department shall publish the manner in which the department will engage the public in the process of readopting the plan under this section.

(3) The publication requirements of subdivisions (1) and (2) of this subsection may be met by inclusion of the subject matter in the department's biennial report.

(4) The plan's implementation recommendations shall be updated by the department no less frequently than every ~~five~~ six years. These recommendations shall be updated prior to the expiration of ~~five~~ six years if the general assembly passes a joint resolution making a request to that effect. If the department proposes or the general assembly requests the revision of implementation recommendations, the department shall hold public hearings on the proposed revisions.

(d) ~~Any distribution~~ Distribution of the plan to members of the general assembly shall be in accordance with the provisions of 2 V.S.A. § 20(a)–(c).

Sec. 5. INTENT; RETROACTIVE APPLICATION

In enacting Secs. 3 (20-year electric plan) and 4 (comprehensive energy plan), the general assembly intends to set the readoption of these plans by the department of public service (the department) on a regular six-year cycle beginning with the comprehensive energy plan adopted by the department in December 2011. The department's adoption of that plan in December 2011 shall be deemed to satisfy the requirements of 30 V.S.A. §§ 202 and 202b, as amended by Secs. 3 and 4 of this act, to adopt plans by January 1, 2012.

Sec. 6. 21 V.S.A. § 269 is amended to read:

§ 269. COMPLIANCE PLAN

The commissioner of public service shall perform all of the following:

(1) No later than September 1, 2011, issue a plan for achieving compliance with the energy standards adopted under this subchapter no later than February 1, 2017 in at least 90 percent of new and renovated residential and commercial building space. In preparing this plan, the department shall review enforcement mechanisms for building energy codes that have been adopted in other jurisdictions and shall solicit the comments and recommendations of one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; environmental organizations; consumer advocates; energy efficiency experts; the attorney general; and other persons who are potentially affected or have relevant expertise.

(2) No later than ~~June 30, 2012~~ December 31, 2013, by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25:

(A) Establish active training and enforcement programs to meet the energy standards adopted under this subchapter.

(B) Establish a system for measuring the rate of compliance each year with the energy standards adopted under this chapter. Following establishment of this system, the commissioner also shall provide for such

annual measurement.

* * * Electronic Filings and Case Management * * *

Sec. 7. 30 V.S.A. § 11(a) is amended to read:

(a) The forms, pleadings, and rules of practice and procedure before the board shall be prescribed by it. The board shall promulgate and adopt rules which include, among other things, provisions that:

(1) A utility whose rates are suspended under the provisions of section 226 of this title shall, within 30 days from the date of the suspension order, file with the board ~~10 copies of~~ all exhibits it intends to use in the hearing thereon together with the names of witnesses it intends to produce in its direct case and a short statement of the purposes of the testimony of each witness. Except in the discretion of the board, a utility shall not be permitted to introduce into evidence in its direct case exhibits which are not filed in accordance with this rule.

* * *

Sec. 8. 30 V.S.A. § 11a is added to read:

§ 11a. ELECTRONIC FILING AND ISSUANCE

(a) As used in this section:

(1) "Confidential document" means a document containing confidential information that is filed with the board and parties in a proceeding subject to a protective order duly issued by the board.

(2) "Document" means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

(3) "Electronic filing" means the transmission of documents to the board by electronic means.

(4) "Electronic filing system" means a board-designated system that provides for the electronic filing of documents with the board and for the electronic issuance of documents by the board. If the system provides for the filing or issuance of confidential documents, it shall be capable of maintaining the confidentiality of confidential documents and of limiting access to confidential documents to individuals explicitly authorized to access such confidential documents.

(5) "Electronic issuance" means:

(A) the transmission by electronic means of a document that the board has issued, including an order, proposal for decision, or notice; or

(B) the transmission of a message from the board by electronic means informing the recipients that the board has issued a document, including an order, proposal for decision, or notice and that the document is available for viewing and retrieval from an electronic filing system.

(6) "Electronic means" means any board-authorized method of electronic transmission of a document.

(b) The board, in consultation with the commissioner of information and innovation or designee, by order, rule, procedure, or practice may:

(1) provide for electronic issuance of any notice, order, proposal for decision, or other process issued by the board, notwithstanding any other service requirements set forth in this title or in 10 V.S.A. chapter 43;

(2) require electronic filing of documents with the board;

(3) for any filing or submittal to the board for which the filing or submitting entity is required to provide notice or a copy to another state agency under this title or under 10 V.S.A. chapter 43, waive such requirement if the state agency will receive notice of and access to the filing or submittal through an electronic filing system; and

(4) for any filing, order, proposal for decision, notice, or other process required to be served or delivered by first-class mail or personal delivery under this title or under 10 V.S.A. chapter 43, waive such requirement to the extent the required recipients will receive the filing, order, proposal of decision, notice, or other process by electronic means or will receive notice of and access to the filing, order, proposal for decision, notice, or other process through an electronic filing system.

(c) Any order, rule, procedure, or practice issued under subsection (b) of this section shall include exceptions to accommodate parties and other participants who are unable to file or receive documents by electronic means.

(d) Subsection (b) of this section shall not apply to the requirements for service of citations and notices in writing as set forth in 30 V.S.A. §§ 111(b), 111a(i), and 2804.

Sec. 9. 30 V.S.A. § 20(a) is amended to read:

(a)(1) The board or department may authorize or retain legal counsel, ~~official stenographers,~~ expert witnesses, advisors, temporary employees, and other research services:

* * *

(4) The board or department may authorize or retain official stenographers in any proceeding within its jurisdiction, including proceedings

listed in subsection (b) of this section.

Sec. 10. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

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

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology and information security which outlines the significant deviations from the previous year's ~~information technology~~ plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. For purposes of this section, "information security" shall mean protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability. All such plans shall be reviewed and approved by the commissioner of information and innovation prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and information security and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of $100,000.00:

(A) a life-cycle costs analysis including planning, purchase and development of applications, the purchase of hardware and the ~~on-going~~ ongoing operation and maintenance costs to be incurred over the expected life of the systems; and a cost-benefit analysis which shall include acquisition costs as well as operational and maintenance costs over the expected life of the system;

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

(C) a statement identifying any impact of the proposed new computer system on the privacy or disclosure of individually identifiable information;

(D) a statement identifying costs and issues related to public access to nonconfidential information;

(E) a statewide budget for all information technology activities with a cost in excess of ~~$100,000~~ $100,000.00.

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

(A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records;

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including both hardware and software, which perform these activities.

* * *

Sec. 11. 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

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

(1) to provide direction and oversight for all activities directly related to information technology and information security, including telecommunications services, information technology equipment, software, accessibility, and networks in state government. For purposes of this section, "information security" is defined as in 3 V.S.A. § 2222(a)(9);

(2) to manage GOVnet;

(3) to review all information technology and information security requests for proposal in accordance with agency of administration policies;

(4) to review and approve information technology activities in all departments with a cost in excess of $100,000.00, and annually submit to the general assembly a strategic plan and a budget for information technology and information security as required of the secretary of administration by 3 V.S.A. § 2222(a)(9). For purposes of this section, "information technology activities" is defined in 3 V.S.A. § 2222(a)(10);

(5) to administer the independent review responsibilities of the secretary of administration described in 3 V.S.A. § 2222(g);

(6) to perform the responsibilities of the secretary of administration under 30 V.S.A. § 227b;

(7) to administer communication, information, and technology services, which are transferred from the department of buildings and general services;

(8) to inventory technology assets within state government;

(9) to coordinate information technology and information security training within state government;

* * *

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

(12) Not later than July 1, 2013, to adopt rules requiring the auditing and updating of state websites.

Sec. 12. 22 V.S.A. § 904 is added to read:

§ 904. STATE WEBSITE AUDITING

Any state agency that maintains or operates a state website shall cause that website to be audited and updated pursuant to rules adopted by the department of information and innovation under subdivision 901(12) of this chapter.

* * * Condemnation Hearing: Service of Citation * * *

Sec. 13. 30 V.S.A. § 111(b) is amended to read:

(b) The citation shall be served upon each person having any legal interest in the property~~, including each municipality and each planning body where the property is situate like a summons,~~ or on absent persons in such manner as the supreme court may by rule provide for service of process in civil actions. The board also shall give notice of the hearing to each municipality and each planning body where the property is located. The board, in its discretion, may schedule a joint hearing of some or all petitions relating to the same project and concerning properties or rights located in the same town or abutting towns.

* * * Filing Rate Schedules with the Board * * *

Sec. 14. 30 V.S.A. § 225 is amended to read:

§ 225. RATE SCHEDULES

(a) Within a time to be fixed by the board, each company subject to the provisions of this chapter shall file with the board and the department, with separate filings to the directors for regulated utility planning and public advocacy, schedules which shall be open to public inspection, showing all rates including joint rates for any service performed or any product furnished by it within the state, and as a part thereof shall file the rules and regulations that in any manner affect the tolls or rates charged or to be charged for any such service or product. Those schedules, or summaries of the schedules approved

by the department, shall be published by the company in two newspapers with general circulation in the state within 15 days after such filing. A change shall not thereafter be made in any such schedules, including schedules of joint rates or in any such rules and regulations, except upon 45 days notice to the board and to the department of public service, and such notice to parties affected by such schedules as the board shall direct. The board shall consider the department's recommendation and take action pursuant to sections 226 and 227 of this title before the date on which the changed rate is to become effective. All such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 45 days prior to the time the same are to take effect. Subject only to temporary increases, rates may not thereafter be raised without strictly complying with the notice and filing requirements set forth in this section. In no event may a company amend, supplement or alter an existing filing or substantially revise the proof in support of such filing in order to increase, decrease or substantiate a pending rate request, unless, upon opportunity for hearing, the company demonstrates that such a change in filing or proof is necessary for the purpose of providing adequate and efficient service. However, upon application of any company subject to the provisions of this chapter, and with the consent of the department of public service, the board may for good cause shown prescribe a shorter time within which such change may be made; but a change which in effect decreases such tolls or rates may be made upon five days' notice to the board and the department of public service and such notice to parties affected as the board shall direct.

* * *

* * * CPG: Recommendations of Municipal and

Regional Planning Commissions * * *

Sec. 15. 30 V.S.A. § 248 is amended to read:

§ 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND FACILITIES; CERTIFICATE OF PUBLIC GOOD

* * *

(f) However, the plans for the construction of such a facility within the state must be submitted by the petitioner to the municipality and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions ~~shall~~ may make recommendations~~, if any,~~ to the public service board and to the petitioner ~~at least seven days prior to filing of the petition~~ within 21 days after the date the petition is filed with the public service board.

* * *

* * * Universal Service Fund Studies * * *

Sec. 16. 30 V.S.A. § 7515 is amended to read:

§ 7515. HIGH-COST BASIC TELECOMMUNICATIONS SERVICE

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

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

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

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

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

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

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

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

(B) broadening eligibility for the lifeline program; and

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

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

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

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

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

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

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

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

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

Sec. 17. STUDY ON THE STATE USF AND PREPAID WIRELESS TELECOMMUNICATIONS SERVICES

(a) The commissioner of public service or designee, in consultation with the commissioner of taxes or designee, shall convene a work group to study issues related to application of the state's universal service charge established under 30 V.S.A. chapter 88 to prepaid wireless telecommunications services. The work group shall include representatives of prepaid wireless telecommunications service providers, Vermont retailers of prepaid wireless telecommunications services, consumers, the enhanced-911 program, and any other stakeholders identified by the commissioner. The study shall consider:

(1) the retail transactions subject to the charge;

(2) the amount of the charge;

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

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

(5) billing and collection procedures, including:

(A) notice of charges to consumers; and

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

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

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

(b) The commissioner, on behalf of the work group established under subsection (a) of this section, shall report his or her findings and recommendations to the house committee on commerce and economic

development and the senate committee on finance not later than December 1, 2012. The report shall include draft legislation for consideration during the 2013 legislative session.

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

* * * Effective Dates * * *

Sec. 18. EFFECTIVE DATES

This act shall take effect on passage, except that Sec. 12 (relating to state website auditing) shall take effect 60 days after the department of information and innovation adopts rules pursuant to 22 V.S.A. § 901(12).

(Committee Vote: 10-0-1)

Amendment to be offered by Reps. Ralston of Middlebury, Young of Glover, Dickinson of St. Albans Town, Scheuermann of Stowe, Buxton of Tunbridge, Campion of Bennington, Taylor of Barre City, Russell of Rutland City and Clarkson of Woodstock to H. 718

Reps. Ralston of Middlebury, Young of Glover, Dickinson of St. Albans Town, Scheuermann of Stowe, Buxton of Tunbridge, Campion of Bennington, Taylor of Barre City, Russell of Rutland City and Clarkson of Woodstock move that the bill be amended by adding Sec. 17a to read as follows:

Sec. 17a. BUSINESS AND CONSUMER ADVOCACY OFFICE; WORK GROUP AND PROPOSAL

(a) Findings and purpose. Vermonters believe there is a need for an independent voice in regulatory proceedings representing residential ratepayers, small businesses, and municipalities, many of whom do not have the financial resources or expertise to fully participate in and advance their interests in such proceedings. It is the purpose of this section to establish a work group to propose a model for a business and consumer advocacy office (BACAO) to address that need in Vermont.

(b) BACAO work group. There is created the BACAO work group to be convened by the Vermont attorney general or designee. The purpose of the work group shall be to develop a proposal for an independent business and consumer advocacy office to represent residential ratepayers, small businesses, and municipalities in proceedings before the public service board, consistent with the following parameters:

(1) the proposed model shall ensure that BACAO has authority to appeal agency or court decisions;

(2) the work group shall study and determine the forums (regulatory, judicial, state, or federal) in which the advocate may represent its statutorily defined interests;

(3) the work group shall examine and make recommendations regarding the relationship between BACAO and the department of public service, including the department's public advocate and its division of consumer affairs and public information, and shall delineate the advocate's access to departmental records, including utility accounting and financial records, as well as the advocate's direct access to utility information and records;

(4) the work group shall take into consideration consumer advocacy models implemented in other jurisdictions; and

(5) the proposed model shall ensure that the operational costs of BACAO, including expert witness fees and other reasonable costs incurred in the preparation and advocacy of a position relating to an issue in a regulatory or court proceeding, shall be borne by the utility or utilities which initiated the proceeding, as determined by the public service board.

(c) Membership. The work group shall include the attorney general or designee, the commissioner of public service or designee, a member of the general assembly selected by the speaker of the house, a member of the general assembly selected by the president pro tempore of the senate, and five other members to be selected by the attorney general. In selecting the five other members the attorney general shall consider selecting representatives of regulated utilities, consumer advocacy organizations, and other stakeholders and interested parties so that a diverse range of interests and opinions is represented. The members of the work group shall elect a chair.

(d) Proposal. The BACAO work group shall prepare draft legislation establishing the enabling authority for the office of utility consumer advocacy, as well as a report detailing its findings and recommendations and the rationale for each. The report and draft legislation shall be submitted to the house committees on commerce and economic development and on natural resources and energy and the senate committees on finance and on natural resources and energy not later than December 15, 2012.

(e) Meetings. The work group may meet up to six times or at the call of the chair and shall cease to exist upon the completion of its duties under this section. The meetings of the work group shall be publicly announced and open to the public and reasonable opportunity shall be given to the public to express its opinion on the matters being considered by the work group.

(f) Public review and comment. Prior to reporting to committees of the general assembly under subsection (d) of this section, the work group shall allow for public review and comment on its proposed draft legislation and report.

Amendment to be offered by Rep. Browning of Arlington et. al. to H. 718

Representatives Browning of Arlington, Acinapura of Brandon, Andrews of Rutland City, Aswad of Burlington, Batchelor of Derby, Bohi of Hartford, Bouchard of Colchester, Branagan of Georgia, Burditt of West Rutland, Burke of Brattleboro, Buxton of Tunbridge, Campion of Bennington, Canfield of Fair Haven, Christie of Hartford, Clark of Vergennes, Clarkson of Woodstock, Condon of Colchester, Conquest of Newbury, Consejo of Sheldon, Corcoran of Bennington, Dakin of Chester, Davis of Washington, Degree of St. Albans City, Devereux of Mount Holly, Donahue of Northfield, Eckhardt of Chittenden, Fagan of Rutland City, French of Shrewsbury, Greshin of Warren, Helm of Fair Haven, Higley of Lowell, Howard of Cambridge, Howrigan of Fairfield, Hubert of Milton, Johnson of Canaan, Kilmartin of Newport City, Koch of Barre Town, Komline of Dorset, Larocque of Barnet, Lenes of Shelburne, Lewis of Berlin, McAllister of Highgate, McFaun of Barre Town, McNeil of Rutland Town, Miller of Shaftsbury, Mook of Bennington, Moran of Wardsboro, Morrissey of Bennington, Mrowicki of Putney, Myers of Essex, Pearce of Richford, Pearson of Burlington, Peaslee of Guildhall, Perley of Enosburgh, Poirier of Barre City, Ram of Burlington, Reis of St. Johnsbury, Russell of Rutland City, Savage of Swanton, Shaw of Pittsford, Smith of New Haven, South of St. Johnsbury, Strong of Albany, Stuart of Brattleboro, Taylor of Barre City, Till of Jericho, Townsend of Randolph, Turner of Milton, Winters of Williamstown, Woodward of Johnson, Wright of Burlington and Zagar of Barnard moves that the bill be amended by adding Sec. 17a to read as follows:

Sec. 17a. WINDFALL-SHARING MECHANISM; PAYBACK

(a) The public service board may not approve the acquisition of one electric company by another or the merger of electric companies unless, as a condition of such acquisition or merger, any applicable windfall-sharing mechanism previously established by the board results in direct cash repayment of the full amount of funds subject to the windfall-sharing mechanism to current ratepayers, based on their rate class.

(b) Notwithstanding 1 V.S.A. §§ 213 and 214, subsection (a) of this section shall apply to all petitions filed with the public service board on or after September 1, 2011.

H. 722

An act relating to the labeling of food produced with genetic engineering

Rep. Partridge of Windham, for the Committee on **Agriculture,** 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 and declares that:

(1) U.S. federal law does not provide for the necessary and satisfactory regulation of the safety and labeling of food that contains genetically engineered ingredients, as evidenced by the fact that:

(A) U.S. federal labeling and food and drug laws do not require manufacturers of food produced from genetically engineered ingredients to label such food as genetically engineered.

(B) As indicated by the testimony of Dr. Robert Merker, a U.S. Food and Drug Administration (FDA) Consumer Safety Officer, the FDA does not have statutory authority to require labeling of foods produced with genetic engineering.

(C) The FDA has adopted a policy regarding the labeling of food produced from genetic engineering based on a conclusion that these products are generally regarded as safe with no material difference from conventional products. The FDA does not require genetically engineered foods to be labeled as such.

(D) Instead of specifically regulating the safety and labeling of food produced from genetic engineering, the FDA regulates genetically engineered foods in the same way it regulates foods developed by traditional plant breeding, but, according to Dr. James Maryanski, FDA biotechnology coordinator (1985−2008), the decision to regulate genetically engineered food in this manner was a political decision not based in science.

(E) Under its regulatory framework, the FDA does not independently test the safety of genetically engineered foods. Instead, manufacturers submit safety research and studies, the majority of which the manufacturers finance or conduct.

(F) There is a lack of consensus regarding the validity of the research and/or science surrounding genetically engineered foods. The result is public uncertainty about the nutrition, health, safety, environmental impacts, and the proliferation of genetic engineering technology that is not fully understood or proven to be safe.

(G) There have been no long-term studies in the United States that examine the safety of human consumption of genetically engineered foods.

(2) Genetically engineered ingredients are increasingly present in foods available for human consumption, as evidenced by the fact that:

(A) it is estimated that 70 to 80 percent of the processed foods sold in the United States have at least one genetically engineered ingredient.

(B) According to the U.S. Department of Agriculture, in 2011, genetically engineered soybeans accounted for 94 percent of U.S. soybean acreage, genetically engineered corn accounted for 88 percent of U.S. corn acreage, and genetically engineered sugar beets accounted for 95 percent of U.S. sugar beet acreage.

(3) Genetically engineered foods have an effect on health, safety, agriculture, and the environment, as evidenced by the fact that:

(A) Independent studies in laboratory animals indicate that the ingestion of genetically engineered foods may lead to health problems such as gastrointestinal damage, liver and kidney damage, reproductive problems, immune system interference, and allergic responses.

(B) Trends in commodity agricultural production practices are toward monocultured crop production, which may result in genetic homogeneity, loss of biodiversity, and increased vulnerability of crops to pests, diseases, and variable climate conditions. Genetically engineered crops are one tool used in commodity agricultural production.

(C) Genetically engineered crops that include pesticides may adversely affect populations of butterflies and other nontarget insects.

(D) Organic food certification, which is generally construed not to include ingredients produced from genetic engineering, can be adversely affected by contamination from genetically engineered crops.

(E) Cross-pollination from genetically engineered crops may have an adverse effect on wild plant species.

(F) The proliferation of patented genetically engineered crops reduces the options of farmers who may want to save their own seed.

(4) Vermont and other states do have the authority to regulate the labeling of genetically engineered foods as evidenced by the fact that:

(A) Under the Tenth Amendment to the U.S. Constitution and the U.S. Supreme Court's ruling in *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963), states may regulate the retail sale of food in the interest of consumers where such regulation does not conflict with federal law.

(B) Under *Holk v. Snapple Beverage Co.*, 575 F.3d 329 (3d Cir. 2009), the Federal Food, Drug, and Cosmetic Act and the FDA policy for labels using the word "natural" do not preempt states from regulating the use of the word "natural."

(C) The Supreme Court, in *Milavetz, Gallop & Milavetz v. United States*, 130 S.Ct. 1324 (2010), reaffirmed the proposition, first expressed in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), that "an advertiser's [First Amendment] rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers."

(D) Under current First Amendment jurisprudence, expressed in *National Electric Manufacturers Assn. v. Sorrell*, 272 F.3d 104 (2d Cir. 2001), states are free to compel the disclosure of factual commercial speech as long as the means employed by the state are rationally related to the state's legitimate interest.

(E) The decision of the U.S. Court of Appeals for the Second Circuit in *International Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67 (2d Cir. 1996), is expressly limited to cases in which a state disclosure requirement is supported by no interest other than gratification of consumer curiosity.

(5) For multiple personal, health, religious, and economic reasons, the citizens of Vermont desire, require, and necessitate that food produced from genetic engineering be labeled as such, as evidenced by the fact that:

(A) Public opinion polls conducted by the Center for Rural Studies at the University of Vermont indicate that a large majority of Vermonters want foods produced with genetic engineering to be labeled as such.

(B) Given that 6 V.S.A. § 641(9) defines "genetically engineered seed" as "seed produced using a variety of methods . . . used to modify genetically organisms or influence their growth and development by means that are not possible under natural conditions or processes," labeling foods produced with genetic engineering as "natural," "naturally made," "naturally grown," "all natural," or other descriptors of similar substance is inherently misleading and poses a risk of confusing and deceiving consumers and conflicts with the general perception that "natural" foods are not genetically engineered.

(C) Vermont citizens with certain religious beliefs object to producing foods using genetic engineering because of objections to tampering with the genetic makeup of life forms and the rapid introduction and proliferation of genetically engineered organisms and, therefore, need food to be labeled as genetically engineered in order to conform to religious beliefs.

(D) Requiring that foods produced through genetic engineering be labeled as such will create additional market opportunities for those producers who are not certified as organic and whose products are not produced from genetic engineering. Such additional market opportunities will contribute to the vibrant and diversified agricultural community of Vermont.

(E) Labeling gives consumers information they can use to make informed decisions about what products they would prefer to purchase.

(F) On March 12, 2012, the Vermont congressional delegation, along with 52 other members of Congress, sent a letter to the Honorable Margaret Hamburg, commissioner of the FDA, asking that the FDA require labeling of food produced with genetic engineering.

(6) Because both the FDA and the U.S. Congress have failed to require the labeling of food produced with genetic engineering, the state should exercise its authority to require food produced with genetic engineering to be labeled as such in order to serve the legitimate interests of the state to prevent inadvertent consumer deception, promote food safety, respect religious beliefs, protect the environment, and promote economic development.

Sec. 2. 18 V.S.A. chapter 82, subchapter 3 is added to read:

Subchapter 3. Labeling of Food Produced with Genetic Engineering

§ 4091. PURPOSE

It is the purpose of this chapter to:

(1) Consumer confusion and deception. Reduce consumer confusion and deception and promote the disclosure of factual information on food labels to allow consumers to make informed decisions.

(2) Food safety. Promote food safety by allowing consumers to make informed dietary decisions when purchasing food, since:

(A) genetically engineered food is considered to be generally recognized as safe by the Food and Drug Administration despite a lack of consensus about that fact in the scientific community;

(B) scientific evidence indicates that foods produced using genetic engineering pose potential food safety and health issues related to allergenicity, antibiotic resistance, immune response, reproductive problems, and liver and kidney damage; and

(3) Protecting religious and cultural practice. Provide consumers with data from which they may make informed decisions for personal, religious, moral, cultural, or ethical reasons.

(4) Environmental impacts. Assist consumers in making informed decisions about food purchases that have potential effects on the environment, including:

(A) displacement of native flora and fauna;

(B) transfer of unnatural DNA to wild relatives and organic crops;

(C) creation of herbicide-resistant "super weeds" and pesticide resistant insects;

(D) ecosystem disruptions such as loss of biodiversity, increased herbicide and pesticide use, and adverse effects on nontarget insects such as butterflies.

(5) Promoting economic development. Create additional market opportunities for those producers who are not certified organic and whose products are not produced using genetic engineering and allow consumers to make informed purchasing decisions.

§ 4092. DEFINITIONS

As used in this subchapter:

(1) "Enzyme" means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

(2) "Genetic engineering" means a food or food ingredient that is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection of nucleic acid into cells or organelles; or

(B) fusion of cells (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive, or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic group, in a way that does not occur by natural multiplication or natural recombination.

(3) "In vitro nucleic acid techniques" means techniques, including recombinant DNA or ribonucleic acid (RNA) techniques, that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

(4) "Organism" means any biological entity capable of replication,

reproduction, or transferring of genetic material.

(5) "Processed food" means any food other than a raw agricultural commodity and includes any food produced from a raw agricultural commodity that has been subjected to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(6) "Processing aid" means:

(A) a substance that is added to a food during the processing of such food but that is removed in some manner from the food before the food is packaged in its finished form;

(B) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or

(C) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at levels that do not have any technical or functional effect in that finished food.

(7) "Raw agricultural commodity" means any food in its raw or natural state. It includes any fruit that is washed, colored, or otherwise treated in its unpeeled natural form prior to marketing.

§ 4093. LABELING OF FOOD PRODUCED WITH GENETIC ENGINEERING

(a) Except as set forth under section 4094 of this title, food shall be labeled as produced entirely or in part from genetic engineering if it is a product:

(1) offered for retail sale in Vermont;

(2) entirely or partially produced with genetic engineering; and

(3) entirely or partially produced with genetic engineering, but such fact is not disclosed:

(A) in the case of a raw agricultural commodity, on the package offered for retail sale, with the clear and conspicuous words, "produced from genetic engineering" on the front of the package of such commodity or in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which such commodity is displayed for sale;

(B) in the case of any processed food, in clear and conspicuous language on the front or back of the package of such food, with the words, "partially produced with genetic engineering" or "may be partially produced

with genetic engineering."

(b) Except as set forth under section 4094 of this title, a food produced entirely or in part from genetic engineering shall not be labeled on the product, in signage, or in advertising as "natural," "naturally made," "naturally grown," "all natural," or any words of similar import that would have a tendency to mislead a consumer.

§ 4094. EXEMPTIONS

The following foods shall not be subject to the labeling requirements of section 4093 of this title:

(1) Food consisting entirely of or derived entirely from an animal which has not itself been produced with genetic engineering, regardless of whether such animal has been fed or injected with any food or drug produced with genetic engineering;

(2) A raw agricultural commodity or food derived therefrom that has been grown, raised, or produced without the knowing and intentional use of food or seed produced with genetic engineering. Food will be deemed to be as described in the preceding sentence only if the person otherwise responsible for complying with the requirements of subsection 4093(a) of this title with respect to a raw agricultural commodity or food obtains, from whomever sold the commodity or food to that person, a sworn statement that such commodity or food has not been knowingly or intentionally produced with genetic engineering and has been segregated from and has not been knowingly or intentionally commingled with food that may have been produced with genetic engineering at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in the preceding sentence.

(3) Any processed food which would be subject to subsection 4093(a) of this title solely because it includes one or more processing aids or enzymes produced with genetic engineering.

(4) Any beverage that is subject to the provisions of Title 7.

(5) Until July 1, 2019, any processed food that would be subject to subsection 4093(a) of this title solely because it includes one or more ingredients that have been produced with genetic engineering, provided that:

(A) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and

(B) the processed food does not contain more than ten such ingredients.

(6) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with food or seed produced with genetic engineering, provided that such determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the department. No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) or the Grant and Feed Trade Association (GAFTA). No testing procedure shall be approved by the department unless:

(A) it is consistent with the most recent "Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods," (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and

(B) it does not rely on testing of processed foods in which no DNA is detectable.

(7) Food that has been lawfully certified to be labeled, marketed, and offered for sale as "organic" pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the United States Department of Agriculture.

(8) Food that is not packaged for retail sale and that either:

(A) is a processed food prepared and intended for immediate human consumption; or

(B) is served, sold, or otherwise provided in any restaurant or other food establishment, as defined in section 4301 of this title, that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

(9) Medical food, as that term is defined in 21 U.S.C. § 360ee(b)(3).

§ 4095. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid or in violation of the constitution or laws of the United States or in violation of the constitution or laws of Vermont, the invalidity or the violation shall not affect other provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are severable.

§ 4096. PENALTIES

A person who violates the requirements of this subchapter shall be subject

to penalty under section 4054 of this title. Notwithstanding any other provision of law, no violation of this subchapter shall give rise to any cause of action under 9 V.S.A. chapter 63.

Sec. 3. 18 V.S.A. § 4060 is amended to read:

§ 4060. MISBRANDED FOOD

A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another food.

* * *

(13) If it is labeled in violation of section 4093 of this title.

Sec. 4. EFFECTIVE DATE

In order to allow food producers time and opportunity to properly label products in accordance with this act and to avoid disruption in the supply chains of food producers, grocers, and other markets, this act shall take effect 365 days after California and two of the following other states have enacted substantially comparable requirements for the labeling of food produced from genetic engineering: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, or Rhode Island.

(Committee Vote: 10-1-1)

S. 148

An act relating to expediting development of small and micro hydroelectric projects

Rep. Krebs of South Hero, for the Committee on **Fish, Wildlife & Water Resources,** recommends that the House propose to the Senate that 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) The existing policy of the state of Vermont is to promote development and use of renewable energy projects, including hydroelectric projects.

(2) Additional capacity exists for development of hydroelectric projects in Vermont, with estimates ranging from 25 megawatts (MW) to 434 MW. The Comprehensive Energy Plan issued in December 2011 by the department

of public service (DPS) states in Sec. 5.8.2.1.1:

> Opinions differ on the amount of available hydropower that is available in Vermont. Depending on assumptions used, reports vary from 25 MW at 44 sites (estimated by the ANR [agency of natural resources] in 2008) to 434 MW at 1,291 sites (estimated in a DOE [Department of Energy] study in 2006). A 2007 study for the DPS identified more than 90 MW developable at 300 of the existing 1,200 existing dams.

(3) In a report to the general assembly entitled "The Development of Small Hydroelectric Projects in Vermont" (Jan. 9, 2008) at p. 19, ANR states that most hydroelectric projects in Vermont are smaller than five MW in capacity.

(4) Most hydroelectric projects require approval from the Federal Energy Regulatory Commission (FERC). The length and cost of the process of obtaining a FERC approval do not vary significantly with the capacity of the hydroelectric project. However, the ability of a hydroelectric project to absorb this cost decreases as the capacity of the project grows smaller.

(5) A FERC approval of a hydroelectric project may be in the form of a "license" for a limited term that is not to exceed 50 years and that may be renewed. The majority of the over 1,700 hydroelectric projects regulated by FERC are subject to limited term licenses. These licenses can apply to large hydroelectric projects such as the 15 Mile Falls Hydroelectric Project on the Connecticut River (291 MW) and to small projects such as the Gilman Dam on the Black River in Vermont (0.125 MW). Licensed projects may include "minor water power projects," which FERC defines as any existing or proposed water power project that would have a total installed generation capacity of 1.5 MW or less.

(6) A FERC approval of a hydroelectric project may be in the form of an "exemption," under which the project is exempted from some requirements of the Federal Power Act, including the limited term, but there is still an extensive application and environmental review process. These exemptions therefore are approvals in perpetuity. There are two classes of hydroelectric license "exemptions" granted by FERC:

(A) Small hydropower projects, which are five MW or less, that will be built at an existing dam, or projects that utilize a natural water feature for head or an existing project that has a capacity of five MW or less and proposes to increase capacity.

(B) Conduit exemptions for generating capacities of 15 MW or less for nonmunicipal and 40 MW or less for a municipal project. The conduit

must have been constructed primarily for purposes other than power production and be located entirely on nonfederal lands. In this context, "conduit" refers to a human-made water conveyance (e.g., an irrigation canal).

(7) In August 2010, FERC and the state of Colorado, through its energy office, entered into a memorandum of understanding "to streamline and simplify the authorization of small-scale hydropower projects."

(8) In Vermont:

(A) The state energy office is the department of public service, which among other duties advances state energy policy pursuant to the direction provided by statute.

(B) The main agency engaged in environmental regulation is the agency of natural resources (ANR), the duties and expertise of which include science-based analysis of the impacts of projects on water quality, fish, and wildlife. When a FERC license or exemption is sought for a hydroelectric project in Vermont, ANR reviews the project and determines whether to issue a certification under the Clean Water Act, 33 U.S.C. § 1341, that the project will not violate water quality standards adopted under that act.

Sec. 2. MEMORANDUM OF UNDERSTANDING; SMALL HYDROELECTRIC PROJECTS

(a) In consultation with the secretary of natural resources (the secretary), the commissioner of the department of public service (the commissioner) shall seek to enter into a memorandum of understanding (MOU) with the Federal Energy Regulatory Commission (FERC) for a program to expedite the procedures for FERC's granting approvals for projects in Vermont that constitute small conduit hydroelectric facilities and small hydroelectric power projects as defined in 18 C.F.R. § 4.30 (the MOU program). The commissioner also may seek to include minor water power projects, as defined by 18 C.F.R. § 4.30, in the MOU program. By July 15, 2012, the commissioner shall initiate with FERC the process of negotiating this MOU.

(b) In negotiating and entering into an MOU under this section, the commissioner in consultation with the secretary shall offer and agree to prescreening by the state of Vermont of hydroelectric projects participating in the MOU program.

(c) Prior to executing an MOU with FERC under this section, the commissioner shall submit a copy of the MOU, in its final form as the parties intend to execute it, to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy. The MOU may be submitted electronically to the office of legislative council,

which shall distribute it to the members of these committees.

(d) In consultation with the secretary, the commissioner is authorized to sign an MOU under this section on behalf of the department of public service, the agency of natural resources, and other state agencies and departments involved in the review of proposed hydroelectric projects in Vermont.

(e) No later than January 15, 2014 and annually by each second January 15 thereafter, the commissioner shall submit a written report to the general assembly detailing the progress of the MOU program, including an identification of each hydroelectric project participating in the program. After five hydroelectric projects participating in the program are approved and commence operation, reports filed under this subsection shall evaluate and provide lessons learned from the program, including recommendations, if any, on how to improve procedures for obtaining approval of micro hydroelectric projects (100 kilowatts capacity or less). The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be submitted under this subsection.

(f) As necessary and appropriate, the commissioner and the secretary shall seek funding from available sources to support the MOU program under this section. Inception of the MOU program shall not be contingent on receipt of such funding.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 9-0-0)

(For text see Senate Journal 3/20/2012)

S. 183

An act relating to the testing of potable water supplies

Rep. Fagan of Rutland City, for the Committee on **Fish, Wildlife & Water Resources,** recommends that the House propose to the Senate that 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 and declares that:

(1) The U.S. Environmental Protection Agency and the Vermont department of health estimate that 40 percent of Vermont residents obtain drinking water from groundwater sources.

(2) Owners of certain properties in the state with potable water supplies

from groundwater currently are not required to test the groundwater source.

(3) In adults and especially in children, consumption of contaminated groundwater can cause serious health effects, such as digestive problems, kidney problems, blue baby syndrome, and brain damage.

(4) The state lacks comprehensive groundwater quality data that could be used to develop mapping and a clearinghouse identifying groundwater contamination locations.

(5) To help mitigate the potential health effects of consumption of contaminated groundwater, the state should conduct education and outreach regarding the need for property owners to test the quality of groundwater used as potable water.

(6) The state should utilize tests of groundwater sources to identify groundwater contamination in the state so that the department of health can recommend potential treatment options.

Sec. 2. 10 V.S.A. § 1396 is amended to read:

§ 1396. RECORDS AND REPORTS

(a) Each licensee shall keep accurate records and file a report with the department and well owner on each water well constructed or serviced, including but not limited to the name of the owner, location, depth, character of rocks or earth formations and fluids encountered, and other reasonable and appropriate information the department may, by rule, require.

(b) The reports required to be filed under subsection (a) of this section shall be on forms provided by the department as follows:

(1) Each licensee classified as a water well driller shall submit a well completion report within 90 days after completing the construction of a water well.

(2) Each licensee classified as a monitoring well driller shall submit a monitoring well completion or closure report or approved equivalent within 90 days after completing the construction or closure of a monitoring well. Reporting on the construction of a monitoring well shall be limited to information obtained at the time of construction and need not include the work products of others. The filing of a monitoring well completion or closure report shall be delayed for one or more six-month periods from the date of construction upon the filing of a request form provided by the department which is signed by both the licensee and well owner.

(3), (4) [Repealed.]

(c) No report shall be required to be filed with the department if the well is

hand driven or is dug by use of a hand auger or other manual means.

(d) On or after January 1, 2013, a licensee drilling or developing a new water well for use as a potable water supply, as that term is defined in subdivision 1972(6) of this title, shall provide the owner of the property to be served by the groundwater source informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of contaminated groundwater; and

(2) recommended tests to detect specific contaminants, such as arsenic, lead, uranium, gross alpha radiation, total coliform bacteria, total nitrate or nitrite, fluoride, and manganese.

Sec. 3. 18 V.S.A. § 501b is amended to read:

§ 501b. CERTIFICATION OF LABORATORIES

(a) The commissioner may certify a laboratory that meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent to perform the testing and monitoring:

(1) required under 10 V.S.A. chapter 56 and the federal Safe Drinking Water Act ~~if such laboratory meets the standards currently in effect of the National Environmental Laboratory Accreditation Conference and is accredited by an approved National Environmental Laboratory Accreditation Program accrediting authority or its equivalent~~; and

(2) of water from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6).

(b)(1) The commissioner may by order suspend or revoke a certificate granted under this section, after notice and opportunity to be heard, if the commissioner finds that the certificate holder has:

(A) submitted materially false or materially inaccurate information; or

(B) violated any material requirement, restriction or condition of the certificate; or

(C) violated any statute, rule or order relating to this title.

(2) The order shall set forth what steps, if any, may be taken by the certificate holder to relieve the holder of the suspension or enable the certificate holder to reapply for certification if a previous certificate has been

revoked.

(c) A person may appeal the suspension or revocation of the certificate to the board under section 128 of this title.

* * *

(f) A laboratory certified to conduct testing of water supplies from a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), shall submit the results of groundwater analyses to the department of health and the agency of natural resources in a format required by the department of health.

Sec. 4. 27 V.S.A. § 616 is added to read:

§ 616. GROUNDWATER SOURCE TESTING; DISCLOSURE OF INFORMATIONAL MATERIAL

(a) Disclosure of potable water supply informational material. For a contract for the conveyance of real property with a potable water supply, as that term is defined in 10 V.S.A. § 1972(6), that is not served by a public water system, as that term is defined in 10 V.S.A. § 1671(5), executed on or after January 1, 2013, the seller shall, within 72 hours of the execution provide the buyer with informational materials developed by the department of health regarding:

(1) the potential health effects of the consumption of contaminated groundwater; and

(2) the availability of test kits provided by the department of health.

(b) Marketability of title. Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

Sec. 5. DEPARTMENT OF HEALTH; EDUCATION AND OUTREACH ON SAFE DRINKING WATER

The department of health, after consultation with the agency of natural resources, shall revise and update its education and outreach materials regarding the potential health effects of contaminants in groundwater sources of drinking water in order to improve citizen access to such materials and to increase awareness of the need to conduct testing of groundwater sources. In revising and updating its education and outreach materials, the department shall update the online safe water resource guide by incorporating the most current information on the health effects of contaminants, treatment of contaminants, and causes of contamination and by directly linking users to the department of health contaminant fact sheets.

Sec. 6. EFFECTIVE DATE

This act shall take effect on January 1, 2013.

(Committee vote: 7-1-1)

(For text see Senate Journal 3/28/2012)

S. 202

An act relating to regulation of flood hazard areas, river corridors, and stream alteration

Rep. Deen of Westminster, for the Committee on **Fish, Wildlife & Water Resources,** recommends that the House propose to the Senate that the bill be amended by striking all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. chapter 32 is amended to read:

CHAPTER 32. FLOOD HAZARD AREAS

§ 751. PURPOSE

The purpose of this chapter is to minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding; to ensure that the development of the flood hazard areas of this state is accomplished in a manner consistent with the health, safety and welfare of the public; ~~to provide state assistance to local government units in management of flood hazard areas;~~ to coordinate federal, state, and local management activities for flood hazard areas; to encourage local government units to manage flood hazard areas and other flood-prone lands; to provide state assistance to local government units in management of flood-prone lands; to comply with National Flood Insurance Program requirements for the regulation of development; to authorize adoption of state rules for management of uses exempt from municipal regulation in a flood hazard area; to maintain the ~~wise~~ agricultural use of flood-prone lands consistent with the National Flood Insurance Program; to carry out a comprehensive statewide flood hazard area management program for the state in order to ~~make the state and units of local government eligible~~ ensure eligibility for flood insurance under the requirements of the ~~federal department of housing and urban development in administering Title XIII of the Housing and Urban Development Act of 1968~~ National Flood Insurance Program.

§ 752. DEFINITIONS

For the purpose of this chapter:

(1) "Agency" means the agency of natural resources.

(2) "Development," for the purposes of flood hazard area management and regulation, shall have the same meaning as "development" under 44 C.F.R. § 59.1.

(3) "Flood hazard area" ~~means an area which would be inundated in a flood of such severity that the flood would be statistically likely to occur once in every hundred years. In appropriate circumstances this might be the 1927 or the 1973 flood. In delineating any flood hazard area for the one hundred year flood based upon prior floods, flood control devices such as, but not limited to dams, canals, and channel work should be considered in the delineation~~ shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

~~(3)~~(4) "Flood proofing" shall have the same meaning as "flood proofing" under 44 C.F.R. § 59.1.

(5) "Floodway" ~~means the channel of a watercourse and adjacent land areas which are required to carry and discharge the one hundred year flood within a regulated flood hazard area without substantially increasing the flood heights delineation~~ shall have the same meaning as "regulatory floodway" under 44 C.F.R. § 59.1.

~~(4) "Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water and sanitary facilities, structures and contents of buildings delineation.~~

~~(5)~~(6) "Legislative body" means the ~~board of selectmen~~ selectboard, trustees, mayor, city council, and ~~board of aldermen~~ alderboard of a municipality.

~~(6)~~(7) "Municipality" means any town, city, or incorporated village.

(8) "Uses exempt from municipal regulation" means land use or activities that are exempt from municipal land use regulation under 24 V.S.A. chapter 117.

~~(7)~~(9) ~~"Obstruction" means any natural or artificial condition including but not limited to, real estate which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by the water, or so situated that the flow of the water might carry it downstream to the damage of life or property~~ "National Flood Insurance Program" means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

~~(8)~~(10) "Regional planning commission" means the regional planning commission of which a municipality is a member or would be a member based

upon its location.

(11) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in section 1422 of this title, and for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

~~(9)~~(12) "Secretary" means the secretary of ~~the agency of~~ natural resources or the secretary's duly authorized representative.

§ 753. FLOOD HAZARD AREAS; COOPERATION; MAPPING

(a) Cooperation to secure flood insurance. ~~To meet the objective of this chapter and the requirements of 24 V.S.A. § 4412, the designation and management of flood hazard areas shall adhere to the following procedure and schedule. All~~ The secretary and all municipalities, regional planning commissions, and departments and agencies of state government shall mutually cooperate to ~~these ends~~ achieve the purposes of this chapter and to secure flood ~~plain~~ insurance for municipalities and the state of Vermont. All correspondence sent to a municipality pursuant to this chapter shall be sent to the municipal clerk, the municipal manager, if one exists, the legislative body, ~~and~~ the planning commission, and the conservation commission, if one exists. Copies of this correspondence shall be sent to the regional planning commission~~,~~ and the agency of commerce and community development~~, and the state planning office~~.

(b) Notice of designation of flood hazard areas; maps. The secretary shall, as the information becomes available, provide each municipality with a designation of flood hazard areas. The designation shall include a map or maps.

(c) Procedure to authorize review of municipal permit applications. The secretary shall establish a procedure for authorizing a representative of a municipality or a regional planning commission to conduct the review required under 24 V.S.A. § 4424(a)(2)(D), including eligibility requirements for authorization to conduct permit application review and an approved process or list of approved certifications that the secretary shall accept as proof of expertise in the field of floodplain management.

§ 754. FLOOD HAZARD AREA RULES; USES EXEMPT FROM MUNICIPAL REGULATION

(a) Rulemaking authority.

(1) On or before March 15, 2014, the secretary shall adopt rules pursuant to 3 V.S.A. chapter 25 that establish requirements for the issuance and enforcement of permits applicable to uses exempt from municipal regulation that are located within a flood hazard area of a municipality that has adopted a flood hazard bylaw or ordinance under 24 V.S.A. chapter 117.

(2) The secretary shall not adopt rules under this subsection that regulate agricultural activities without the consent of the secretary of agriculture, food and markets, provided that the secretary of agriculture, food and markets shall not withhold consent under this subdivision when lack of such consent would result in the state's noncompliance with the National Flood Insurance Program.

(3) The secretary shall seek the guidance of the Federal Emergency Management Agency in developing and drafting the rules required by this section in order to ensure that the rules are sufficient to meet eligibility requirements for the National Flood Insurance Program.

(b) Required rulemaking content. The rules shall:

(1) set forth the requirements necessary to ensure uses exempt from municipal regulation are regulated by the state in order to comply with the regulatory obligations set forth under the National Flood Insurance Program.

(2) be designed to ensure that the state and municipalities meet community eligibility requirements for the National Flood Insurance Program.

(3) require that the secretary provide notice to a municipality in which a use exempt from municipal regulation will occur of an application received under this section and a copy of the permit issued, unless a use is authorized to occur without notification of or reporting to the secretary.

(c) Discretionary rulemaking. The rules may establish requirements that exceed the requirements of the National Flood Insurance Program for uses exempt from municipal regulation.

(d) General permit. The rules authorized by this section may establish requirements for a general permit to implement the requirements of this section, including authorization under the general permit to conduct a specified use exempt from municipal regulation without notifying or reporting to the secretary or an agency delegated under subsection (i) of this section.

(e) Consultation with interested parties. Prior to submitting the rules required by this section to the secretary of state under 3 V.S.A. § 838, the secretary shall solicit the recommendations of and consult with affected and interested persons and entities such as: the secretary of commerce and community development; the secretary of agriculture, food and markets; the secretary of transportation; the commissioner of financial regulation;

representatives of river protection interests; representatives of fishing and recreational interests; representatives of the banking industry; representatives of the agricultural community; the regional planning commissions; municipal interests; and representatives of municipal associations.

(f) Permit requirement. Beginning July 1, 2014, no person shall commence or conduct a use exempt from municipal regulation in a flood hazard area in a municipality that has adopted a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 without a permit issued under the rules required under subsection (a) of this section by the secretary or by a state agency delegated permitting authority under subsection (g) of this section.

(g) Delegation.

(1) The secretary may delegate to another state agency the authority to implement the rules adopted under this section, to issue a permit under subsection (h) of this section, and to enforce the rules and a permit.

(2) A memorandum of understanding shall be entered into between the secretary and a delegated state agency for the purpose of specifying implementation of requirements of this section and the rules adopted under this section, issuance of a permit or coverage under a general permit under this section, and enforcement of the rules and permit required by this section.

(3) Prior to entering a memorandum of understanding, the secretary shall post the proposed memorandum of understanding on its website for 30 days for notice and comment. When the memorandum of understanding is posted, it shall include a summary of the proposed memorandum; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. A final copy of a memorandum of understanding entered into under this section shall be sent to the chairs of the house and senate committees on natural resources and energy, the house committee on fish, wildlife and water resources, and any other committee that has jurisdiction over an agency that is a party to the memorandum of understanding.

(h) Municipal authority. This section and the rules adopted under it shall not prevent a municipality from adopting substantive requirements for development in a flood hazard area bylaw or ordinance under 24 V.S.A. chapter 117 that are more stringent than the rules required by this section, provided that the bylaw or ordinance shall not apply to uses exempt from municipal regulation.

§ 755. MUNICIPAL EDUCATION; MODEL FLOOD HAZARD AREA BYLAW OR ORDINANCE

(a) Education and assistance. The secretary, in consultation with regional planning commissions, shall provide ongoing education, technical assistance, and guidance to municipalities regarding the requirements under 24 V.S.A. chapter 117 necessary for compliance with the National Flood Insurance Program.

(b) Model flood hazard area bylaw or ordinance. The secretary shall create and make available to municipalities a model flood hazard area bylaw or ordinance for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaw or ordinance shall set forth the minimum provisions necessary to meet the requirements of the National Flood Insurance Program. The model bylaw may include alternatives that exceed the minimum requirements for compliance with the National Flood Insurance Program in order to allow a municipality to elect whether it wants to adopt the minimum requirement or an alternate requirement that further minimizes the risk of harm to life, property, and infrastructure from flooding.

(c) Assistance to municipalities with no flood hazard area bylaw or ordinance. The secretary, in consultation with municipalities, municipal organizations, and regional planning commissions, shall provide education and technical assistance to municipalities that lack a flood hazard area bylaw or ordinance in order to encourage adoption of a flood hazard area bylaw or ordinance that qualifies the municipality for the National Flood Insurance Program.

* * * Stream Alteration; Emergency Activities * * *

Sec. 2. 10 V.S.A. § 1002 is amended to read:

§ 1002. DEFINITIONS

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Artificial regulation of stream flow" means the intermittent or periodic manipulation of water levels and the intermittent or periodic regulation of discharge of water into the stream below the dam.

(2) "Banks" means that land area immediately adjacent to the bed of the stream, which is essential in maintaining the integrity thereof.

(3) "Bed" means the maximum area covered by waters of the stream for not less than 15 consecutive days in one year.

(4) "Board" means the natural resources board.

(5) "Cross section" means the entire channel to the top of the banks.

(6) "Dam" applies to any artificial structure on a stream or at the outlet

of a pond or lake, which is utilized for holding back water by ponding or storage together with any penstock, flume, piping or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.

(7) "Department" means the department of environmental conservation.

(8) ~~[Repealed.]~~ "Instream material" means:

(A) all gradations of sediment from silt to boulders;

(B) ledge rock; or

(C) large woody debris in the bed of a watercourse or within the banks of a watercourse.

(9) "Person" means any individual; partnership; company; corporation; association; unincorporated association; joint venture; trust; municipality; the state of Vermont or any agency, department, or subdivision of the state, any federal agency, or any other legal or commercial entity.

(10) "Watercourse" means any perennial stream. "Watercourse" shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.

(11) "Secretary" means the secretary of the agency of natural resources, or the secretary's duly authorized representative.

(12) "Berm" means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title.

(13) "Large woody debris" means any piece of wood within a watercourse with a diameter of 10 or more inches and a length of 10 or more feet that is detached from the soil where it grew.

Sec. 3. 10 V.S.A. § 1021 is amended to read:

§ 1021. ALTERATION PROHIBITED; EXCEPTIONS

(a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or of designated outstanding resource waters, within or along the boundaries of this state either by movement, fill, or ~~by~~ excavation of ten cubic yards or more of instream material in any year, unless authorized by the secretary. A person shall not establish or construct a berm in a flood hazard area or river corridor, as those terms are defined in subdivisions 752(3) and (11) of this title, unless permitted by the secretary or constructed as

an emergency protective measure under subsection (b) of this section.

(b) This subchapter shall not apply to emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both. The protective measures shall:

(1) be limited to the minimum amount necessary to remove imminent threats to life or property~~, shall~~;

(2) have prior approval from a member of the municipal legislative body ~~and shall~~;

(3) be reported to the secretary by the legislative body within ~~72~~ 24 hours after the onset of the emergency; and

(4) be implemented in a manner consistent with the rules adopted under section 1027 of this title regarding stream alteration during emergencies.

* * *

Sec. 4. 10 V.S.A. § 1023 is amended to read:

§ 1023. INVESTIGATION, PERMIT

(a) Upon receipt of an application, the secretary shall cause an investigation of the proposed change to be made. Prior to making a decision, a written report shall be made by the secretary concerning the effect of the proposed change on the watercourse. The permit shall be granted, subject to such conditions determined to be warranted, if it appears that the change:

(1) will not adversely affect the public safety by increasing flood or fluvial erosion hazards;

(2) will not significantly damage fish life or wildlife;

(3) will not significantly damage the rights of riparian owners; and

(4) in case of any waters designated by the board as outstanding resource waters, will not adversely affect the values sought to be protected by designation.

(b) The reasons for the action taken under this section shall be set forth in writing to the applicant. Notice of the action of the secretary shall also be sent to the selectmen of the town in which the proposed change is located, and to each owner of property which abuts or is opposite the land where the alteration is to take place.

(c) If the local legislative body and planning commission determine in writing by majority vote of each that ~~gravel~~ instream material in a watercourse is threatening life or property, due to increased potential for flooding, and that

the removal of ~~gravel~~ instream material is necessary to prevent the threat to life or property, and if a complete permit application has been submitted to the secretary, requesting authority to remove ~~gravel~~ instream material in the minimum amount necessary to remove threats to life or property, the local legislative body and the planning commission may request an expedited review of the complete permit application by notifying the secretary and providing copies of their respective decisions. If the secretary fails to approve or deny the application within 45 calendar days of receipt of notice of the decisions, the application shall be deemed approved and a permit shall be deemed to have been granted. ~~Gravel~~ Instream material removed shall be used only for public purposes, and cannot be sold, traded, or bartered. The fact that an application for a permit has been filed under this subsection shall not limit the ability to take emergency measures under subsection 1021(b) of this title. For the purposes of section 1024 of this title, if a permit has been deemed to have been granted under this subsection, that permit shall constitute a decision of the secretary.

(d)(1) The secretary shall conduct training programs or seminars regarding how to conduct stream alteration, water quality review, stormwater discharge, fish and wildlife habitat preservation, and wastewater discharge activities necessary during:

(A) a state of emergency declared under 20 V.S.A. chapter 1;

(B) flooding; or

(C) other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property.

(2) The secretary shall make the training programs or seminars available to agency employees in an agency division other than the watershed management division, employees of other state and federal agencies, regional planning commission members and employees, municipal officers and employees, and state, municipal, and private contractors.

(f) The secretary is authorized to enter into reciprocal mutual aid agreements or compacts with other states to assist the secretary and the state in addressing watershed, river management, and transportation system issues that arise when a state of emergency is declared under 20 V.S.A. chapter 1.

Sec. 5. 10 V.S.A. § 1027 is added to read:

§ 1027. RULEMAKING; EMERGENCY PERMIT

(a) The secretary may adopt rules to implement the requirements of this subchapter.

(b) The secretary shall adopt rules regarding the permitting of stream

alteration activities under this subchapter during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stream alteration emergency permit or receive coverage under a general stream alteration emergency permit.

(1) A rule adopted under this subsection shall establish:

(A) criteria for coverage under an individual permit and criteria for coverage under a general emergency permit;

(B) criteria for different categories of activities covered under a general emergency permit, including the construction of temporary berms as emergency protective measures;

(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(D) requirements for coordination with state and municipal authorities; and

(E) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the secretary after initiation or completion of the activity.

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

(B) authorize an activity that does not require reporting to the secretary; or

(C) authorize an activity that requires reporting to the secretary after initiation or completion of an activity.

Sec. 6. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

* * *

(k) The secretary may adopt rules regulating stormwater discharges and stormwater infrastructure repair or maintenance during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or

private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit.

(1) A rule adopted under this subsection shall establish:

(A) criteria for coverage under an individual or general emergency permit;

(B) criteria for different categories of activities covered under a general emergency permit;

(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;

(D) requirements for coordination with state and municipal authorities;

(E) requirements that the secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the secretary after initiation or completion of the activity.

(2) A rule adopted under this section may:

(A) establish reporting requirements for categories of activities;

(B) authorize an activity that does not require reporting to the secretary; or

(C) authorize an activity that requires reporting to the secretary after initiation or completion of an activity.

Sec. 6a. REPORT ON USE OF VOLUNTARY STORMWATER MANAGEMENT CREDITS FOR HIGH ELEVATION PROJECTS

(a) ANR report on voluntary stormwater management credits. On or before January 15, 2014, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the effectiveness of the use of voluntary stormwater management credits to permit discharges of stormwater from renewable energy projects located at an elevation above 1,500 feet. The report shall:

(1) Summarize available national data regarding the efficacy of alternative stormwater treatment practices similar to the voluntary stormwater

management credits;

(2) Evaluate the efficacy of the science and design of the management practices authorized under the voluntary stormwater management credits, including the impact of management practices authorized under the voluntary stormwater management credits on the vegetation and trees, fragile ecosystems, shallow soils, and sensitive streams found in high-elevation settings; and

(3) Recommend whether the voluntary stormwater management credits should be available for the permitting of stormwater discharges from renewable energy project sites located at elevations above 1,500 feet.

(4) Analyze or estimate if financial gains are prevalent to developers who have made use of management practices authorized under the voluntary stormwater management credits.

(5) Estimate the number of acres of soil that have not been disturbed as a result of the application of management practices authorized under the voluntary stormwater management credits.

(6) Recommend whether management practices authorized under the voluntary stormwater management credits should be expanded for discharges below 1,500 feet.

(b) Consultation with interested parties. In developing the report required under subsection (a) of this section, the secretary of natural resources shall consult with interested parties, including environmental groups.

* * * River Corridor Assessment and Planning * * *

Sec. 7. 10 V.S.A. § 1421 is amended to read:

§ 1421. POLICY

To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans, make rules, encourage and promote buffers adjacent to lakes, ponds, reservoirs, rivers, and streams of the state, encourage and promote protected river corridors adjacent to rivers and streams of the state, and authorize municipal shoreland and river corridor protection zoning bylaws for the efficient use, conservation, development, and protection of the state's water resources. The purposes of the rules shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish, and aquatic life; control building sites, placement of structures, and land uses; reduce fluvial erosion hazards; reduce property loss and damage; preserve shore cover, natural beauty, and natural stability; and

provide for multiple use of the waters in a manner to provide for the best interests of the citizens of the state.

Sec. 8. 10 V.S.A. § 1422 is amended to read:

§ 1422. DEFINITIONS

In this chapter, unless the context clearly requires otherwise:

(1) "Agency" means the agency of natural resources.

* * *

(7) "Secretary" means the secretary of natural resources or the secretary's duly authorized representative.

* * *

(12) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel~~,~~ and that is necessary ~~to maintain or restore fluvial~~ for the natural maintenance or natural restoration of dynamic equilibrium conditions and ~~minimize~~ for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

(13) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(14) "Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(15) "Flood hazard area" shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1.

(16) "Fluvial erosion" means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(17) "Geomorphic condition" means the degree of departure from the dimensions, pattern, and profile associated with a naturally stable channel representing the unique dynamic equilibrium condition of a river segment.

(18) "Infrastructure" means public and private buildings, roads, and public works, including public and private buildings; state and municipal highways and roads; bridges; sidewalks and other traffic enhancements;

culverts; private roads; public and private utility construction, state and municipal public works, cemeteries, and public parks and fields.

(19) "River corridor protection area" means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

(20) "Sensitivity" means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.

Sec. 9. 10 V.S.A. § 1427 is amended to read:

§ 1427. RIVER CORRIDORS AND BUFFERS

(a) River corridor and floodplain management program. The secretary of natural resources shall establish a river corridor and floodplain management program to aid and support the municipal adoption of river corridor, floodplain, and buffer bylaws. Under the river corridor and floodplain management program, the secretary shall:

(1) ~~upon request, provide municipalities with maps of designated river corridors within the municipality. A river corridor map provided to a municipality shall delineate a recommended buffer that is based on site-specific conditions. The secretary shall provide maps under this subdivision based on a priority schedule established by the secretary in procedure; and~~ assess the geomorphic condition and sensitivity of the rivers of the state and identify where the sensitivity of a river poses a probable risk of harm to life, property, or infrastructure.

(2) delineate and map river corridors based on the river sensitivity assessments required under subdivision (1) of this subsection according to a priority schedule established by the secretary by procedure; and

(3) develop recommended best management practices for the management of river corridors, floodplains, and buffers.

(b) River sensitivity assessment; secretary's discretion. ~~No later than February 1, 2011, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives to municipalities through existing grants and pass-through funding programs which encourage municipal adoption and implementation of zoning bylaws that protect river corridors and buffers~~ Notwithstanding the schedule established by the secretary under subdivision (a)(2) of this section, the

secretary may complete a sensitivity assessment for a river if, in the secretary's discretion, the sensitivity of a river and the risk it poses to life, property, and infrastructure require an expedited assessment.

(c) ~~No later than February 1, 2011, the agency of natural resources shall define minimum standards for municipal eligibility for any financial incentives established under subsection (b) of this section~~ Municipal consultation during river assessment. Prior to and during an assessment of river sensitivity required under subsection (a) of this section, the secretary shall consult with the legislative body or designee of municipalities and the regional planning commissions in the area in which a river is located.

Sec. 10. 10 V.S.A. § 1428 is added to read:

§ 1428. RIVER CORRIDOR PROTECTION

(a) River corridor maps. Upon completion of a sensitivity assessment for a river or river segment under section 1427 of this title, the secretary shall provide to each municipality and regional planning commission in which the river or river segment is located a copy of the sensitivity assessment and a river corridor map for the municipality and region. A river corridor map provided to a municipality and regional planning commission shall identify floodplains, river corridor protection areas, flood hazard areas, and other areas or zones indicated on a Federal Emergency Management Agency flood insurance rate map, and shall recommend best management practices, including vegetated buffers, based on site-specific conditions. The secretary shall post a copy of the sensitivity assessment and river corridor map to the agency of natural resources' website. A municipality with a mapped river or river segment shall post a copy of a sensitivity assessment and river corridor map received under this subsection in the municipal offices and on the municipality's website, if the municipality regularly updates its website . A regional planning commission shall post a sensitivity assessment or river corridor map received under this subsection in the commission's offices and on the commission's website. When a sensitivity assessment or a river corridor map is provided to a municipality, provided to a regional planning commission, or posted on the agency website, the agency shall provide all information, including the supportive data, in a digital format.

(b) River corridor protection area bylaw. The secretary shall create and make available to municipalities several alternative model river corridor protection area bylaws or ordinances for potential adoption by municipalities pursuant to 24 V.S.A. chapter 117 or 24 V.S.A. § 2291. The model bylaws or ordinances shall use terminology consistent with the National Flood Insurance Program regulations.

(c) Flood resilient communities program; incentives. No later than February 1, 2013, the secretary of administration, after consultation with the state agencies of relevant jurisdiction, shall offer financial incentives through a flood resilient communities program. The program shall list the existing financial incentives under state law for which municipalities may apply for financial assistance, when funds are available, for municipal adoption and implementation of bylaws under 24 V.S.A. chapter 117 that protect river corridors and floodplains. The secretary of natural resources shall summarize minimum standards for municipal eligibility for any financial incentives established under this subsection.

* * * Municipal Planning; Flood Hazard and River Corridor Protection Areas * * *

Sec. 11. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

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

* * *

(8) "Flood hazard area" for purposes of section 4424 of this title ~~means the land subject to flooding from the base flood. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year~~ shall have the same meaning as "area of special flood hazard" under 44 C.F.R. § 59.1. Further, with respect to flood, river corridor protection area, and other hazard area regulation pursuant to this chapter, the following terms shall have the following meanings:

(A) "Floodproofing" ~~means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures~~ shall have the same meaning as "flood proofing" under 44 C.F.R. § 59.1.

(B) "Floodway" ~~means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one foot~~ shall have the same meaning as "regulatory floodway" under 44 C.F.R. § 59.1.

(C) "Hazard area" means land subject to landslides, soil erosion, fluvial erosion, earthquakes, water supply contamination, or other natural or human-made hazards as identified within a "local mitigation plan" enacted

under section 4424 of this title and in conformance with and approved pursuant to the provisions of 44 C.F.R. ~~section~~ § 201.6.

(D) "National Flood Insurance Program" means the National Flood Insurance Program under 42 U.S.C. chapter 50 and implementing federal regulations in 44 C.F.R. parts 59 and 60.

(E) "New construction" means construction of structures or filling commenced on or after the effective date of the adoption of a community's flood hazard bylaws.

~~(E)~~(F) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. However, the term does not include either of the following:

(i) Any project or improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

(ii) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

(G) "Equilibrium condition" means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

(H) "Fluvial erosion" means the erosion or scouring of riverbeds and banks during high flow conditions of a river.

(I) "River" means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. "River" does not mean constructed drainageways, including water bars, swales, and roadside ditches.

(J) "River corridor" means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the agency of natural resources in accordance with river corridor protection procedures.

(K) "River corridor protection area" means the area within a delineated river corridor subject to fluvial erosion that may occur as a river establishes and maintains the dimension, pattern, and profile associated with its

dynamic equilibrium condition and that would represent a hazard to life, property, and infrastructure placed within the area.

* * *

Sec. 12. 24 V.S.A. § 4411(b) is amended to read:

(b) All zoning bylaws shall apply to all lands within the municipality other than as specifically limited or exempted in accordance with specific standards included within those bylaws and in accordance with the provisions of this chapter. The provisions of those bylaws may be classified so that different provisions may be applied to different classes of situations, uses, and structures and to different and separate districts of the municipality as may be described by a zoning map made part of the bylaws. The land use map required pursuant to subdivision 4382(a)(2) of this title of any municipality may be designated as the zoning map except in cases in which districts are not deemed by the planning commission to be described in sufficient accuracy or detail by the municipal plan land use map. All provisions shall be uniform for each class of use or structure within each district, except that additional classifications may be made within any district for any or all of the following:

(1) To make transitional provisions at and near the boundaries of districts.

(2) To regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.

(3) To regulate, restrict, or prohibit uses or structures at or near any of the following:

* * *

(G) Flood, ~~fluvial erosion~~ or other hazard areas and other places having a special character or use affecting or affected by their surroundings.

(H) River corridors, river corridor protection areas, and buffers, as ~~those terms are~~ the term "buffer" is defined in 10 V.S.A. ~~§§~~ § 1422 ~~and 1427~~.

* * *

Sec. 13. 24 V.S.A. § 4424 is amended to read:

§ 4424. SHORELANDS; RIVER CORRIDOR PROTECTION AREAS; FLOOD OR HAZARD AREA; SPECIAL OR FREESTANDING BYLAWS

(a) Any municipality may adopt freestanding bylaws under this chapter to address particular hazard areas in conformance with the municipal plan or, for the purpose of adoption of a flood hazard area bylaw, a local hazard mitigation

plan approved under 44 C.F.R. § 201.6, including the following, which may also be part of zoning or unified development bylaws:

(1) Bylaws to regulate development and use along shorelands.

(2) Bylaws to regulate development and use in flood areas, river corridor protection areas, or other hazard areas. The following shall apply if flood or other hazard area bylaws are enacted:

(A) Purposes.

(i) To minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public service that result from flooding, landslides, erosion hazards, earthquakes, and other natural or human-made hazards.

(ii) To ensure that the design and construction of development in flood, river corridor protection, and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area or that minimizes the potential for fluvial erosion and loss or damage to life and property in a river corridor protection area.

(iii) To manage all flood hazard areas designated pursuant to 10 V.S.A. § 753.

(iv) To make the state and municipalities eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

(B) Contents of bylaws. Flood, river corridor protection area, and other hazard area bylaws may:

(i) Contain standards and criteria that prohibit the placement of damaging obstructions or structures, the use and storage of hazardous or radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions.

(ii) Require flood, fluvial erosion, and hazard protection through elevation, floodproofing, disaster preparedness, hazard mitigation, relocation, or other techniques.

(iii) Require adequate provisions for flood drainage and other emergency measures.

(iv) Require provision of adequate and disaster-resistant water and wastewater facilities.

(v) Establish other restrictions to promote the sound management and use of designated flood, river corridor protection, and other hazard areas.

(vi) Regulate all land development in a flood hazard area, river corridor protection area, or other hazard area, except for development that is regulated under 10 V.S.A. § 754.

(C) Effect on zoning bylaws. Flood or other hazard area bylaws may alter the uses otherwise permitted, prohibited, or conditional in a flood or other hazard area under a bylaw, as well as the applicability of other provisions of that bylaw. Where a flood hazard bylaw, a hazard area bylaw, or both apply along with any other bylaw, compliance with the flood or other hazard area bylaw shall be prerequisite to the granting of a zoning permit. Where a flood hazard area bylaw or a hazard area bylaw but not a zoning bylaw applies, the flood hazard and other hazard area bylaw shall be administered in the same manner as are zoning bylaws, and a flood hazard area or hazard area permit shall be required for land development covered under the bylaw.

(D)(i) Mandatory provisions. All flood and other hazard area bylaws shall provide that no permit for new construction or substantial improvement shall be granted for a flood or other hazard area until after both the following:

~~(i)~~(I) A copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel to the agency of natural resources or its designee.

~~(ii)~~(II) Either 30 days have elapsed following the mailing or the agency or its designee delivers comments on the application.

(ii) The agency of natural resources may delegate to a qualified representative of a municipality with a flood hazard area bylaw or ordinance or to a qualified representative for a regional planning commission the agency's authority under this subdivision (a)(2)(D) to review and provide technical comments on a proposed permit for new construction or substantial improvement in a flood hazard area. Comments provided by a representative delegated under this subdivision (a)(2)(D) shall not be binding on a municipality.

~~(E) Special exceptions. The appropriate municipal panel, after public hearing, may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard area, subject to compliance with applicable federal and state laws and regulations, and provided that the following criteria are met:~~

~~(i) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure is required for the~~

~~continued economically feasible operation of a nonresidential enterprise.~~

~~(ii) The appropriate municipal panel finds that the repair, relocation, or enlargement of the nonconforming structure will not increase flood levels in the regulatory floodway, increase the risk of other hazard in the area, or threaten the health, safety, and welfare of the public or other property owners.~~

~~(iii) The permit so granted states that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood or other hazard area, does not conform to the bylaws pertaining to that area, and will be maintained at the risk of the owner.~~

(b) A municipality may adopt a flood hazard area, river corridor protection area, or other hazard area regulation that meets the requirements of this section by ordinance under subdivision 2291(25) of this title.

Sec. 14. 24 V.S.A. § 4469 is amended to read:

§ 4469. APPEAL; VARIANCES

(a) On an appeal under section 4465 or 4471 of this title or on a referral under subsection 4460(e) of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the environmental division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public

welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

(b) On an appeal under section 4465 or 4471 of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the board of adjustment or development review board or the environmental division may grant that variance and render a decision in favor of the appellant if all the following facts are found, and the finding is specified in its decision:

(1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaws.

(2) The hardship was not created by the appellant.

(3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(4) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaws and from the plan.

(c) In rendering a decision in favor of an appellant under this section, a board of adjustment or development review board or the environmental division may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this chapter and the plan of the municipality then in effect.

(d) A variance authorized in a flood hazard area shall meet applicable federal and state rules for compliance with the National Flood Insurance Program.

Sec. 15. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

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

* * *

(25) To regulate by means of an ordinance or bylaw development in a flood hazard area, river corridor protection area, or other hazard area consistent with the requirements of section 4424 of this title and the National Flood Insurance Program.

Sec. 16. 10 V.S.A. § 6086(c) is amended to read:

(c) A permit may contain such requirements and conditions as are allowable proper exercise of the police power and which are appropriate within the respect to subdivisions (1) through (10) of subsection (a), including but not limited to those set forth in 24 V.S.A. §§ 4414(4), 4424(a)(2), 4414(1)(D)(i), 4463(b), and 4464, the dedication of lands for public use, and the filing of bonds to insure compliance. The requirements and conditions incorporated from Title 24 may be applied whether or not a local plan has been adopted. General requirements and conditions may be established by rule of the land use panel.

Sec. 17. ANR REPORT ON FINANCIAL INCENTIVES FOR THE FLOOD RESILIENT COMMUNITIES PROGRAM

As part of the biennial report required by Sec. 8 of No. 110 of the Acts of the 2009 Adj. Sess. (2010), the secretary of natural resources shall identify existing state financing programs or incentives that could be amended so that such programs or incentives could be available to municipalities under the flood resilient communities program for the purpose of flood hazard and river corridor protection planning.

Sec. 18. IMPLEMENTATION; TRANSITION

(a)(1) Prior to the secretary of natural resources' adopting rules under 10 V.S.A. § 754 for the regulation in flood hazard areas of uses exempt from municipal regulation:

(A) state- or community-owned and -operated institutions and facilities shall not be constructed within a flood hazard area, as that term is defined in 10 V.S.A. § 752(3), unless such construction conforms with the development requirements of the National Flood Insurance Program; and

(B) the following new uses or new construction shall not be permitted or certified for construction unless such construction conforms with the development requirements of the National Flood Insurance Program:

(i) a school;

(ii) a hospital;

(iii) a solid waste or hazardous waste facility; or

(v) a power-generating plant or transmission facility regulated

under 30 V.S.A. § 248.

(2) Noncompliance with the requirements of this section shall not affect the marketability of title of a property.

(b) The consolidated executive branch fee report and request to be submitted on or before the third Tuesday of January 2013 pursuant to 32 V.S.A. § 605 shall include the agency of natural resources' proposed fee or fees to support the agency's services provided under Sec. 1 of this act in 10 V.S.A. § 754 (flood hazard area rules). The proposed fee shall be sufficient to pay for at least 20 percent of the cost to the agency of natural resources of implementing, administering, and enforcing the rules adopted under 10 V.S.A. § 754.

* * * ANR Report on State Water Quality Programs * * *

Sec. 19. AGENCY OF NATURAL RESOURCES WATER QUALITY REMEDIATION, IMPLEMENTATION, AND FUNDING REPORT

(a) Findings. The general assembly finds and declares that:

(1) Clean water is a key factor in Vermont's quality of life.

(2) Preserving, protecting, and restoring the water quality of surface waters are necessary for the clean water, recreation, economic opportunity, wildlife habitat, and ecological value that such waters provide.

(3) Restoring and maintaining river corridor, floodplain, lakeshore, wildlife habitat, and wetland functions serve to protect water quality and reduce the risk of flood hazards.

(4) The state and its regulatory agencies currently are subject to multiple requirements to respond to, remediate, and prevent water quality problems in the state, including the following:

(A) The federal Clean Water Act requires a total maximum daily load (TMDL) plan for impaired waters. Lake Champlain is impaired due to phosphorus pollution that exceeds the Vermont water quality standards. The U.S. Environmental Protection Agency (EPA) recently disapproved the Lake Champlain phosphorus TMDL. Consequently, the state will be required to amend the TMDL implementation plan in order to incorporate additional water quality measures and controls.

(B) The EPA likely will require the state to meet certain pollution control requirements for nitrogen in the Connecticut River as part of the Long Island Sound TMDL.

(C) The state is required to implement federally required TMDLs for 15 stormwater-impaired waters in the state.

(D) All waters of the state are at risk of pollution or impairment, and under state and federal law, the state is required to prevent impairment or degradation of these waters.

(5) Responding to the multiple water quality requirements to which the state is subject will require significant funding, but the state currently lacks the funding necessary to respond adequately and in a timely way to the demands for remediation and water quality protection.

(6) The development of a statewide mechanism, such as a statewide clean water utility, is necessary to address regulatory demands and to prioritize investment in water quality projects throughout the state so that the protection and improvement of water quality is achieved in the most cost-effective manner.

(7) In order to identify how the state should respond to existing and future demands to remediate and protect state surface waters, the secretary of natural resources should submit to the general assembly recommendations for addressing and funding the multiple water quality requirements to which the state is subject.

(b) Report requirement. On or before December 15, 2012, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the house and senate committees on natural resources and energy, the house and senate committees on agriculture, and the house and senate committees on transportation with recommendations on how to remediate or improve the water quality of the state's surface waters, how to implement remediation or improvement of water quality, and how to fund the remediation or improvement of water quality.

(c) Content of report. In the report required by this section, the secretary shall recommend:

(1) Funding. How to fund statewide and localized water quality remediation and conservation efforts. The secretary shall recommend funding sources or a funding mechanism or mechanisms for ongoing water quality efforts in the state. The recommendation shall address whether the state should implement a statewide assessment or fee, such as a clean water utility fee, an impervious surface fee, a Clean Water Act § 401 (33 U.S.C. § 1341) certification fee, impact fees, or other fees or charges.

(2) Administration. How to design, implement, and administer water quality programs in the state, including whether:

(A) a statewide clean water utility or similar statewide mechanism should be established to address water quality in the state;

(B) implementation of a statewide clean water utility or similar statewide mechanism is more suitable for an independent, nongovernmental entity and, if so:

(i) how an independent, nongovernmental entity would be established and administered; and

(ii) whether such an entity would need rulemaking authority in order to effectively operate and implement a water quality program.

(C) water quality programs could be effectively implemented through regional water quality utilities or similar mechanisms currently authorized under 24 V.S.A. chapters 105 and 121.

(3) Priority award. How available water quality funds should be allocated, including:

(A) whether funds should be allocated according to a science-based system that prioritizes awards to projects or programs in areas of high risk of pollution in impaired, unimpaired, or high quality waters.

(B) whether funds should be available for the development, accommodation, or planning of municipal or regional water quality utilities or mechanisms authorized under 24 V.S.A. chapters 105 and 121.

(C) how to best achieve regional equity in the distribution of water quality funds.

(D) whether additional priority points should be awarded to certain water quality projects eligible for funding from the special environmental revolving fund under 24 V.S.A. chapter 120.

(4) Agricultural water quality. After consultation with the secretary of agriculture, food and markets and the agricultural community, how regulation of agricultural runoff and application of water quality standards to agricultural operations should be implemented, including whether additional requirements, standards, technical assistance, or financial assistance is necessary to increase compliance with AAPs and whether the AAPs should be amended to require all small farms or a subset of small farms to apply nutrients according to a nutrient management plan or at a more stringent soil loss tolerance than is currently required.

(5) Urban water quality. How regulation of stormwater runoff should be managed and enforced in order to meet the Vermont water quality standards and whether additional requirements, standards, technical assistance, or financial assistance are necessary to improve the management of stormwater runoff in the state.

(6) Lake shoreland protection. How the state should work toward the restoration and protection of shorelands of lakes, including how the state should regulate development in shorelands of lakes, including whether the state should enact statewide regulation for activities within shorelands of lakes and whether any regulation of activities within shorelands should be based on site-specific criteria.

(7)(A) Critical source areas. How to respond to and remediate nutrient pollution from critical source areas. The recommendations shall:

(i) address how to define and identify critical source areas statewide, including the Lake Champlain Basin;

(ii) propose a process and provide a cost estimate for developing site-specific implementation plans to reduce discharges from critical source areas and shall summarize how tactical basin planning will be utilized in such a process.

(B) As used in this subdivision (7), "critical source area" means an area in a watershed with high potential for the release, discharge, or runoff of nutrients or pollutants to the waters of the state.

(8) Response plans or mechanism. A plan or mechanism for prioritizing state response to and remediation of water quality concerns or impairments in identified waters or watersheds, such as St. Albans Bay, including how to prioritize available funding or staffing in a manner that allows discrete water quality issues to be addressed and remediated.

(9) Implementation plan. How the recommendations or plans required under subdivisions (1) through (8) of this subsection will be implemented.

(d) Conduct of report; consultation. In developing the recommendations required by subsection (c) of this section, the secretary of the agency of natural resources shall consult with interested parties for guidance, including but not limited to: the secretary of transportation or his or her designee; the secretary of agriculture, food and markets or his or her designee; the chair of the natural resources board or his or her designee; legislators and legislative staff; representatives of environmental groups; representatives of municipalities or municipal interests; representatives of municipalities subject to the federal Clean Water Act requirements for discharges from municipal separate storm sewer systems; representatives of the agricultural community; representatives of the business community; representatives of municipal stormwater utilities or other municipal stormwater controls; representatives of engineering or consulting firms; and other interested persons or organizations relevant to completion of the report. The secretary shall warn any meeting with interested parties in fulfillment of this section by posting a notice of such a meeting to the

website of the agency of natural resources no later than seven days before the meeting.

(e) Format of report to general assembly. The report to the general assembly required by this section shall address each of the report requirements of subsection (c) of this section and may, as part of the report, include recommended draft legislation.

* * * ANR Rulemaking Authority * * *

Sec. 20. 10 V.S.A. § 905b is amended to read:

§ 905b. DUTIES; POWERS

The department shall protect and manage the water resources of the state in accordance with the provisions of this subchapter and shall:

* * *

(18) study and investigate the wetlands of the state and cooperate with municipalities, the general public, other agencies, and the board in collecting and compiling data relating to wetlands, propose to the board specific wetlands to be designated as Class I wetlands, issue or deny permits pursuant to section 6025 of this title and the rules ~~of the panel~~ authorized by this subdivision, issue wetland determinations pursuant to section 914 of this title, issue orders pursuant to section 1272 of this title, and ~~implement the rules adopted by the board governing significant wetlands~~ in accordance with 3 V.S.A. chapter 25, adopt rules to address the following:

(A) the identification of wetlands that are so significant they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values which a wetland serves:

(i) provides temporary water storage for flood water and storm runoff;

(ii) contributes to the quality of surface and groundwater through chemical action;

(iii) naturally controls the effects of erosion and runoff, filtering silt, and organic matter;

(iv) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;

(v) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;

(vi) provides stopover habitat for migratory birds;

(vii) contributes to an exemplary wetland natural community, in accordance with the rules of the secretary;

(viii) provides for threatened and endangered species habitat;

(ix) provides valuable resources for education and research in natural sciences;

(x) provides direct and indirect recreational value and substantial economic benefits; and

(xi) contributes to the open-space character and overall beauty of the landscape;

(B) the ability to reclassify wetlands, in general, or on a case-by-case basis;

(C) the protection of wetlands that have been determined under subdivision (A) or (B) of this subdivision (18) to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations by the department under this chapter; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The department shall not adopt rules that restrain agricultural activities without the consent of the secretary of agriculture, food and markets and shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of forests, parks and recreation;

* * *

Sec. 21. 10 V.S.A. § 1252 is amended to read:

§ 1252. CLASSIFICATION OF WATERS; MIXING ZONES

* * *

(b) The secretary may establish mixing zones or waste management zones as necessary in the issuance of a permit in accordance with this section and criteria established by ~~board~~ rule. ~~The board shall adopt these rules by July 1, 1994.~~ Those waters authorized under this chapter, as of July 1, 1992, to receive the direct discharge of wastes which prior to treatment contained organisms pathogenic to human beings are designated waste management zones for those discharges. Those waters that as of July 1, 1992 are Class C waters into which no direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings is authorized, shall become waste management zones for any municipality in which the waters are located that qualifies for a discharge permit under this chapter for those wastes prior to July 1, 1997.

* * *

(e) The ~~board~~ secretary shall adopt standards of water quality to achieve the purposes of the water classifications. Such standards shall be expressed in detailed water quality criteria, taking into account the available data and the effect of these criteria on existing activities, using as appropriate: (1) numerical values, (2) biological parameters; and (3) narrative descriptions. These standards shall establish limits for at least the following: alkalinity, ammonia, chlorine, fecal coliform, color, nitrates, oil and grease, dissolved oxygen, pH, phosphorus, temperature, all toxic substances for which the United States Environmental Protection Agency has established criteria values and any other water quality parameters deemed necessary by the board.

(f) The ~~board~~ secretary may issue declaratory rulings regarding these standards.

* * *

Sec. 22. 10 V.S.A. § 1253 is amended to read:

§ 1253. CLASSIFICATION OF WATERS DESIGNATED, RECLASSIFICATION

* * *

(c) On its own motion, or on receipt of a written request that the ~~board~~ secretary adopt, amend, or repeal a reclassification rule, the ~~board~~ secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify all or any portion of the affected waters in the public interest. In the course of this proceeding, the ~~board~~ secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in question. If the ~~board~~ secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, ~~it~~ he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the ~~board~~ secretary finds that it is in the public interest to change the classification of any pond, lake or reservoir designated as Class A waters by subsection (a) of this section, ~~it~~ the secretary shall so advise and consult with the department of health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water supply is affected shall construct filtration and disinfection facilities or convert to a new source of water supply.

(d) The ~~board~~ secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by ~~it~~ the board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The secretary shall revise all 17 basin plans by January 1, 2006, and update them

every five years thereafter. On or before January 1 of each year, the secretary shall report to the house committees on agriculture, on natural resources and energy, and on fish, wildlife and water resources, and to the senate committees on agriculture and on natural resources and energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the secretary shall prepare an overall management plan to ensure that the water quality standards are met in all state waters.

(e) In determining the question of public interest, the ~~board~~ secretary shall give due consideration to, and explain ~~its~~ his or her decision with respect to, the following:

* * *

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the ~~board~~ the secretary need find only that the reclassification is in the public interest.

(g) The ~~board in its~~ secretary under the reclassification rule may ~~direct the secretary to~~ grant permits for only a portion of the assimilative capacity of the receiving waters, or ~~to~~ may permit only indirect discharges from on-site disposal systems, or both.

Sec. 23. 10 V.S.A. § 1424 is amended to read:

§ 1424. USE OF PUBLIC WATERS

(a) The ~~board~~ secretary may establish rules to ~~regulate the use of the public waters by~~ implement the provisions of this chapter, including:

(1) Rules to regulate the use of public waters of the state by:

(A) Defining areas on public waters wherein certain uses may be conducted;

~~(2)~~(B) Defining the uses which may be conducted in the defined areas;

~~(3)~~(C) Regulating the conduct in these areas, including ~~but not limited to~~ the size of motors allowed, size of boats allowed, allowable speeds for boats, and prohibiting the use of motors or houseboats;

~~(4)~~(D) Regulating the time various uses may be conducted.

(2) Rules to govern the surface levels of lakes, ponds, and reservoirs that are public waters of the state.

(b) The ~~board~~ secretary in establishing rules under subdivision (a)(2) of this section shall consider the size and flow of the navigable waters, the predominant use of adjacent lands, the depth of the water, the predominant use of the waters prior to regulation, the uses for which the water is adaptable, the

availability of fishing, boating, and bathing facilities, the scenic beauty, and recreational uses of the area.

(c) The ~~board~~ secretary shall attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state. To the extent possible, the ~~board~~ secretary shall provide for all normal uses.

(d) ~~If another agency has jurisdiction over the waters otherwise controlled by this section, that other agency's rules shall apply, if inconsistent with the rules promulgated under this section. The board may not remove the restrictions set forth in 25 V.S.A. §§ 320 and 321.~~

(e) On receipt of a written request that the ~~board~~ secretary adopt, amend, or repeal a rule with respect to the use of public waters signed by not less than one person, the ~~board~~ secretary shall consider the adoption of rules authorized under this section and take appropriate action as required under 3 V.S.A. § 806.

(f) By rule, the ~~board~~ secretary may delegate authority under this section for the regulation of public waters where:

(1) the delegation is to a municipality which is adjacent to or which contains the water; and

(2) the municipality accepts the delegation by creating or amending a bylaw or ordinance for regulation of the water. Appeals from a final act of the municipality under the bylaw or ordinance shall be taken to the environmental division. The ~~board~~ secretary may terminate a delegation for cause or without cause upon six months' notice to the municipality.

Sec. 24. 10 V.S.A. § 6025 is amended to read:

§ 6025. RULES

* * *

~~(d) The water resources panel may adopt rules, in accordance with the provisions of chapter 25 of Title 3, in the following areas:~~

~~(1) Rules governing surface levels of lakes, ponds, and reservoirs that are public waters of Vermont.~~

~~(2) Rules regarding classification of the waters of the state, in accordance with chapter 47 of this title.~~

~~(3) Rules regarding the establishment of water quality standards, in accordance with chapter 47 of this title.~~

~~(4) Rules regulating the surface use of public waters, and rules~~

~~pertaining to the designation of outstanding resource waters, in accordance with chapter 49 of this title.~~

~~(5) Rules regarding the identification of wetlands that are so significant that they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values which a wetland serves:~~

~~(A) provides temporary water storage for flood water and storm runoff;~~

~~(B) contributes to the quality of surface and groundwater through chemical action;~~

~~(C) naturally controls the effects of erosion and runoff, filtering silt and organic matter;~~

~~(D) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;~~

~~(E) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;~~

~~(F) provides stopover habitat for migratory birds;~~

~~(G) contributes to an exemplary wetland natural community, in accordance with the rules of the panel;~~

~~(H) provides for threatened and endangered species habitat;~~

~~(I) provides valuable resources for education and research in natural sciences;~~

~~(J) provides direct and indirect recreational value and substantial economic benefits; and~~

~~(K) contributes to the open-space character and overall beauty of the landscape.~~

~~(6) Rules regarding the ability to reclassify wetlands, in general, or on a case-by-case basis.~~

~~(7) Rules protecting wetlands that have been determined under subdivision (5) or (6) of this subsection to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations under chapter 37 of this title by the department of environmental conservation; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The panel shall not adopt rules that restrain agricultural activities without the consent of the secretary of the agency of agriculture, food and markets and~~

~~shall not adopt rules that restrain silvicultural activities without the consent of the commissioner of the department of forests, parks and recreation.~~

~~(8) Rules implementing 29 V.S.A. chapter 11, relating to management of lakes and ponds.~~

~~(e) Except for subsection (a) of this section, references to rules adopted by the board shall be construed to mean rules adopted by the appropriate panel of the board, as established by this section.~~

Sec. 25. 29 V.S.A. § 410 is added to read:

§ 410. RULEMAKING; ENCROACHMENTS ON PUBLIC WATERS

The department may adopt rules to implement the requirements of this chapter.

Sec. 26. FORMER WATER RESOURCES PANEL RULES

Rules of the water resources panel of the natural resources board issued pursuant to 10 V.S.A. § 6025(d), as that statute and those rules existed immediately prior to the effective date of this act, shall be deemed rules of the secretary of natural resources, and the secretary may amend those rules in accordance with 3 V.S.A. chapter 25.

Sec. 27. STATUTORY REVISION

To effect the purpose of this act of transferring the rulemaking authority of the water resources panel to the secretary of natural resources, the office of legislative council is directed to revise the existing Vermont Statutes Annotated and, where applicable, replace the terms "natural resources board," "water resources panel of the natural resources board," "water resources panel," "water resources board," and similar terms with the term "secretary of natural resources," "secretary," "agency of natural resources," "agency," "department of environmental conservation," or "department" as appropriate, including the following revisions:

(1) in 10 V.S.A. §§ 913 and 915, by replacing "panel" with "department";

(2) in 10 V.S.A. chapter 47, by replacing "board" with "secretary" where appropriate;

(3) in 10 V.S.A. §§ 1422 and 1424, by replacing "board" with "secretary" where appropriate; and

(4) in 29 V.S.A. §§ 401, 402, and 403, by replacing "board" with "department" where appropriate.

Sec. 28. PURPOSE AND INTENT; PUBLIC PARTICIPATION IN

DEPARTMENT OF ENVIRONMENTAL CONSERVATION RULEMAKING

It is the purpose and intent of the general assembly that, in addition to the public participation requirements of 3 V.S.A. chapter 25 and prior to submitting a proposed rule to the secretary of state under 3 V.S.A. § 838, the department of environmental conservation shall engage in an expanded public participation process with affected stakeholders and other interested persons in a dialogue about intent, method, and outcomes of a proposed rule for the purpose of resolving concerns and differences regarding proposed rules. The department of environmental conservation is encouraged to use workshops, focused work groups, dockets, meetings, or other forms of communication to meet the participation requirements of this section.

* * * Agricultural Water Quality * * *

Sec. 29. 10 V.S.A. § 303 is amended to read:

§ 303. DEFINITIONS

As used in this chapter:

(1) "Board" means the Vermont housing and conservation board established by this chapter.

(2) "Fund" means the Vermont housing and conservation trust fund established by this chapter.

(3) "Eligible activity" means any activity which will carry out either or both of the dual purposes of creating affordable housing and conserving and protecting important Vermont lands, including activities which will encourage or assist:

(A) the preservation, rehabilitation or development of residential dwelling units which are affordable to lower income Vermonters;

(B) the retention of agricultural land for agricultural use;

(C) the protection of important wildlife habitat and important natural areas;

(D) the preservation of historic properties or resources;

(E) the protection of areas suited for outdoor public recreational activity;

(F) the protection of lands for multiple conservation purposes, including the protection of surface waters and associated natural resources;

(G) the development of capacity on the part of an eligible applicant to

engage in an eligible activity.

(4) "Eligible applicant" means any:

(A) municipality~~,~~;

(B) ~~department of state government~~ state agency as defined in ~~subsection 6302(a)~~ section 6301a of this title~~,~~;

(C) nonprofit organization qualifying under Section 501(c)(3) of the Internal Revenue Code; or

(D) cooperative housing organization, the purpose of which is the creation or retention of affordable housing for lower income Vermonters and the bylaws of which require that such housing be maintained as affordable housing for lower income Vermonters on a perpetual basis.

* * *

* * * State Revolving Loan Fund; Stormwater Projects * * *

Sec. 30. 24 V.S.A. § 4752(3) is amended to read:

(3) "Municipality" means any city, town, village, town school district, incorporated school district, union school district or other school district, fire district, consolidated sewer district, consolidated water district ~~or~~, solid waste district, or statewide or regional water quality utility or mechanism organized under laws of the state.

* * * Land Application of Septage * * *

Sec. 31. 10 V.S.A. § 6605(g) is amended to read:

(g)(1) Emergency sludge and septage disposal approval. Notwithstanding any other provision of this section, the secretary may authorize the land disposal or management of sludge or septage by an applicant at any certified site or facility with available capacity, provided the secretary finds:

(A) that the applicant needs to dispose of accumulated sludge or septage promptly, and that delay would likely cause public health, or environmental damage, or nuisance conditions, or would result in excessive and unnecessary cost to the public, and that the applicant has lost authority to use previously certified sites through no act or omission of the applicant; and

(B) that at the certified site or facility to be used:

(i) the certificate holder agrees in writing to allow use of the site or facility by the applicant;

(ii) management of the applicant's sludge or septage is compatible with the site or facility certificate;

(iii) all terms and conditions of the original certification will continue to be met with addition of the applicant's sludge or septage; and

(iv) beginning January 1, 2013, any sludge or septage applied to land shall be applied according to a nutrient management plan approved by the secretary.

(2) The secretary shall, following his or her issuance of approval of emergency sludge or septage disposal under this subsection, provide public notice of that action.

Sec. 32. 10 V.S.A. § 1386 is amended to read:

§ 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN TOTAL MAXIMUM DAILY LOAD PLAN

(a) ~~On or before January 15, 2010,~~ Within 12 months after the issuance of a phosphorus total maximum daily load plan (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the secretary of natural resources shall issue a ~~revised~~ Vermont-specific implementation plan for the Lake Champlain TMDL. ~~Beginning January 15, 2013, and every~~ Every four years ~~thereafter~~ after issuance of the Lake Champlain TMDL by the U.S. Environmental Protection Agency, the secretary of natural resources shall amend and update the Vermont-specific implementation plan for the Lake Champlain TMDL. Prior to issuing, amending, or updating the implementation plan, the secretary shall consult with the agency of agriculture, food and markets, all statewide environmental organizations that express an interest in the plan, the Vermont League of Cities and Towns, all business organizations that express an interest in the plan, the University of Vermont Rubenstein ecosystem science laboratory, and other interested parties. The implementation plan shall include a comprehensive strategy for implementing the Lake Champlain ~~total maximum daily load (TMDL)~~ TMDL plan and for the remediation of Lake Champlain. The implementation plan shall be issued as a document separate from the Lake Champlain TMDL. The implementation plan shall:

(1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c) for water quality management plans;

(2) Comply with the requirements of section 1258 of this title and administer a permit program to manage discharges to Lake Champlain consistent with the federal Clean Water Act;

(3) Develop a process for identifying critical source areas for non-point source pollution in each subwatershed. As used in this subdivision, "critical source area" means an area in a watershed with high potential for the release,

discharge, or runoff of phosphorus to the waters of the state;

(4) Develop site-specific plans to reduce point source and non-point source load discharges in critical source areas identified under subdivision (3) of this subsection;

(5) Develop a method for identifying and prioritizing on public and private land pollution control projects with the potential to provide the greatest water quality benefits to Lake Champlain;

(6) Develop a method of accounting for changes in phosphorus loading to Lake Champlain due to implementation of the TMDL and other factors;

(7) Develop phosphorus reduction targets related to phosphorus reduction for each water quality program and for each segment of Lake Champlain, including benchmarks for phosphorus reduction that shall be achieved. The implementation plan shall explain the methodology used to develop phosphorus reduction targets under this subdivision;

(8) Establish a method for the coordination and collaboration of water quality programs within the state;

(9) Develop a method for offering incentives or disincentives to wastewater treatment plants for maintaining the 2006 levels of phosphorus discharge to Lake Champlain;

(10) Develop a method of offering incentives or disincentives for reducing the phosphorus contribution of stormwater discharges within the Lake Champlain basin.

(b) In amending the Vermont-specific implementation plan of the Lake Champlain TMDL under this section, the secretary of natural resources shall comply with the public participation requirements of 40 C.F.R. § 130.7(c)(1)(ii).

(c) ~~On or before January 15, 2010, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources, and the house and senate committees on agriculture with a summary of the contents of and the process leading to the adoption under subsection (a) of this section of the implementation plan for the Lake Champlain TMDL.~~ On or before January ~~15, 2013, and~~ 15 in the year following issuance of the implementation plan under subsection (a) of this section and every four years thereafter, the secretary shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources, and the house and senate committees on agriculture regarding the execution of the implementation plan. The report shall include:

(1) ~~with the~~ The amendments or revisions to the implementation plan for

the Lake Champlain TMDL required by subsection (a) of this section. Prior to ~~issuing~~ submitting a report required by this subsection that includes amendments to revisions to the implementation plan, the secretary shall hold at least three public hearings in the Lake Champlain watershed to describe the amendments and revisions to the implementation plan for the Lake Champlain TMDL. The secretary shall prepare a responsiveness summary for each public hearing. ~~Beginning January 15, 2013, a report required by this subsection shall include:~~

~~(1)~~(2) An assessment of the implementation plan for the Lake Champlain TMDL based on available data, including an evaluation of the efficacy of the implementation plan~~;~~.

~~(2)~~(3) ~~An assessment of the hydrologic base period used to determine the phosphorus-loading capacities for the Lake Champlain TMDL based on available data, including an evaluation of the adequacy of the hydrologic base period for the TMDL;~~ Recommendations, if any, for amending the implementation plan or for reopening the Lake Champlain TMDL.

~~(3) Recommendations, if any, for amending the implementation plan or reopening the Lake Champlain TMDL.~~

(d) Beginning February 1, ~~2009~~ 2014 and annually thereafter, the secretary, after consultation with the secretary of agriculture, food and markets, shall submit to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture a ~~clean and clear program~~ summary ~~reporting on~~ of activities and measures of progress ~~for each program supported by funding under the Clean and Clear Action Plan~~ of water quality ecosystem restoration programs.

Sec. 33. REPEAL

10 V.S.A. § 1385 (Lake Champlain TMDL plan) is repealed.

* * * Enforcement, Appeals, Transition; Effective Dates * * *

Sec. 34. 10 V.S.A. § 8003 is amended to read:

§ 8003. APPLICABILITY

(a) The secretary may take action under this chapter to enforce the following statutes and rules, permits, assurances, or orders implementing the following statutes:

(1) ~~[Deleted.]~~ 10 V.S.A. chapter 23, relating to air quality;

(2) 10 V.S.A. chapter ~~23, relating to air quality~~ 32, relating to flood hazard areas;

* * *

(21) 10 V.S.A. chapter 166, relating to collection and recycling of electronic waste; ~~and~~

(22) 10 V.S.A. chapter 164A, collection and disposal of mercury-containing lamps.

* * *

Sec. 35. 10 V.S.A. § 8503(a) is amended to read:

(a) This chapter shall govern all appeals of an act or decision of the secretary, excluding enforcement actions under chapters 201 and 211 of this title and rulemaking, under the following authorities and under the rules adopted under those authorities:

(1) The following provisions of this title:

* * *

(R) chapter 32 (flood hazard areas).

* * *

Sec. 36. REPEAL

25 V.S.A. §§ 142–144 (general provisions relating to rivers and streams) are repealed.

Sec. 37. 30 V.S.A. § 34 is added to read:

§ 34. PUBLIC EDUCATION ON PROPANE TANK SAFETY

The general assembly finds that there is a need for a coordinated public safety message on the normal storage and handling of propane tanks and fuel oil tanks, and for the recovery of propane tanks and fuel oil tanks that are displaced by a natural disaster, such as flooding. The department of public service, the division of fire safety, and the agency of natural resources shall cooperate with relevant municipal, professional, and industry organizations to develop a variety of educational materials for distribution to the public to provide information on any special treatment of propane tanks that might be required in the event of a natural disaster, such as flooding.

Sec. 38. EFFECTIVE DATES

This act shall take effect on passage except that:

(1) Sec. 29 (VHCB; conservation easements) of this act shall take effect on July 1, 2012.

(2) Sec. 3 (stream alteration; prohibitions and exceptions) of this act

shall take effect on March 1, 2013.

(3) Sec. 34 (ANR enforcement) of this act shall take effect on July 1, 2013.

(Committee vote: 7-2-0)

(For text see Senate Journal 3/20/2012 and 3/23/2012)

Favorable

H. 790

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

Rep. Hubert of Milton, for the Committee on **Government Operations,** recommends the bill ought to pass.

(Committee Vote: 11-0-0)

S. 215

An act relating to evaluating net costs of government purchasing

Rep. Hubert of Milton, for the Committee on **Government Operations**, recommends that the bill ought to pass in concurrence.

(Committee Vote: 7-0-4)

(For text see Senate Journal 3/21/2012 and 3/22/2012)

Senate Proposal of Amendment

H. 37

An act relating to telemedicine

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

Sec. 1. 8 V.S.A. chapter 107, subchapter 14 is added to read:

Subchapter 14. Telemedicine

§ 4100k. COVERAGE FOR TELEMEDICINE SERVICES

(a) All health insurance plans in this state shall provide coverage for telemedicine services delivered to a patient in a health care facility to the same extent that the services would be covered if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as

it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid, the Vermont health access plan, and any other public health care assistance program offered or administered by the state or by any subdivision or instrumentality of the state. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Health care facility" shall have the same meaning as in 18 V.S.A. § 9402.

(3) "Store and forward" means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

(4) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

Sec. 2. 18 V.S.A. chapter 219 is redesignated to read:

CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND TELEMEDICINE

Sec. 3. STATUTORY REVISION

18 V.S.A. §§ 9351–9352 shall be recodified as subchapter 1 (Health Information Technology) of chapter 219.

Sec. 4. 18 V.S.A. chapter 219, subchapter 2 is added to read:

Subchapter 2. Telemedicine

§ 9361. HEALTH CARE PROVIDERS PROVIDING TELEMEDICINE OR STORE AND FORWARD SERVICES

(a) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider–patient settings. For purposes of this subchapter, "telemedicine" shall have the same meaning as in 8 V.S.A. § 4100k.

(b) Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure informed consent from the patient. For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.

Sec. 5. RULEMAKING

(a) The commissioner of Vermont health access may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this act.

(b) The commissioner of banking, insurance, securities, and health care administration may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this act.

Sec. 6. HEALTH CARE FACILITY; STUDY

(a) The commissioner of financial regulation or designee shall convene a workgroup comprising health care providers, health insurers, and other interested stakeholders to consider whether and to what extent Vermont should

require health insurance coverage of services delivered to a patient by telemedicine outside a health care facility.

(b) No later than January 15, 2013, the commissioner of financial regulation or designee shall report the workgroup's recommendations to the house committee on health care and the senate committees on health and welfare and on finance.

Sec. 7. EFFECTIVE DATE

(a) Sec. 1 of this act shall take effect on October 1, 2012 and shall apply to all health insurance plans on and after October 1, 2012 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event no later than October 1, 2013.

(b) The remaining sections of this act shall take effect on passage.

(For text see House Journal 3/14/2012)

H. 254

An act relating to consumer protection

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

Sec. 1. 9 V.S.A. chapter 63, subchapter 1C is added to read:

Subchapter 1C. Discount Membership Programs

§ 2470aa. DEFINITIONS

In this subchapter:

(1) "Billing information" means any data that enables a seller of a discount membership program to access a consumer's credit or debit card, bank, or other account, but does not include the consumer's name, e-mail address, telephone number, or mailing address. For credit card and debit card accounts, billing information includes the full account number, card type, and expiration date, and, if necessary, the security code. For accounts at a financial institution, "billing information" includes the full account number and routing number, and, if necessary, the name of the financial institution holding the account.

(2) A "discount membership program" is a program that entitles consumers to receive discounts, rebates, rewards, or similar incentives on the purchase of goods or services or both, in whole or in part, from any third party.

§ 2470bb. APPLICABILITY

A discount membership program is a good or service within the meaning of

subsection 2451a(b) of this chapter. This subchapter applies only to persons who are regularly and primarily engaged in trade or commerce in this state in connection with offering or selling discount membership programs. This subchapter shall not apply to an electronic payment system, as defined in 9 V.S.A. § 2480o, or to a financial institution, as defined in 8 V.S.A. § 11101(32).

§ 2470cc. REQUIRED DISCLOSURES; CONSENT

(a) No person shall charge or attempt to charge a consumer for a discount membership program, or to renew a discount membership program beyond the term expressly agreed to by the consumer or the term permitted under section 2470ff of this title, whichever is shorter, unless:

(1) Before obtaining the consumer's billing information, the person has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including:

(A) A description of the types of goods and services on which a discount is available;

(B) The name of the discount membership program and the name and address of the seller of the program;

(C) The amount, or a good faith estimate, of the typical discount on each category of goods and services;

(D) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(E) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free telephone number and e-mail address that can be used to cancel the membership;

(F) The maximum length of membership, as described in section 2470ff of this subchapter;

(G) In the event that the program is offered on the Internet through a link or referral from another business's website, the fact that the seller is not affiliated with that business;

(H) The fact that periodic notices of the program billings will be e-mailed or mailed to the consumer, as the case may be, consistent with section 2470dd of this title; and

(2) The person has received express informed consent for the charge from the consumer whose credit or debit card, bank, or other account will be charged, by:

(A) Obtaining from the consumer:

(i) the consumer's billing information; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) Requiring the consumer to perform an additional affirmative action, such as clicking on an online confirmation button, checking an online box that indicates the consumer's consent to be charged the amount disclosed, or expressly giving consent over the telephone.

(b) A person who sells discount membership programs shall retain evidence of a consumer's express informed consent for at least three years after the consent is given.

§ 2470dd. PERIODIC NOTICES

(a) A person who periodically charges a consumer for a discount membership program shall send the consumer a notice of the charge no less frequently than every three months from the date of initial enrollment that clearly and conspicuously discloses:

(1) A description of the program;

(2) The name of the discount membership program and the name and address of the seller of the program;

(3) The cost of the program, including the amount of any periodic charges, how often such charges are imposed, and the method of payment;

(4) The right to cancel and to terminate the program, which shall be no more restrictive than as required by section 2470ee of this subchapter, and a toll-free number and e-mail address that can be used to cancel the membership; and

(5) The maximum length of membership, as described in section 2470ff of this subchapter.

(b) The notice specified in subsection (a) of this section:

(1) Shall be sent:

(A) To the consumer's last known e-mail address, if the consumer enrolled in the discount membership program online or by e-mail, with the subject line, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words, provided that the sender takes reasonable steps to verify that the e-mail has been opened; or

(B) Otherwise by first-class mail to the consumer's last known

mailing address, with the heading on the enclosure and outside envelope, "IMPORTANT INFORMATION ABOUT YOUR DISCOUNT PROGRAM BILLING," or substantially similar words; and

(2) Shall not include any solicitation or advertising.

§ 2470ee. CANCELLATION AND TERMINATION

(a) In addition to any other right to revoke an offer, a consumer may cancel the purchase of a discount membership program until midnight on the 30th day after the date the consumer has given express informed consent to be charged for the program. If the consumer cancels within the 30-day period, the seller of the discount membership program shall, within ten days of receiving the notice of cancellation, provide a full refund to the consumer.

(b) Notice of cancellation shall be deemed given when deposited in a mailbox properly addressed and postage prepaid or when e-mailed to the e-mail address of the seller of the discount membership program.

(c) In addition to the right to cancel described in this subchapter, a consumer may terminate a discount membership program at any time by providing notice to the seller by one of the methods described in this section. In that case, the consumer shall not be obligated to make any further payments under the program and shall not be entitled to any discounts under the program for any period of time after the last month for which payment has been made.

(d) If the seller of a discount membership program cancels the program for any reason other than nonpayment by the consumer, the seller shall make pro rata reimbursement to the consumer of all periodic charges paid by the consumer for periods of time after cancellation. Prior to such cancellation, the seller shall first provide reasonable notice and an explanation of the cancellation in writing to the consumer.

§ 2470ff. MAXIMUM LENGTH OF PLAN

No person shall sell, or offer for sale, a discount membership program lasting longer than 18 months.

§ 2470gg. BILLING INFORMATION

No person who offers or sells discount membership programs shall obtain billing information relating to a consumer except directly from the consumer.

§ 2470hh. VIOLATIONS

(a) A violation of this subchapter is deemed to be a violation of section 2453 of this title.

(b) The attorney general has the same authority to make rules, conduct

civil investigations, enter into assurances of discontinuance, and bring civil actions as is provided under subchapter 1 of this chapter.

Sec. 2. 9 V.S.A. chapter 63 is amended to read:

CHAPTER 63. CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2453. PRACTICES PROHIBITED; ANTITRUST AND CONSUMER ~~FRAUD~~ PROTECTION

* * *

§ 2461e. REQUIREMENTS FOR GUARANTEED PRICE PLANS AND PREPAID CONTRACTS

* * *

(d) Private right of action under consumer ~~fraud~~ protection act. In addition to the remedies set forth in sections 2458 and 2461 of this title, a home heating oil, kerosene, or liquefied petroleum gas dealer may bring an action against its heating oil, kerosene, or liquefied petroleum gas suppliers for failing to honor its contract with the home heating oil, kerosene, or liquefied petroleum gas dealer. The home heating oil, kerosene, or liquefied petroleum gas dealer bringing the action may recover all remedies available to consumers under subsection 2461(b) of this title.

* * *

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

* * *

(3) A violation of section 2480p of this subchapter shall be deemed a violation of ~~chapter 63~~ section 2453 of this title~~, the Consumer Fraud Act~~. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 ~~of chapter 63~~ of this ~~title~~ chapter.

* * *

Sec. 3. REDESIGNATION OF TERM "CONSUMER FRAUD" TO READ "CONSUMER PROTECTION"

(a) The legislative council, under its statutory revision authority pursuant to 2 V.S.A. § 424, is directed to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in each of the following sections: 7 V.S.A. § 1010; 8 V.S.A. §§ 2706, 2709, and 2764;

9 V.S.A. § 2471; 18 V.S.A. §§ 1511, 1512, 4086, 4631, 4633, 4634, and 9473; 20 V.S.A. § 2757; and 33 V.S.A. §§ 1923 and 2010; and in any other sections as appropriate.

(b) Notwithstanding the provisions of 3 V.S.A. chapter 25, the attorney general shall have the authority to delete the term "consumer fraud" and to insert in lieu thereof the term "consumer protection" wherever it appears in the attorney general's rules, regulations, and procedures and shall exercise such authority upon passage of this act as he or she deems to be necessary, appropriate, and consistent with the purposes of this section.

Sec. 4. 9 V.S.A. chapter 62 is amended to read:

CHAPTER 62: PROTECTION OF PERSONAL INFORMATION

§ 2430. DEFINITIONS

The following definitions shall apply throughout this chapter unless otherwise required:

* * *

(5)(A) "~~Personal~~ Personally identifiable information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted or protected by another method that renders them unreadable or unusable by unauthorized persons:

(i) Social Security number;

(ii) Motor vehicle operator's license number or nondriver identification card number;

(iii) Financial account number or credit or debit card number, if circumstances exist in which the number could be used without additional identifying information, access codes, or passwords;

(iv) Account passwords or personal identification numbers or other access codes for a financial account.

(B) "~~Personal~~ Personally identifiable information" does not mean publicly available information that is lawfully made available to the general public from federal, state, or local government records.

* * *

(8)(A) "Security breach" means unauthorized acquisition ~~or access~~ of ~~computerized~~ electronic data or a reasonable belief of an unauthorized acquisition of electronic data that compromises the security, confidentiality, or integrity of ~~personal~~ a consumer's personally identifiable information

maintained by the data collector.

(B) "Security breach" does not include good faith but unauthorized acquisition ~~or access~~ of ~~personal~~ personally identifiable information by an employee or agent of the data collector for a legitimate purpose of the data collector, provided that the ~~personal~~ personally identifiable information is not used for a purpose unrelated to the data collector's business or subject to further unauthorized disclosure.

(C) In determining whether personally identifiable information has been acquired or is reasonably believed to have been acquired by a person without valid authorization, a data collector may consider the following factors, among others:

(i) indications that the information is in the physical possession and control of a person without valid authorization, such as a lost or stolen computer or other device containing information;

(ii) indications that the information has been downloaded or copied;

(iii) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported; or

(iv) that the information has been made public.

§ 2435. NOTICE OF SECURITY BREACHES

(a) This section shall be known as the Security Breach Notice Act.

(b) Notice of breach.

(1) Except as set forth in subsection (d) of this section, any data collector that owns or licenses computerized ~~personal~~ personally identifiable information that includes personal information concerning a consumer shall notify the consumer that there has been a security breach following discovery or notification to the data collector of the breach. Notice of the security breach shall be made in the most expedient time possible and without unreasonable delay, but not later than 45 days after the discovery or notification, consistent with the legitimate needs of the law enforcement agency, as provided in ~~subdivision~~ subdivisions (3) and (4) of this subsection, or with any measures necessary to determine the scope of the security breach and restore the reasonable integrity, security, and confidentiality of the data system.

(2) Any data collector that maintains or possesses computerized data containing ~~personal~~ personally identifiable information of a consumer that the ~~business~~ data collector does not own or license or any data collector that acts

or conducts business in Vermont that maintains or possesses records or data containing ~~personal~~ personally identifiable information that the data collector does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in ~~subdivision~~ subdivisions (3) and (4) of this subsection.

(3) A data collector or other entity subject to this subchapter, other than a person or entity licensed or registered with the department of financial regulation under Title 8 or this title, shall provide notice of a breach to the attorney general's office as follows:

(A)(i) The data collector shall notify the attorney general of the date of the security breach and the date of discovery of the breach and shall provide a preliminary description of the breach within 14 business days, consistent with the legitimate needs of the law enforcement agency as provided in subdivisions (3) and (4) of this subsection, of the data collector's discovery of the security breach or when the data collector provides notice to consumers pursuant to this section, whichever is sooner.

(ii) Notwithstanding subdivision (A)(i) of this subdivision (b)(3), a data collector who, prior to the date of the breach, on a form and in a manner prescribed by the office of the attorney general, had sworn in writing to the attorney general that it maintains written policies and procedures to maintain the security of personally identifiable information and respond to a breach in a manner consistent with Vermont law shall notify the attorney general of the date of the security breach and the date of discovery of the breach and shall provide a description of the breach prior to providing notice of the breach to consumers pursuant to subdivision (1) of this subsection.

(iii) If the date of the breach is unknown at the time notice is sent to the attorney general, the data collector shall send the attorney general the date of the breach as soon as it is known.

(iv) Unless otherwise ordered by a court of this state for good cause shown, a notice provided under this subdivision (3)(A) shall not be disclosed to any person other than the authorized agent or representative of the attorney general, a state's attorney, or another law enforcement officer engaged in legitimate law enforcement activities without the consent of the data collector.

(B)(i) When the data collector provides notice of the breach pursuant to subdivision (1) of this subsection (b), the data collector shall notify the attorney general of the number of Vermont consumers affected, if known to the data collector, and shall provide a copy of the notice provided to consumers

under subdivision (1) of this subsection (b).

(ii) The data collector may send to the attorney general a second copy of the consumer notice, from which is redacted the type of personally identifiable information that was subject to the breach, and which the attorney general shall use for any public disclosure of the breach.

(4) The notice to a consumer required by this subsection shall be delayed upon request of a law enforcement agency. A law enforcement agency may request the delay if it believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. In the event law enforcement makes the request in a manner other than in writing, the data collector shall document such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. A law enforcement agency shall promptly notify the data collector when the law enforcement agency no longer believes that notification may impede a law enforcement investigation, or a national or homeland security investigation or jeopardize public safety or national or homeland security interests. The data collector shall provide notice required by this section without unreasonable delay upon receipt of a written communication, which includes facsimile or electronic communication, from the law enforcement agency withdrawing its request for delay.

~~(4)~~(5) The notice to a consumer shall be clear and conspicuous. The notice shall include a description of each of the following, if known to the data collector:

(A) The incident in general terms.

(B) The type of ~~personal~~ personally identifiable information that was subject to the ~~unauthorized access or acquisition~~ security breach.

(C) The general acts of the ~~business~~ data collector to protect the ~~personal~~ personally identifiable information from further ~~unauthorized access or acquisition~~ security breach.

(D) A ~~toll-free~~ telephone number, toll-free if available, that the consumer may call for further information and assistance.

(E) Advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.

(F) The approximate date of the security breach.

~~(5)~~(6) For purposes of this subsection, notice to consumers may be provided by one of the following methods:

* * *

(h) Vermont law enforcement agencies, including the department of public safety, shall not be considered a data collector. Except as provided in subdivisions (b)(2) and (b)(3) of this section, Vermont law enforcement agencies, including the department of public safety, shall be exempt from this subchapter.

Sec. 5. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

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

* * *

(9) Submit to the general assembly concurrent with the governor's annual budget request required under 32 V.S.A. § 306, a strategic plan for information technology and information security which outlines the significant deviations from the previous year's ~~information technology~~ plan, and which details the plans for information technology activities of state government for the following fiscal year as well as the administration's financing recommendations for these activities. For purposes of this section, "information security" shall mean protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide integrity, confidentiality, and availability. All such plans shall be reviewed and approved by the commissioner of information and innovation prior to being included in the governor's annual budget request. The plan shall identify the proposed sources of funds for each project identified. The plan shall also contain a review of the state's information technology and information security and an identification of priority projects by agency. The plan shall include, for any proposed information technology activity with a cost in excess of $100,000.00:

(A) a life-cycle costs analysis including planning, purchase and development of applications, the purchase of hardware and the ~~on-going~~ ongoing operation and maintenance costs to be incurred over the expected life of the systems; and a cost-benefit analysis which shall include acquisition costs as well as operational and maintenance costs over the expected life of the system;

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

(C) a statement identifying any impact of the proposed new computer system on the privacy or disclosure of individually identifiable information;

(D) a statement identifying costs and issues related to public access to nonconfidential information;

(E) a statewide budget for all information technology activities with a cost in excess of ~~$100,000~~ $100,000.00.

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

(A) the creation, collection, processing, storage, management, transmission, or conversion of electronic data, documents, or records;

(B) the design, construction, purchase, installation, maintenance, or operation of systems, including both hardware and software, which perform these activities.

* * *

Sec. 6. 22 V.S.A. § 901 is amended to read:

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

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

(1) to provide direction and oversight for all activities directly related to information technology and information security, including telecommunications services, information technology equipment, software, accessibility, and networks in state government. For purposes of this section, "information security" is defined as in 3 V.S.A. § 2222(a)(9);

(2) to manage GOVnet;

(3) to review all information technology and information security requests for proposal in accordance with agency of administration policies;

(4) to review and approve information technology activities in all departments with a cost in excess of $100,000.00, and annually submit to the general assembly a strategic plan and a budget for information technology and information security as required of the secretary of administration by 3 V.S.A. § 2222(a)(9). For purposes of this section, "information technology activities" is defined in 3 V.S.A. § 2222(a)(10);

(5) to administer the independent review responsibilities of the secretary of administration described in 3 V.S.A. § 2222(g);

(6) to perform the responsibilities of the secretary of administration

under 30 V.S.A. § 227b;

(7) to administer communication, information, and technology services, which are transferred from the department of buildings and general services;

(8) to inventory technology assets within state government;

(9) to coordinate information technology and information security training within state government;

* * *

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

(12) not later than July 1, 2013, to adopt rules requiring the auditing and updating of state websites.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal 3/29/2012)

H. 496

An act relating to preserving Vermont's working landscape

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

Sec. 1. 6 V.S.A. § 2966 (Vermont agricultural development board) is repealed in its entirety and new §§ 2966 is added to read:

§ 2966. ESTABLISHMENT OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

(a) Board Established. The Vermont working lands enterprise board is hereby established as the successor in interest to the Vermont agricultural development board.

(b) Goals. The Vermont working lands enterprise board shall perform its duties pursuant to sections 2967 and 2968 of this title:

(1) to promote job creation and the economic viability, growth, and sustainability of the working landscape;

(2) to attract a new generation of entrepreneurs to agriculture and forestry, food and forest systems, and value-added production as a foundation

for rural job creation and working lands conservation;

(3) to increase the value and sales of the products of the working landscape by means which reward sound farm and forest management, including appropriate increases in the proportion of value-added farm and forest products relative to raw material exports; and

(4) to build Vermont's reputation as the national leader in food systems development, environmental quality, land stewardship, access to outdoor recreation, and working lands entrepreneurism.

(c) Board Composition. The board shall be composed of the following 24 members:

(1) six members appointed by the governor:

(A) a person with expertise in rural economic development issues;

(B) an employee of a Vermont postsecondary institution experienced in researching issues related to agriculture or forestry;

(C) a person familiar with the agricultural or forest tourism industry;

(D) a member of the Northeast Organic Farming Association of Vermont;

(E) a member of the Vermont Forest Products Association; and

(F) a member of the Vermont Wood Manufacturers Association;

(2) six members appointed by the speaker of the house of representatives:

(A) a person who produces an agricultural commodity other than dairy products;

(B) a person who creates a value-added product using ingredients substantially produced on Vermont farms or from Vermont forests;

(C) a person with expertise in sales and marketing;

(D) a person representing the feed, seed, fertilizer, or equipment enterprises;

(E) a member of the Vermont Woodlands Association; and

(F) a member of the Vermont Forest Stewardship Committee;

(3) six members appointed by the committee on committees of the senate:

(A) a representative of Vermont's dairy industry who is also a dairy farmer;

(B) a person with expertise in land planning and conservation efforts that support Vermont's working landscape;

(C) a representative from a Vermont agricultural or forestry advocacy organization;

(D) a person with experience in providing youth with educational opportunities enhancing understanding of agriculture or forestry;

(E) a member of the Green Mountain Division, Society of American Foresters; and

(F) a member of the Forest Guild who is a resident of Vermont.

(4) the following three members from the executive branch:

(A) the secretary of agriculture, food and markets;

(B) the secretary of commerce and community development; and

(C) the commissioner of forest, parks and recreation; and

(5) the following three members who shall serve as ex officio, non-voting members:

(A) the manager of the Vermont economic development authority;

(B) the executive director of the Vermont sustainable jobs fund; and

(C) the executive director of the Vermont housing conservation board.

(d) Governance.

(1) Eleven voting members of the board shall constitute a quorum, and an action of the board shall be taken by a majority of those members present and voting at a meeting of the members at which a quorum is present.

(2)(A) The chair of the board shall be elected by the board from its membership at the first meeting. The chair shall serve for the duration of his or her member term, until his or her earlier resignation, or until his or her unanimous removal by the governor, the speaker of the house, and the president pro tempore of the senate. A chair may be reappointed, provided that no individual may serve more than two consecutive three-year terms as chair.

(3) Each member of the board shall serve a term of three years, or until his or her earlier resignation. A member shall not serve more than two consecutive three-year terms. Any vacancy occurring among the members shall be filled by the respective appointing authority, and shall be filled for the balance of the unexpired term.

(e) Compensation. Members who are not state employees or whose membership is not supported by their employer or association may receive reimbursement for actual and necessary expenses incurred in the performance of their duties pursuant to 32 V.S.A. § 1010.

Sec. 2. 6 V.S.A. § 2967 is added to read:

§ 2967. POWERS AND DUTIES OF THE VERMONT WORKING LANDS ENTERPRISE BOARD

(a) The Vermont working lands enterprise board shall have the authority to promote job creation and the economic viability, growth, and sustainability of the working landscape through three mechanisms:

(1) Direct grants and investments in agricultural and forestry enterprises;

(2) Services and assistance to agricultural and forestry enterprises, both through direct coordination with public and private partners, and through performance contracts with one or more persons, including:

(A) technical assistance and product research services;

(B) marketing assistance, market development, and business and financial planning;

(C) local, statewide, regional, national, or international marketing of the Vermont working landscape, its entrepreneurs and sectors, and the public and private programs and partners supporting the working landscape;

(D) organizational, regulatory, and development assistance; and

(E) feasibility studies of facilities or capital investments to optimize construction and other cost efficiencies.

(3) Direct grants and investments in food and forest systems infrastructure.

(b) The board shall have the additional authority:

(1) to pursue, receive, and accept any type of funding from public or private funding sources for the performance of its work;

(2) to use the services and staff of the agency of agriculture, food and markets to assist in the performance of the board's duties, with the concurrence of the secretary of agriculture, food and markets;

(3) to contract for support, technical, or other professional services necessary to complete its work; and

(4) to advise and make recommendations to the secretary of agriculture, food and markets and to the commissioner of forests, parks and recreation on

the adoption and amendment of laws, regulations, and governmental policies that affect agriculture and forestry.

Sec. 3. 6 V.S.A. § 2968 is added to read:

§ 2968. VERMONT WORKING LANDS ENTERPRISE FUND

There is created a special fund in the state treasury to be known as the "Vermont working lands enterprise fund." Notwithstanding any contrary provisions of 32 V.S.A. Chapter 7, subchapter 5:

(1) the fund shall be administered, and the monies of the funds shall be expended, by the Vermont working lands enterprise board created in section 2966 of this title;

(2) the fund shall be composed of moneys from time to time appropriated to the fund by the general assembly or received from any other source, private or public, approved by the board, and unexpended balances and any earnings shall remain in the fund from year to year; and

(3) the board shall make expenditures from the fund consistent with the duties and authority of the board to promote job creation and the economic viability, growth, and sustainability of the working landscape consistent with section 2967 of this title.

Sec. 4. TRANSITION

Notwithstanding any provision of Sec. 1. of this act to the contrary, upon the effective date of this act, each member of the Vermont agricultural development board shall become a member of the Vermont working lands enterprise board and shall serve the remainder of his or her current term, upon the expiration of which a member may be reappointed or replaced as provided in 6 V.S.A. § 2966, as amended by this act.

Sec. 5. 10 V.S.A. chapter 15 is amended to read:

CHAPTER 15. VERMONT HOUSING AND CONSERVATION TRUST FUND

* * *

§ 302. POLICY, FINDINGS, AND PURPOSE

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural ~~land~~ and forest land, historic properties, important natural areas, and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future

generations the essential characteristics of the Vermont countryside, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural ~~land~~ and forest land, historic properties, important natural areas, and recreational lands.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section.

§ 303. DEFINITIONS

As used in this chapter:

(1) "Board" means the Vermont housing and conservation board established by this chapter.

(2) "Fund" means the Vermont housing and conservation trust fund established by this chapter.

(3) "Eligible activity" means any activity which will carry out either or both of the dual purposes of creating affordable housing and conserving and protecting important Vermont lands, including activities which will encourage or assist:

(A) the preservation, rehabilitation or development of residential dwelling units which are affordable to lower income Vermonters;

(B) the retention of agricultural land for agricultural use, and of forest land for forestry use;

(C) the protection of important wildlife habitat and important natural areas;

(D) the preservation of historic properties or resources;

(E) the protection of areas suited for outdoor public recreational activity;

(F) the development of capacity on the part of an eligible applicant to engage in an eligible activity.

* * *

§ 311. CREATION OF THE VERMONT HOUSING AND CONSERVATION BOARD

(a) There is created and established a body politic and corporate to be known as the "Vermont housing and conservation board" to carry out the provisions of this chapter. The board is constituted a public instrumentality

exercising public and essential governmental functions, and the exercise by the board of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the state. The board is exempt from licensure under 8 V.S.A. chapter 73 ~~of Title 8~~.

(b) The board shall consist of the following 11 members:

(1) The secretary of agriculture, food and markets or his or her designee.

(2) The secretary of human services or his or her designee.

(3) The secretary of natural resources or his or her designee.

(4) The executive director of the Vermont housing finance agency or his or her designee.

(5) Three public members appointed by the governor with the advice and consent of the senate, who shall be residents of the state and who shall be experienced in creating affordable housing or conserving and protecting Vermont's agricultural ~~land~~ and forest land, historic properties, important natural areas, or recreational lands, one of whom shall be a representative of lower income Vermonters and one of whom shall be a farmer as defined in 32 V.S.A. § 3752(7).

(6) One public member appointed by the speaker of the house, who shall not be a member of the general assembly at the time of appointment.

(7) One public member appointed by the senate committee on committees, who shall not be a member of the general assembly at the time of appointment.

(8) Two public members appointed jointly by the speaker of the house and the president pro tempore of the senate as follows:

(A) One member from the nonprofit affordable housing organizations that qualify as eligible applicants under subdivision 303(4) of this title who shall not be an employee or board member of any of those organizations at the time of appointment.

(B) One member from the nonprofit conservation organizations whose activities are eligible under subdivision 303(3) of this title who shall not be an employee or member of the board of any of those organizations at the time of appointment.

* * *

§ 321. GENERAL POWERS AND DUTIES

* * *

(d) On behalf of the state of Vermont, the board shall seek and administer federal farmland protection and forestland conservation funds to facilitate the acquisition of interests in land to protect and preserve in perpetuity important farmland for future agricultural use and forestland for future forestry use. Such funds shall be used to implement and effectuate the policies and purposes of this chapter. In seeking federal farmland protection and forestland conservation funds under this subsection, the board shall seek to maximize state participation in the federal wetlands reserve program ~~in order~~ and such other programs as is appropriate to allow for increased or additional implementation of conservation practices on farmland and forestland protected or preserved under this chapter.

* * *

§ 324. STEWARDSHIP

If an activity funded by the board involves acquisition by the state of an interest in real property for the purpose of conserving and protecting agricultural ~~land~~ or forest land, important natural areas, or recreation lands, the board, in its discretion, may make a one-time grant to the appropriate state agency or municipality. The grant shall not exceed ten percent of the current appraised value of that property interest and shall be used to support its proper management or maintenance or both.

* * *

Sec. 6. PRIORITIES FOR WORKING LANDS INVESTMENTS

In the event that sources of funding for investments are available in the agency of agriculture, food and markets, the working lands enterprise board, and the working lands enterprise fund, it is the intent of the general assembly to invest in the following priorities:

(1) funding for direct grants and investments in food and forest systems infrastructure pursuant to 6 V.S.A. § 2966(a)(3).

(2) funding for direct grants and investments in agricultural or forestry enterprises pursuant to 6 V.S.A. § 2966(a)(1).

(3) funding to provide services and assistance to agricultural and forestry enterprises pursuant to 6 V.S.A. § 2966(a)(2).

(4) funding to the agency of agriculture, food and markets for one full-time position of "Vermont working landscape development director," for support staff, and for fiscal management and operations costs.

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

(For text see House Journal 3/29/2012)

H. 627

An act relating to an opioid addiction treatment system

The Senate proposes to the House to amend the bill 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 physician or advanced practice registered nurse and 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 or advanced practice registered nurse 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 health care providers, 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.

(For text see House Journal 3/20/2012)

Ordered to Lie

H. 775

An act relating to allowed interest rates for installment loans.

Pending Action: Second Reading of the bill.

Information Notice

INFORMATION NOTICE

The following items were recently received by the Joint Fiscal Committee:

JFO #2561 – $2,486,970 grant from the U.S. Federal Emergency Management Agency to the Vermont Department of Children and Families. This grant will be used to assist victims of Tropical Storm Irene through the provision of long-term disaster case management services. This item includes

the establishment of one (1) limited service position.

JFO #2562 – Request to establish seven (7) limited service positions in the Agency of Human Services and Department of Vermont Health Access. These positions will assist in the planning, procurement and implementation of the Medicaid Management Information System. Ninety-percent of funding for these healthcare information technology positions will be federal funding.

JFO #2563 – $40,000 grant from the Water Wheel Foundation to the Vermont Agency of Human Services. This grant will be used to implement a statewide volunteer management system.