

Senate Calendar

WEDNESDAY, APRIL 25, 2012

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**ACTION CALENDAR
CONSIDERATION POSTPONED**

Second Reading

S. 172.

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

PENDING ACTION: Second reading continued.

Reported adversely by Senator Cummings for the Committee on Finance.

(Committee vote: 4-1-2)

Reported adversely by Senator Kitchel for the Committee on Appropriations.

(Committee vote: 5-2-0)

**AMENDMENT TO S. 172 TO BE OFFERED BY SENATORS ILLUZZI
AND GALBRAITH**

Senators Illuzzi and Galbraith move to amend the bill by adding a new section to be numbered Sec. 1a to read as follows:

Sec. 1a. STUDY OF STATE OWNERSHIP INTEREST IN VERMONT'S TRANSMISSION ASSETS

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

(b) The joint fiscal office shall study whether the state's financial interests would be enhanced by acquiring an ownership interest in Transco, financed in whole or in part with private activity or general obligation bonds or by

acquiring or assuming an equal amount of debt and, if so, make a recommendation on a specific level of ownership. The joint fiscal office may retain the services of a financial advisor to conduct the study and make the recommendation required by this subsection, the reasonable costs of which shall be reimbursed by the petitioners in Docket No. 7770 per order of the public service board. The joint fiscal office shall submit the study and recommendation to the public service board, the department of public service, and the senate committees on economic development, housing, and general affairs, on finance, and on natural resources and energy, and the house committees on commerce and economic development and on natural resources and energy not later than September 1, 2013.

UNFINISHED BUSINESS

Third Reading

H. 485.

An act relating to establishing universal recycling of solid waste.

AMENDMENT TO H. 485 TO BE OFFERED BY SENATOR ASHE BEFORE THIRD READING

Senator Ashe moves that the Senate proposal of amendment be amended in Sec. 7, 10 V.S.A. § 66051, in subdivision (a)(2), by striking out “Public land” shall not mean land leased by the state to a person for private use.”

AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO H. 485 TO BE OFFERED BY SENATOR KITTELL BEFORE THIRD READING

Senator Kittell moves to amend the Senate proposal of amendment as follows in Sec. 12 as follows:

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

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

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

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

**AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO
H. 485 TO BE OFFERED BY SENATORS POLLINA AND ASHE
BEFORE THIRD READING**

Senators Pollina and Ashe move to amend the Senate proposal of amendment as follows:

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

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

§ 1522. BEVERAGE CONTAINERS; DEPOSIT

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

* * *

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

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

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

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

§ 1530. CLEAN ENVIRONMENT JOBS FUND

(a) There is hereby established in the state treasury a special fund to be known as the clean environment jobs fund, to be administered and expended by the secretary of natural resources to fund programs or projects that promote or support the growth of jobs or businesses in the state that are related to or engaged in recycling and solid waste management, provided that expenditures

from the fund shall not be used to fund programs or projects associated with the incineration of solid waste.

(b) The secretary may authorize disbursement or expenditures from the fund for:

(1) loans or grants to Vermont citizens or businesses initiating or expanding a business engaged in recycling or solid waste management, including: collection, transport, and recycling of electronic waste; salvage, recovery, and recycling of building materials; and the collection and disposal of mercury-added products; and

(2) the costs to the agency of natural resources in implementing the extended producer responsibility program set forth in chapter 160 of this title.

(c) There shall be deposited into the fund:

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

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

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

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

**PROPOSAL OF AMENDMENT TO H. 485 TO BE OFFERED BY
SENATOR WHITE BEFORE THIRD READING**

Senator White moves to amend the Senate proposal of amendment as follows

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

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

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

waste collected from a residential customer. A transporter certified under this section may incorporate the cost of the collection of mandated recyclables into the cost of the collection of solid waste and may adjust the charge for the collection of solid waste. A transporter certified under this section that offers the collection of solid waste may charge a separate fee for the collection of leaf and yard residuals or organic waste from a residential customer.

H. 769.

An act relating to department of environmental conservation fees.

AMENDMENT TO SENATE PROPOSAL OF AMENDMENT TO H. 769 TO BE OFFERED BY SENATOR MCCORMACK, ON BEHALF OF THE COMMITTEE ON FINANCE BEFORE THIRD READING

Senator McCormack, on behalf of the Committee on Finance moves to amend the Senate proposal of amendment by adding a new section to be numbered Sec. 18a to read as follows:

Sec. 18a. 21 V.S.A. § 1624 is added to read:

§ 1624. CHILD CARE PROVIDERS

Registered family day care home providers, licensed family child care home providers, and legally exempt child care providers shall have the right to organize, form, join, or assist a union, and, once an exclusive representative is selected, to negotiate a legally binding agreement with the state related to child care subsidy reimbursement rates and rules, professional development and training, grievance procedures, and a mechanism for dues collection. Child care providers may petition the labor relations board for an election in accord with section 1581 of this title and upon payment of a \$100.00 fee. The provisions of this chapter relating to election and negotiation shall apply to child care providers.

Second Reading

Favorable with Recommendation of Amendment

S. 20.

An act relating to financing campaigns for elected office.

Reported favorably with recommendation of amendment by Senator White for the Committee on Government Operations.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Large campaign contributions reduce public confidence in the electoral process and increase the risk and the appearance that candidates and elected officials may be beholden to contributors and not act in the best interests of all Vermont citizens.

(2) In Vermont, contributions greater than the amounts specified in this act are considered by the general assembly, candidates, and elected officials to be large contributions.

(3) In Vermont, candidates can raise sufficient monies to fund effective, competitive campaigns from contributions no larger than the amounts specified in this act.

(4) Limiting large contributions will encourage direct and small group contact between candidates and the electorate and will encourage the personal involvement of a larger number of citizens in campaigns, both of which are crucial to public confidence and the robust debate of issues.

(5) Identification of persons who publish political advertisements and electioneering communications provides the public with important information to evaluate advertising messages during an election campaign.

(6) Individuals who and companies which wish to influence voters but do not want to be particularly visible to the public during an election campaign often make contributions to political committees rather than sponsor campaign advertisements themselves. Disclosure of the identity of contributors to political committees provides the public with important information to evaluate the political committees' advertising messages and to illuminate the potential influence of contributors.

(7) Contributors who wish to influence candidates make contributions not only to candidates, but also to political committees and political parties that are associated with those candidates.

(8) Political committees make independent expenditures for the purpose of influencing the conduct of candidates and officeholders. Candidates and officeholders may feel beholden to political committees that produce advertising supportive of them. In addition, the conduct of candidates and officeholders may be influenced by a desire to avoid the effects of negative advertising by political committees that oppose them.

(9) As the line between independent and related expenditures is difficult to detect and enforce, the limit on contributions to political committees assists in preventing circumvention of the limits on contributions to candidates.

(10) Aggregate contribution limitations are necessary to limit the influence of a single source, political committee, or political party in an election. Large contributors to political committees and political parties are

known to candidates and can exert undue influence over those candidates. Contributors who wish to circumvent the limits on contributions to candidates have been known to give large contributions to political committees that also support the same candidates.

(11) There is an extensive record supporting the need for the regulation of campaign finance in Vermont that was compiled during the consideration of No. 64 of the Acts of 1997 and that was considered by the courts during the litigation of Landell v. Sorrell, 118 F.Supp.2d 459 (D.Vt. 2000), aff'd in part and vacated in part, 382 F.3d 91 (2d Cir. 2004), rev'd and remanded sub nom. Randall v. Sorrell, 126 S. Ct. 2479 (2006), and during the general assembly's consideration of S.164 during the 2007 legislative session, S.278 during the 2008 legislative session, and S.92 during the 2009–2010 legislative sessions.

(12) This act is necessary in order to implement more fully the provisions of Article 8 of Chapter I of the Constitution of the State of Vermont, which declares “That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution.”

Sec. 2. 17 V.S.A. § 2801 is amended to read:

§ 2801. DEFINITIONS

As used in this chapter:

(1) “Candidate” means an individual who has taken affirmative action to become a candidate for state, county, local₂ or legislative office in a primary, special, general₂ or local election. An affirmative action shall include one or more of the following:

(A) accepting contributions or making expenditures totaling \$500.00 or more; or

(B) filing the requisite petition for nomination under this title or being nominated by primary or caucus; or

(C) announcing that he or she seeks an elected position as a state, county₂ or local officer or a position as representative or senator in the general assembly.

(2) “Clearly identified,” with respect to a candidate, means that:

(A) The name of the candidate appears;

(B) A photograph or drawing of the candidate appears; or

(C) The identity of the candidate is apparent by unambiguous reference.

(3) “Contribution” means a payment, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid ~~to a person~~ for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates in any election, ~~but shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee or political party.~~ For purposes of this chapter, “contribution” shall not include a ~~personal loan from a lending institution.~~ any of the following:

(A) a personal loan of money to a candidate from a lending institution;

(B) services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party;

(C) unreimbursed travel expenses paid for by an individual for himself or herself who volunteers personal services to a candidate;

(D) unreimbursed campaign-related travel expenses paid for by the candidate or the candidate’s spouse or civil union partner;

(E) the payment by a political party of the costs of preparation, display, or mailing or other distribution of a party candidate listing;

(F) documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this title, lists of registered voters, and voter identification information created, obtained, or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party or to another political party;

(G) compensation paid by a political party to its employees whose job responsibilities are not for the specific and exclusive benefit of a single candidate in any election;

(H) campaign training sessions provided to three or more candidates;

(I) costs paid for by a political party in connection with a campaign event at which three or more candidates are present;

(J) the use of a political party’s offices, telephones, computers, and similar equipment;

(K) the use by a candidate or volunteer of his or her own personal property, including offices, telephones, computers, and similar equipment;

(L) compensation paid by a political party to its employees or consultants for the purpose of providing assistance to another political party;

(M) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention or depict a clearly identified candidate.

~~(3)~~(4) “Expenditure” means a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates. For the purposes of this chapter, “expenditure” shall not include any of the following:

(A) a personal loan of money to a candidate from a lending institution;

(B) services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party;

(C) unreimbursed travel expenses paid for by an individual for himself or herself who volunteers personal services to a candidate;

(D) unreimbursed campaign-related travel expenses paid for by the candidate or the candidate’s spouse or civil union partner.

(5) “Party candidate listing” means any communication by a political party that:

(A) lists the names of at least three candidates for election to public office;

(B) is distributed through public advertising such as broadcast stations, cable television, newspapers, and similar media or through direct mail, telephone, electronic mail, a publicly accessible site on the Internet, or personal delivery;

(C) treats all candidates in the communication in a substantially similar manner; and

(D) is limited to:

(i) the identification of each candidate, with which pictures may be used;

(ii) the offices sought;

(iii) the offices currently held by the candidates;

(iv) the party affiliation of the candidates and a brief statement about the party or the candidates’ positions, philosophy, goals, accomplishments, or biographies;

(v) encouragement to vote for the candidates identified; and

(vi) information about voting, such as voting hours and locations.

~~(4)~~(6) “Political committee” or “political action committee” means any formal or informal committee of two or more individuals, or a corporation, labor organization, public interest group, or other entity, not including a political party, which receives contributions of more than \$500.00 and makes expenditures of more than \$500.00 in any one calendar year for the purpose of supporting or opposing one or more candidates, influencing an election, or advocating a position on a public question in any election or affecting the outcome of an election.

~~(5)~~(7) “Political party” means a political party organized under chapter 45 of this title ~~or~~ and any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof ~~and including national or regional affiliates of the party and shall be considered a single, unified political party. The national affiliate of the political party shall be considered a separate political party.~~

~~(6)~~(8) “Single source” means an individual, partnership, corporation, association, labor organization, or any other organization or group of persons which is not a political committee or political party.

~~(7)~~(9) “Election” means the procedure whereby the voters of this state or any of its political subdivisions ~~select~~ or caucus selects a person to be a candidate for public office or fill a public office, or to act on public questions including voting on constitutional amendments. Each primary, general, special, ~~run-off~~ or local election shall constitute a separate election.

~~(8)~~(10) “Public question” means an issue that is before the voters for a binding decision.

~~(9)~~(11) “Two-year general election cycle” means the 24-month period that begins 38 days after a general election. ~~Expenditures related to a previous campaign and contributions to retire a debt of a previous campaign shall be attributed to the earlier campaign cycle.~~

~~(10)~~(12) “Full name” means an individual’s full first name, middle name or initial, if any, and full legal last name, making the identity of the person who made the contribution apparent by unambiguous reference.

~~(11)~~(13) “Telephone bank” means more than 500 telephone calls of an identical or substantially similar nature that are made to the general public within any 30-day period.

Sec. 3. 17 V.S.A. § 2801a is amended to read:

§ 2801a. EXCEPTIONS

The definitions of “contribution,” “expenditure,” and “electioneering communication” shall not apply to:

(1) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication which has not been paid for, or such facilities are not owned or controlled, by any political party, committee, or candidate; or

(2) any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and if all candidates in the race have an equal opportunity to promote their candidacies through the station.

Sec. 4. 17 V.S.A. § 2803 is amended to read:

§ 2803. CAMPAIGN REPORTS; FORMS; FILING

(a) The secretary of state shall prescribe and provide a uniform reporting form for all campaign finance reports. The reporting form shall be designed to show the following information, which shall be reported by a candidate or the candidate’s treasurer:

(1) the full name, town of residence, and mailing address of each contributor who contributes an amount in excess of \$100.00 for any election, the date of the contribution, and the amount contributed, as well as a space on the form for the occupation and employer of each contributor, which the candidate shall make a reasonable effort to obtain;

* * *

Sec. 5. 17 V.S.A. § 2805 is amended to read:

§ 2805. LIMITATIONS OF CONTRIBUTIONS

(a) A candidate for state representative or local office shall not accept contributions totaling more than ~~\$200.00~~ \$500.00 from a single source; or political committee ~~or political party in~~ for any two-year general election cycle.

(b) A candidate for state senator or county office shall not accept contributions totaling more than ~~\$300.00~~ \$1,000.00 from a single source; or political committee ~~or political party in~~ for any two-year general election cycle.

(c) A candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall not accept contributions totaling more than ~~\$400.00~~ \$2,000.00 from a single source; or political committee ~~or political party in~~ for any two-year general election cycle. ~~A political committee, other than a political committee of a candidate, or a political party shall not accept contributions totaling more than \$2,000.00~~

~~from a single source, political committee or political party in any two-year general election cycle.~~

~~(b)(d)~~ A single source, ~~political committee or political party~~ shall not contribute more to a candidate, ~~political committee or political party~~ than the candidate, ~~political committee or political party~~ is permitted to accept under subsection (a) of this section than an aggregate of \$20,000.00 to candidates in any two-year general election cycle. A single source shall not contribute more than an aggregate of \$20,000.00 to political committees and political parties in any two-year general election cycle.

~~(e)(e)~~ A candidate, ~~political party or political committee~~ shall not accept, ~~from a political party~~ contributions totaling more than the following amounts in any two-year general election cycle, ~~more than 25 percent of total contributions from contributors who are not residents of the state of Vermont or from political committees or parties not organized in the state of Vermont:~~

(1) For the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general, \$30,000.00;

(2) For the office of state senator or county office, \$2,000.00;

(3) For the office of state representative or local office, \$1,000.00.

~~(f)~~ A single source, ~~political committee, or political party~~ shall not contribute more to a candidate, ~~political committee, or political party~~ than the candidate, ~~political committee, or political party~~ is permitted to accept under subsections (a) through (c) and (e) of this section.

~~(d)(g)~~ A candidate shall not accept a monetary contribution in excess of \$50.00 unless made by check, credit or debit card, or other electronic transfer.

~~(e)(h)~~ A candidate, political party, or political committee shall not knowingly accept a contribution which is not directly from the contributor, but was transferred to the contributor by another person for the purpose of transferring the same to the candidate, or otherwise circumventing the provisions of this chapter. It shall be a violation of this chapter for a person to make a contribution with the explicit or implicit understanding that the contribution will be transferred in violation of this subsection.

~~(f)(i)~~ This section shall not be interpreted to limit the amount a candidate or his or her immediate family may contribute to his or her own campaign. For purposes of this subsection, "immediate family" means ~~individuals related to the candidate in the first, second or third degree of consanguinity~~ a candidate's spouse or civil union partner, parent, grandparent, child, grandchild, sister, brother, stepparent, step-grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, legal guardian, or former legal guardian.

~~(g)~~(j) The limitations on contributions established by this section shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment.

~~(h)~~(k) For purposes of this section, the term “candidate” includes the candidate’s political committee.

(l) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded to the nearest \$10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year, the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(m) A candidate’s expenditures related to a previous two-year general election cycle and contributions used to retire a debt of a previous two-year general election cycle shall be attributed to the earlier two-year general election cycle.

(n) A candidate accepts a contribution when the contribution is deposited in the candidate’s campaign account.

Sec. 6. 17 V.S.A. § 2805b is added to read:

§ 2805b. LIMITATIONS ON CONTRIBUTIONS; POLITICAL COMMITTEES; POLITICAL PARTIES

(a) In any two-year general election cycle:

(1) A political committee, other than a political committee of a candidate, shall not accept contributions totaling more than \$2,000.00 from a single source, political committee, or political party.

(2) A political party shall not accept contributions totaling more than \$2,000.00 from a single source or political committee.

(3) A political party shall not accept contributions totaling more than \$30,000.00 from another political party.

(b) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded to the nearest \$10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year,

the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(c) In any two-year general election cycle:

(1) A single source, political committee, or political party shall not contribute more than \$2,000.00 to a political committee other than a political committee of a candidate.

(2) A single source or political committee shall not contribute more than \$2,000.00 to a political party.

(3) A political party shall not contribute more than \$30,000.00 to another political party.

(d) The limitations on contributions established by this section shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment.

Sec. 7. 17 V.S.A. § 2806(a) is amended to read:

(a) A person who knowingly and intentionally violates a provision of ~~subchapters 2 through 4~~ subchapter 2, 3, 4, or 8 of this chapter shall be fined not more than \$1,000.00 or imprisoned not more than six months or both. If the person is not a natural person, each individual responsible for knowingly and intentionally authorizing a violation shall be liable under this subsection.

Sec. 8. 17 V.S.A. § 2806a is amended to read:

§ 2806a. CIVIL INVESTIGATION

(a) The attorney general or a state's attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule or regulation made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, and physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation. The attorney general or state's attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state and may take testimony and require proof material for his or her information and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum. The attorney general or a state's attorney shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses personally or by certified mail upon such person at his or her principal place of business, or, if such place is not known, to his or her last known address. Any book, record, paper,

memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or a state's attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same, except that any transcript of oral testimony, written responses, documents, or other information produced pursuant to this section may be used in the enforcement of this chapter, including in connection with any civil action brought under section 2806 of this title or subsection (c) of this section. Nothing in this subsection is intended to prevent the attorney general or a state's attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule or regulation made pursuant to this chapter. This subsection shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b) A person upon whom a notice is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by the order of a court of this state. Any person who is served with such notice within the state shall bear the complete cost of compliance with the terms thereof. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to such notice, or mistakes or conceals any information, shall be fined not more than \$5,000.00.

* * *

Sec. 9. 17 V.S.A. § 2809 is amended to read:

§ 2809. ACCOUNTABILITY FOR RELATED EXPENDITURES

* * *

~~(b) A related campaign expenditure made on a candidate's behalf shall be considered an expenditure by the candidate on whose behalf it was made. However, if the expenditure did not exceed \$50.00, the expenditure shall not be considered an expenditure by the candidate on whose behalf it was made.~~

(c) For the purposes of this section, a "related campaign expenditure made on the candidate's behalf" means any expenditure intended to promote the election of a specific candidate or group of candidates, or the defeat of an opposing candidate or group of candidates, if intentionally facilitated by, solicited by, or approved by the candidate or the candidate's political committee.

(d)(1) An expenditure made by a political party or by a political committee that recruits or endorses candidates, that primarily benefits six or fewer candidates who are associated with the political party or political committee making the expenditure, is presumed to be a related expenditure made on behalf of those candidates. An expenditure made by a political party or by a political committee that recruits or endorses candidates, that substantially benefits more than six candidates and facilitates party or political committee functions, voter turnout, platform promotion or organizational capacity shall not be presumed to be a related expenditure made on a candidate's behalf. In addition, an expenditure shall not be considered a "related campaign expenditure made on the candidate's behalf" if all of the following apply:

~~(1)(A)~~ (A) The ~~expenditures were~~ expenditure was made in connection with a campaign event whose purpose was to provide a group of voters with the opportunity to meet the candidate personally.

~~(2)(B)~~ (B) The ~~expenditures were~~ expenditure was made only for refreshments and related supplies that were consumed at that event.

~~(3)(C)~~ (C) The amount of the ~~expenditures~~ expenditure for the event was less than \$100.00.

(2) For the purposes of this section, a "related campaign expenditure made on the candidate's behalf" does not mean:

(A) the cost of invitations and postage and of food and beverages voluntarily provided by an individual in conjunction with an opportunity for a group of voters to meet a candidate, if the cumulative value of these items provided by the individual on behalf of any candidate does not exceed \$500.00 per election; or

(B) the sale of any food or beverage by a vendor at a charge less than the normal comparable charge for use at a campaign event providing an opportunity for a group of voters to meet a candidate, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$500.00 per election.

* * *

Sec. 10. 17 V.S.A. § 2891 is amended to read:

§ 2891. DEFINITIONS

As used in this chapter, "electioneering communication" means any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate, including communications

published in any newspaper or periodical or broadcast on radio or television or over any public address system, placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars, or in any direct mailing, robotic phone calls, or mass e-mails ~~that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate.~~

Sec. 11. 17 V.S.A. § 2892 is amended to read:

§ 2892. IDENTIFICATION

(a) All electioneering communications shall contain the name and address of the person, political committee, ~~or campaign~~ political party, or candidate who or which paid for the communication, except that:

(1) an electioneering communication transmitted through radio and paid for by a candidate does not need to contain the candidate's address; and

(2) an electioneering communication paid for by a person acting as an agent or consultant on behalf of another person, political committee, political party, or candidate shall clearly designate the name and address of the person, political committee, political party, or candidate on whose behalf the communication is published or broadcast. ~~The communication shall clearly designate the name of the candidate, party, or political committee by or on whose behalf the same is published or broadcast.~~

(b) If an electioneering communication is a related campaign expenditure made on a candidate's behalf pursuant to section 2809 of this title, then in addition to other requirements of this section, the communication shall also clearly designate the candidate on whose behalf it was made by including language such as "on behalf of" such candidate.

(c) The identification requirements of this section shall not apply to lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than \$150.00 on those electioneering communications, adjusted for inflation pursuant to the Consumer Price Index.

Sec. 12. 17 V.S.A. § 2892a is added to read:

§ 2892a. SPECIFIC IDENTIFICATION REQUIREMENTS FOR CERTAIN ELECTIONEERING COMMUNICATIONS

(a) A person, political committee, political party, or candidate who makes an expenditure for an electioneering communication shall include in any communication which is transmitted through radio or television, in a clearly

spoken manner, an audio statement by the person who paid for the communication stating his or her name and title, that the person paid for the communication, and that the person approves of the content of the communication. Moreover, for electioneering communications transmitted through television, this statement shall be made while the person, candidate, or representative of the political committee or political party that made the expenditure appears in a full-screen, unobscured view in the televised electioneering communication. If the person who paid for the communication is not a natural person, a statement required by this subsection shall be made by the principal officer of the person and shall include the name of the person who paid for the communication, the principal officer's name and title, and a statement that the officer approves of the content of the communication.

(b) For electioneering communications using media other than radio or television, the name and mailing address of the person who paid for the communication shall appear prominently such that a reasonable person would clearly understand by whom the expenditure has been made.

Sec. 13. 17 V.S.A. § 2893 is amended to read:

§ 2893. NOTICE OF EXPENDITURE

(a) For purposes of this section, “mass media activities” ~~includes~~ means any communication that includes the name or likeness of a clearly identified candidate for office including television commercials, radio commercials, mass mailings, mass electronic or digital communications, literature drops, newspaper and periodical advertisements, robotic phone calls, and telephone banks which include the name or likeness of a clearly identified candidate for office.

(b) In addition to any other reports required to be filed under this chapter, a person who makes expenditures for any one mass media activity totaling \$500.00 or more, adjusted for inflation pursuant to the Consumer Price Index, within 30 days of before a primary or general election shall, for each activity, file within 12 hours of the expenditure or activity, whichever occurs first, a mass media report by e-mail with the secretary of state and send a copy of the mass media report by e-mail to each candidate who has provided the secretary of state with an e-mail address on the consent form and whose name or likeness is included in the activity within 24 hours of the expenditure or activity, whichever occurs first without that candidate's knowledge. For the purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. The report shall identify the person who made the expenditure ~~with~~ and the name of ~~the each~~ each candidate ~~involved~~ whose name or likeness was included in the activity and any other information relating to the expenditure that is required to be disclosed under the provisions of subsections 2803(a) and (b) of this title. If

the activity occurs within 30 days before the election and the expenditure was previously reported, an additional report shall be required under this section.

Sec. 14. EVALUATION OF 2012 PRIMARY AND GENERAL ELECTIONS

The house and senate committees on government operations shall evaluate the 2012 primary and general elections to determine whether the major provisions of this act are accomplishing their intended purposes.

Sec. 15. REPEAL

17 V.S.A. § 2805a (campaign expenditure limitations) is repealed.

Sec. 16. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 3-2-0)

**AMENDMENT TO S. 20 TO BE OFFERED BY SENATORS
GALBRAITH, ASHE, POLLINA AND BARUTH**

Senators Galbraith, Ashe, Pollina and Baruth move that the bill be amended as follows:

First: In Sec. 2, 17 V.S.A. § 2801 (definitions), by adding a new subdivision to be subdivision (14) to read:

(14) "Separate segregated fund" means a bank account held separately from the general treasury of a corporation, labor union, political committee, or political party and which only contains contributions made by natural persons within the contribution limits of this chapter for those persons.

Second: By adding a new section to be Sec. 6a to read:

Sec. 6a. 17 V.S.A. § 2805c is added to read:

§ 2805c. LIMITATIONS ON CONTRIBUTIONS; CORPORATIONS AND LABOR UNIONS; POLITICAL COMMITTEES AND POLITICAL PARTIES

(a) Notwithstanding any provision of law to the contrary and except as provided in subsection (b) of this section, a corporation or labor union shall not make a contribution to a candidate.

(b) Notwithstanding the provisions of subsection (a) of this section, a corporation or labor union may:

(1) establish a separate segregated fund that may contribute to candidates.

(2) use money, property, labor, or any other thing of monetary value of that entity for the purposes of soliciting its stockholders, administrative officers, and members for contributions to the corporation's separate segregated fund and for financing the administration of that separate segregated fund. The corporation's employees to whom the foregoing authority does not extend may voluntarily contribute to the segregated separate fund but shall not be solicited for contributions; and

(3) provide its meeting facilities to a candidate, political committee, or political party on a nondiscriminatory and nonpreferential basis.

(c) Notwithstanding any provision of law to the contrary, a political committee or political party shall not contribute to a candidate except from the separate segregated fund of that political committee or political party.

(d) Notwithstanding any provision of law to the contrary, a candidate shall not accept a contribution from a corporation, labor union, political committee, or political party except from the separate segregated fund of that corporation, labor union, political committee, or political party.

S. 137.

An act relating to workers' compensation and unemployment compensation.

PENDING QUESTION: Shall the bill be amended as recommended by the Committee on Economic Development, Housing and General Affairs, as amended?

AMENDMENT TO S. 137 TO BE OFFERED BY SENATOR ASHE

Senator Ashe moves to amend the recommendation of amendment by the Committee on Economic Development, Housing and General Affairs by adding Sec. 26 to read as follows:

Sec. 26. FINDINGS

The general assembly finds:

(1) The right of employees to organize and form a labor organization to engage in collective bargaining is fundamental to both a free society and the generation and maintenance of a strong middle class.

(2) The state has long favored the right of employees to organize for the purpose of bargaining collectively with their employer.

(3) Vermont law recognizes that a labor organization democratically selected by bargaining unit employees is the exclusive representative of all the employees within the bargaining unit.

(4) A labor organization engages in both "chargeable" and "nonchargeable" activities on behalf of bargaining unit members.

“Chargeable” activities are generally those related to negotiating and ensuring the enforcement of collective bargaining agreements on behalf of the bargaining unit as a whole and for every employee within it. “Nonchargeable” activities are generally those related to political activities and lobbying.

(5) With respect to “chargeable activities,” a labor organization must represent all the employees within its bargaining unit. It may not discriminate between members of the labor organization who pay membership fees and those who exercise their rights not to become members. This is called “the duty of fair representation.” This duty does not extend to “nonchargeable” activities.

(6) The “chargeable” activities undertaken by labor organizations on behalf of all bargaining unit employees are in the interest of the public good.

(7) It is the policy of the state to require employees in bargaining units organized under state law who do not become members of the labor organization representing the unit to pay a “fair-share agency fee” for the chargeable activities undertaken on their behalf.

(8) Current labor law in Vermont leaves the question of a fair-share agency fee to the collective bargaining process itself.

(9) It is inconsistent with state policy to continue to permit employers, merely by not agreeing to fair-share fee provisions in collective bargaining agreements, to enable their bargaining unit employees who are not members of the labor organization to avoid paying their fair share of the organization’s representation.

(10) The result of allowing employers to withhold consent to fair-share fees has resulted in a patchwork of collective bargaining agreements, some of which include fair-share provisions and some of which do not.

(11) By enacting a fair-share agency fee law, the state will allow employees not to join the labor organizations representing them, but will ensure equitable treatment across bargaining units organized under state law.

(12) The duty of fair representation should be balanced by the duty to pay a fair-share agency fee.

and by renumbering the remaining sections to be numerically correct.

AMENDMENT TO S. 137 TO BE OFFERED BY SENATOR SNELLING

Senator Snelling moves to amend the recommendation of the committee on Economic Development, Housing and General Affairs, as follows

First: By striking out Secs. 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 in their entirety and inserting in lieu thereof a new Sec. 25 to read as follows:

Sec. 25. 21 V.S.A. § 1624 is added to read:

§ 1624. CHILD-CARE PROVIDERS

Child-care providers have the right to form a union and once organized to negotiate the scope of bargaining rights with the state. The provisions of chapter 19 of this title related to elections and negotiation process shall apply to child care providers forming a union and negotiating with the state for purposes of a legally binding agreement.

Second: In Sec. 42, EFFECTIVE DATES, by striking out the designation (a) and subsections (b), (c), and (d) in their entirety

And by renumbering the remaining sections to be numerically correct

AMENDMENT TO S. 137 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves to amend the bill in Sec. 27, 3 V.S.A. § 903, by adding at the end of subsection (c) a new sentence to read as follows:

This subsection shall not apply to employees who were not members of the employee organization and were not required to pay a collective bargaining service fee prior to July 1, 1998, and since that date have not joined the employee organization or paid a collective bargaining service fee.

**AMENDMENT TO S. 137 TO BE OFFERED BY
SENATOR MCCORMACK**

Senator McCormack moves that the bill be amended by adding Secs. 43 and 44 to read:

Sec. 43. FINDINGS

The general assembly finds:

(1) Quality early childhood education and care is essential to the quality of life in Vermont and is a vital contributor to the healthy development of children. Numerous studies have demonstrated that high-quality early childhood education and care during the first five years of a child's life is crucial to brain development and increases the likelihood of a child's success in school and later in life.

(2) The early childhood education and care a child receives before school age has a profound effect on future mental, psychological, and academic success. High-quality early childhood education and care lay the vital groundwork for the success of Vermont children.

(3) The state is committed to ensuring that all Vermont children are ready to succeed in school; that Vermont families have access to high quality early childhood education and care and after school services; and that the early childhood and after school supports and services administered by the

department for children and families are child-focused, family friendly, and fair to all child-care providers.

(4) Home-based child-care providers should have the opportunity to work collectively with the state to improve the standards in their profession, enhance educational training courses, increase child-care subsidy assistance, and ensure the constant improvement of early childhood education and care for the benefit of Vermont children.

Sec. 44. 33 V.S.A. chapter 36 is added to read:

CHAPTER 36. EXTENSION OF LIMITED COLLECTIVE BARGAINING RIGHTS TO CHILD-CARE PROVIDERS

§ 3601. DEFINITIONS

For purposes of this chapter:

(1) “Board” means the state labor relations board established in 3 V.S.A. § 921.

(2) “Child-care provider” shall have the same meaning as in subdivision 3511(2) of this title and includes people who provide child-care services as defined by subdivisions 3511(3) and 4902(2)–(3) of this title, except that it shall not include licensed child-care centers. For purposes of this chapter, “child-care provider” means the owner or operator of a licensed family-care home or a registered family day-care home, or a legally exempt child-care provider.

(3) “Collective bargaining” or “bargaining collectively” means the process by which the state and the exclusive representative of the child-care providers negotiate terms or conditions as defined in subsection 3603(b) of this title with the intent to arrive at an agreement which, when reached, shall be legally binding on all parties.

(4) “Exclusive representative” means a labor organization that has been elected or recognized and certified under this chapter and has the right to represent child-care providers in an appropriate bargaining unit for the purpose of collective bargaining.

(5) “Grievance” means a child-care provider’s or the exclusive representative’s formal written complaint regarding the improper application of one or more terms of the collective bargaining agreement, which has not been resolved to a satisfactory result through informal discussion with the state.

(6) “Legally exempt child-care provider” means a person who has obtained an Exempt Child Care Provider Certificate, has been approved by the department to provide legally exempt child care, and who is reimbursed for

that care through the agency of human services.

(7) “Licensed family child-care home” means a home licensed by the department for children and families that provides child-care services for up to 12 children in the residence of the licensee, and the licensee is one of the primary caregivers.

(8) “Registered family day care home” means a home registered with the department for children and families that provides child-care services for up to six children at any one time, and which in addition to the six children, may provide care for up to four school-age children for not more than four hours per day.

(9) “Subsidy payment” means any payment made by the state to assist in the provision of child-care services through the state’s child-care financial assistance programs.

§ 3602. RIGHTS OF CHILD-CARE PROVIDERS

(a) Child-care providers shall have the right to:

(1) Organize, form, join, or assist a union or labor organization for the purposes of collective bargaining without interference, restraint, or coercion.

(2) Bargain collectively through their chosen representatives.

(3) Engage in concerted activities for the purpose of supporting or engaging in collective bargaining or exercising their rights under this chapter.

(4) Pursue grievances as provided in this chapter.

(5) Refrain from any or all such activities.

(b) Child-care providers shall not strike or curtail their services in recognition of a picket line of any employee or labor organization, unless otherwise permitted to do so under federal or state law, including the National Labor Relations Act (29 U.S.C. § 151 et seq.) or the Vermont state labor relations act (21 V.S.A. § 1501 et seq.).

§ 3603. ESTABLISHMENT OF LIMITED COLLECTIVE BARGAINING; SCOPE OF BARGAINING

(a) Child-care providers, through their exclusive representative, shall have the right to bargain collectively with the state, through the governor’s designee, under this chapter.

(b) The scope of collective bargaining for child-care providers under this section is limited to the following:

(1) child-care subsidy payments, including rates and reimbursement practices and rate variations reflecting different provider classifications and

quality incentives;

(2) professional development and training, including financial assistance for child-care providers and their staff;

(3) procedures for resolving grievances against the state; and

(4) a mechanism for the collection of dues and representation fees from the child-care providers, which shall be the financial responsibility of each individual provider and shall in no way result in a decrease in the amount of subsidy funds available to eligible families.

(c) The state, acting through the governor's designee, shall meet with the exclusive representative for the purpose of entering into a written agreement that promotes access to high-quality early childhood education and care and after-school services and care for Vermont's children and families and ensures policies and practices that are child-focused, family friendly, and fair to all child-care providers. The negotiated agreement shall legally bind the state and the exclusive representative subject to subsection 3611(a) or subdivision 3612(a)(2) of this title.

§ 3604. PETITIONS FOR ELECTION; FILING; INVESTIGATIONS; HEARINGS; DETERMINATION

(a) A petition may be filed with the board in accordance with regulations prescribed by the board:

(1) By a child-care provider or a group of child-care providers or by any individual or labor union acting on their behalf alleging:

(A) that not less than 30 percent of the child-care providers in the petitioned bargaining unit wish to be represented for collective bargaining, and that the state has declined to recognize their exclusive representative; or

(B) that the labor organization which has been certified or is being recognized by the state as the exclusive representative no longer represents a majority of child-care providers.

(2) By the state alleging that one or more individuals or labor organizations have presented the state with a claim for recognition as the exclusive representative.

(b) The board shall investigate the petition and, if it has reasonable cause to believe that a question of unit determination or representation exists, conduct an appropriate hearing. Written notice of the hearing shall be mailed by certified mail to the parties named in the petition not less than seven days before the hearing. If the board finds upon the record of the hearing that a question of representation exists, it shall conduct an election by secret ballot and certify to the parties the election's results.

(c) In determining whether a question of representation exists, the board shall apply the same regulations and rules of decision regardless of the identity of the persons filing the petition or the kind of relief sought.

(d) Nothing in this chapter prohibits the waiving of hearings by stipulation for a consent election in conformity with the regulations and rules of the board.

(e) For the purposes of this chapter, the state may voluntarily recognize the exclusive representative of a unit of child-care providers, if the labor organization demonstrates that it has the support of a majority of the child-care providers in the unit it seeks to represent, no rival employee organization seeks to represent the child-care providers, and the bargaining unit is appropriate under section 3606 of this chapter.

§ 3605. ELECTION; RUNOFF ELECTIONS

(a) In determining the representation of child-care providers in a collective bargaining unit, the board shall conduct a secret ballot of the providers and certify the results to the interested parties and to the state. The original ballot shall be prepared so as to permit a vote against representation by anyone named on the ballot. No exclusive representative shall be certified or remain certified with less than a majority of all votes cast. The labor organization receiving a majority of votes cast shall be certified by the board as the exclusive representative of the unit of child-care providers.

(b) A runoff election shall be conducted by the board when an election, in which the ballot provides for no less than three choices, results in no choice receiving a majority of valid votes cast. The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election.

§ 3606. BARGAINING UNITS

(a) The board shall decide the unit appropriate for the purpose of collective bargaining in each case and those child-care providers to be included in the units in order to promote the purposes of this statute. The board may consider as an appropriate bargaining unit or units, but is not restricted in its discretion, any of the following units:

(1) a unit composed of registered family day-care home providers;

(2) a unit composed of licensed family child-care home providers;

(3) a unit composed of legally exempt child-care providers;

(4) a unit composed of child-care providers in subdivisions (1)–(3) of this subsection;

(5) a unit composed of a combination of child-care providers in subdivisions (1)–(3) of this subsection.

(b) Child-care providers may elect an exclusive representative for the purpose of collective bargaining by using the election procedures set forth in section 3605 of this chapter.

(c) The exclusive representative of child-care providers is required to represent all of the child-care providers in the unit without regard to membership in the union.

§ 3607. POWERS OF REPRESENTATIVES

The exclusive representative certified by the board shall be the exclusive representative of all the child-care providers in the unit for the purposes of collective bargaining. However, any individual child-care provider or group of providers shall have the right at any time to present grievances to the board and have such grievances adjusted without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and provided that the exclusive representative has been given an opportunity to be present at such an adjustment.

§ 3608. DUTY TO BARGAIN; PROHIBITED CONDUCT

(a) The state and all child-care providers and their representatives shall make every reasonable effort to make and maintain agreements concerning matters allowed under this chapter and to settle all disputes, whether arising out of the application of those agreements or disputes concerning the agreements. All such disputes between the state and child-care providers shall, upon request of either party, be considered within 15 days of the request or at such times as may be mutually agreed to and if possible settled with all expedition in conference between representatives designated and authorized to confer by the state or the interested child-care providers. This obligation does not compel either party to make any agreements or concessions.

(b) The state shall provide within seven days of a request by a labor organization the names, home addresses, telephone numbers, and workplace names of all registered family day-care homes, licensed family-care homes, and legally exempt child-care providers.

(c) The state shall not:

(1) Interfere with, restrain, or coerce child-care providers in the exercise of their rights under this chapter or by any law, rule, or regulation.

(2) Discriminate against a child-care provider because of the provider's affiliation with a labor organization or because a provider has filed charges or complaints or given testimony under this chapter.

(3) Take negative action against a child-care provider because the provider has taken actions demonstrating the provider's support for a labor

organization, including signing a petition, grievance, or affidavit.

(4) Refuse to bargain collectively in good faith with the exclusive representative or fail to abide by any agreement reached.

(5) Discriminate against a child-care provider because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age, or against a qualified disabled individual.

(6) Request or require a child-care provider to take an HIV-related blood test or discriminate against a child-care provider based on his or her HIV status.

(d) The exclusive representative or its agents shall not:

(1) Restrain or coerce child-care providers in the exercise of the rights guaranteed them by law, rule, or regulation. However, a labor organization may prescribe its own rules with respect to the acquisition or retention of membership, provided such rules are not discriminatory.

(2) Cause or attempt to cause the state to discriminate against a child-care provider in violation of this chapter or to discriminate against a child-care provider with respect to whom membership in the organization has been denied or terminated.

(3) Refuse to bargain collectively in good faith with the state.

(e) Complaints related to this section shall be made and resolved in accordance with the procedures set forth in 21 V.S.A. §§ 1622 and 1623.

§ 3609. MEDIATION; FACT-FINDING; LAST BEST OFFER

(a) If, after a reasonable period of negotiation, the representative of a collective bargaining unit and the state of Vermont reach an impasse, the board, upon petition of either party, may authorize the parties to submit their differences to mediation. Within five days after receipt of the petition, the board shall appoint a mediator who shall communicate with the parties and attempt to mediate an amicable settlement.

(b) If, after a minimum of 15 days after the appointment of a mediator, the impasse is not resolved, the mediator shall certify to the board that the impasse continues.

(c) Upon the request of either party, the board shall appoint a fact finder who has been mutually agreed upon by the parties. If the parties fail to agree on a fact finder within five days, the board shall appoint a fact finder. A member of the board or any individual who has actively participated in mediation proceedings for which fact-finding has been called shall not be eligible to serve as a fact finder under this section, unless agreed upon by the parties.

(d) The fact finder shall conduct hearings pursuant to rules of the board. Upon request of either party or of the fact finder, the board may issue subpoenas of persons and documents for the hearings, and the fact finder may require that testimony be given under oath and may administer oaths.

(e) Nothing in this section shall prohibit the fact finder from mediating the dispute at any time prior to issuing recommendations.

(f) The fact finder shall consider factors related to the scope of bargaining contained in this chapter in making a recommendation.

(g) Upon completion of the hearings as provided in subsection (d) of this section, the fact finder shall file written findings and recommendations with both parties.

(h) The costs of witnesses and other expenses incurred by either party in fact-finding proceedings shall be paid directly by the parties incurring them, and the costs and expenses of the fact finder shall be paid equally by the parties. The fact finder shall be paid a rate mutually agreed upon by the parties for each day or any part of a day while performing fact-finding duties and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of his or her duties. A statement of fact-finding per diem and expenses shall be certified by the fact finder and submitted to the board for approval. The board shall provide a copy of approved fact-finding costs to each party with its order apportioning one-half of the total to each party for payment. Each party shall pay its half of the total within 15 days after receipt of the order. Approval by the board of fact-finding and the fact finder's costs and expenses and its order for payment shall be final as to the parties.

(i) If the dispute remains unresolved 15 days after transmittal of findings and recommendations, each party shall submit to the board its last best offer on all disputed issues as a single package. Each party's last best offer shall be certified to the board by the fact finder. The board may hold hearings and consider the recommendations of the fact finder. Within 30 days of the certifications, the board shall select between the last best offers of the parties, considered in their entirety without amendment, and shall determine its cost. The board shall not issue a recommendation under this subsection that is in conflict with any law or rule or that relates to an issue that is not subject to bargaining. The board shall recommend its choice to the general assembly as the agreement which shall become effective subject to appropriations by the general assembly pursuant to subsection 3611(a) of this title.

§ 3610. GRIEVANCE PROCEDURES; BINDING ARBITRATION

The state and the exclusive representative shall negotiate a procedure for resolving complaints and grievances. A collective bargaining agreement may provide for binding arbitration as the final step of a grievance procedure.

§ 3611. COST ITEMS TO BE SUBMITTED TO GENERAL ASSEMBLY;
ANTITRUST EXEMPTION

(a) Agreements reached between the parties shall be submitted to the governor who shall request sufficient funds from the general assembly to implement the agreement. If the general assembly rejects any of the cost items submitted to it, all the cost items shall be returned to the parties to the agreement for further bargaining. If the general assembly appropriates sufficient funds, the agreement shall become effective at the beginning of the next fiscal year. If the general assembly appropriates a different amount of funds, the terms of the agreement affected by that appropriation shall be renegotiated based on the amount of funds actually appropriated, and the new agreement shall become effective at the beginning of the next fiscal year.

(b) The activities of child-care providers and their exclusive representatives that are necessary for the exercise of their rights under this chapter shall be afforded state-action immunity under applicable state and federal antitrust laws. The state intends that the "State Action" exemption to federal antitrust laws be available only to the state, to child-care providers, and to their exclusive representative in connection with these necessary activities. Such exempt activities shall be actively supervised by the state.

§ 3612. RIGHTS UNALTERED

(a) This chapter does not alter or infringe upon the rights of:

(1) A parent or legal guardian to select, discontinue, or negotiate terms of child-care services.

(2) The general assembly and the judiciary to make modifications to the delivery of state services through child-care subsidy programs, including eligibility standards for families, legal guardians, and child-care providers participating in child-care subsidy programs and the nature of the services provided.

(b) Nothing in this chapter shall affect the rights and obligations of private sector employers and employees under the National Labor Relations Act (29 U.S.C. § 151 et seq.) or the Vermont state labor relations act (21 V.S.A. § 1501 et seq.).

(c) Child-care providers shall not be eligible for participation in the Vermont state employees' retirement system or in the health insurance plans available to executive branch employees.

(d) Child-care providers bargaining under this section do not become employees of the state by virtue of such bargaining.

§ 3613. SEVERABILITY

If any of the provisions of this act or its application is held invalid as it relates to state law, federal law, or federal funding requirements, the invalidity shall not affect other provisions of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

§ 3614. EXTENDING NEGOTIATING RIGHTS TO CENTER-BASED PROVIDERS; RULEMAKING; PILOT PROJECT

(a) It is the purpose of this section to establish a pilot project to allow child-care providers at child-care centers to negotiate with the state.

(b) The commissioner for children and families through rulemaking shall establish a program and related procedures by which the staff, including program directors, at licensed child-care facilities may voluntarily participate in a group that shall select a representative organization for the purposes of negotiating a binding written agreement with the department. The agreement shall be limited to the subjects in subdivisions 3603(b)(1)–(4) of this title and shall be applicable only to the group that was formed by participating. No program and related procedures established under this section shall be conducted prior to January 1, 2014.

AMENDMENT TO S. 137 TO BE OFFERED BY SENATOR SEARS

Senator Sears moves to amend the bill as follows

First: By adding Secs. 41b, 41c, and 41d to read:

Sec. 41b. 21 V.S.A. § 495i is added to read:

§ 495i. PRIVACY PROTECTION

(a) For purposes of this section:

(1) “Electronic communications device” means any device that uses electronic signals to create, transmit, and receive information, and includes computers, telephones, personal digital assistants, and other similar devices.

(2) “Retaliatory action” means discharge, threat, suspension, demotion, denial of promotion, discrimination, or other adverse employment action regarding the employee’s compensation, terms, conditions, location, or privileges of employment.

(3) “Social networking service” means an online service, platform, or website that enables an individual to establish a profile within a bounded system created by the service for the purpose of sharing information with other users of the service.

(b) An employer shall not:

(1) Request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through an electronic communications device.

(2) Request or require that an employee or applicant take an action that permits the employer to gain access to the employee's or applicant's account or profile on a social networking service if that information is not available to the general public.

(3) Take retaliatory action against an employee for an employee's refusal to disclose any information specified in subdivision (1) or (2) of this subsection.

(4) Fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in subdivision (1) or (2) of this subsection.

(c) An employer may require an employee to disclose any user name, password, or other means for accessing nonpersonal accounts or services that provide access to the employer's internal computer or information systems.

Sec. 41c. STATE OF VERMONT AS EMPLOYER

Upon passage of this act, the state of Vermont and its subdivisions shall immediately suspend any employment practices prohibited by Sec. 41b of this act.

Sec. 41d. VERMONT DEPARTMENT OF LABOR

The Vermont department of labor shall take appropriate steps to inform employers of Sec. 41b of this act.

Second: In Sec. 42, EFFECTIVE DATES by adding subsections (e) and (f) to read:

(e) Sec. 41b shall take effect on July 1, 2012.

(f) Secs. 41c and 41d shall take effect on passage.

**AMENDMENT TO S. 137 TO BE OFFERED BY SENATOR ILLUZZI
ON BEHALF OF THE COMMITTEE ON ECONOMIC
DEVELOPMENT, HOUSING AND GENERAL AFFAIRS**

Senator Illuzzi, on behalf of the Committee on Economic Development, Housing and General Affairs moves to amend the bill by adding a new section within the Wage Claims portion of the bill to be numbered Sec. 3a to read as follows:

Sec. 3a. 33 V.S.A. § 2301 is amended to read:

§ 2301. BURIAL RESPONSIBILITY

* * *

(c) When a person other than one described in subsection (a) or (b) of this section dies in the town of domicile without sufficient known assets to pay for burial, the burial shall be arranged and paid for by the town. The department shall reimburse the town up to ~~\$250.00~~ \$1,100.00 for expenses incurred.

* * *

AMENDMENT TO S. 137 TO BE OFFERED BY SENATORS ILLUZZI, ASHE, CARRIS, DOYLE AND GALBRAITH

Senators Illuzzi, Ashe, Carris, Doyle and Galbraith moves to amend the bill by inserting two new sections, to be numbered Secs. 15a and 15b, to read as follows:

Sec. 15a. 21 V.S.A. § 348 is added to read:

§ 348. PAYMENT OF PREVAILING WAGE

(a) This section applies to all electric generation plants approved under 30 V.S.A. § 248 that have a plant capacity greater than 2.2 megawatts. For the purposes of this section, “plant” and “plant capacity” are as defined in 30 V.S.A. § 8002.

(b) The holder of a certificate issued for a plant identified in subsection (a) of this section shall require that all wages paid to contractors or subcontractors for construction of the plant shall be no less than the rates established by the U.S. Department of Labor under the federal Davis-Bacon Act, 40 U.S.C. § 3141 et seq., for projects in Vermont.

(c) The purpose of this section is to ensure that fair and adequate compensation is paid to individuals engaged in the construction of electric generation plants located in the state.

Sec. 15b. IMPLEMENTATION

The provisions of 21 V.S.A. § 348 (payment of prevailing wages) shall apply to wages paid on and after passage of this act.

S. 169.

An act relating to workers' compensation liens.

PENDING QUESTION: Shall the rules be suspended to allow a non-germane amendment to be considered?

Text of non-germane recommendation of Committee on Economic Development, Housing and General Affairs.

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. FINDINGS

The general assembly finds:

(1) Several recent cases involving the search and rescue of persons lost in Vermont's outdoor recreation areas, including the tragic death of Levi Duclos on January 9, 2012 as he was hiking on the Emily Proctor Trail in Ripton, have raised questions concerning whether supervision of backcountry search and rescue operations should be maintained by the department of public safety or shared with or transferred to another governmental entity and whether regional protocols should be put into place to allow for a local or regional response utilizing a combination of qualified professional and qualified volunteer searchers and rescuers.

(2) Under current law and practice, the Vermont State Police division of the department of public safety has primary responsibility for finding lost hikers and other missing people in areas of the state which do not have municipal police departments and has the authority to call out qualified professional and qualified volunteer services. This duty was assigned when the Vermont State Police were first created in 1946 and has not changed since that time. According to Howard Paul, a public information officer and member of the board of directors of the National Association for Search and Rescue, Vermont is one of only five states that require their state police to find and rescue people who are lost or missing outdoors.

(3) In other states in which a significant amount of outdoor recreational activity occurs, such as New Hampshire and Maine, state fish and game agencies are in charge of finding lost outdoor recreationalists. Most eastern states turn to park rangers and fish and game wardens for search and rescue.

(4) Many states collaborate with nonprofit organizations to aid in search and rescue. For example, the Maine Warden Service is in charge of search and rescue throughout that state, and it relies on the Maine Association for Search and Rescue, which is composed of approximately 15 approved member organizations.

(5) Vermont has an extensive number of first responders and emergency service personnel with specific training and experience conducting outdoor search and rescue operations. The Lincoln Fire Department, for example, has significant search and rescue experience, well-established strategies for conducting such operations, and the ability to have a team on the ground in sometimes 30 minutes or less on nights and weekends. Despite these resources, only four civilian organizations are approved by the department of public safety to provide search and rescue assistance in Vermont.

(6) In light of Vermont's minority status in charging the state police with responsibility for search and rescue of lost hikers and outdoor

recreationalists and in light of the department's recent challenges in fulfilling this responsibility, it is an appropriate time to consider whether some other state entity, working with Vermont's extensive volunteer community, should assume responsibility for outdoor search and rescue operations.

Sec. 2. BACKCOUNTRY SEARCH AND RESCUE STUDY COMMITTEE

(a) Creation of committee. There is created a backcountry search and rescue study committee to determine whether the department of public safety or a different state agency should have lead or coauthority for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas and to recommend an appropriate organizational structure to manage Vermont's various search and rescue resources. As used in the section, "backcountry search and rescue" means the search for and provision of aid to people who are lost or stranded in the outdoors on Vermont's land or inland waterways.

(b) Membership. The backcountry search and rescue study committee shall be composed of six members. The members of the committee shall be as follows:

(1) Three members of the house appointed by the speaker.

(2) Three members of the senate appointed by the committee on committees.

(c) For purposes of its study, the committee shall consult with and seek testimony from interested parties, including the following individuals and entities or their designees:

(1) The commissioner of public safety.

(2) The commissioner of fish and wildlife.

(3) The Vermont League of Cities and Towns.

(4) Stowe Mountain Rescue.

(5) Colchester Technical Rescue.

(6) A certified first responder with search and rescue experience.

(7) The Professional Firefighters of Vermont.

(8) A member of a volunteer fire department with search and rescue experience designated by the president of the Vermont State Firefighters Association.

(9) A sheriff designated by the department of sheriffs and state's attorneys.

(d) Powers and duties. The committee shall study whether the department of public safety or a different state agency should be responsible for supervising search and rescue operations for missing persons in Vermont's backcountry and outdoor recreational areas. The committee's study shall include:

(1) reviewing the existing method and responsibility for conducting backcountry search and rescue operations in Vermont and identifying the advantages and disadvantages of the current system;

(2) considering models in other states for supervision of backcountry search and rescue operations, including the New Hampshire approach of providing authority to the New Hampshire fish and game department;

(3) evaluating whether backcountry search and rescue operations would be conducted in a more timely and efficient manner if the authority for conducting such operations were held by one or more state or nongovernmental entities other than the department of public safety or whether there should be a shared or regional approach depending on the location of the search;

(4) considering and evaluating different organizational structures to determine how to most effectively manage Vermont's backcountry search and rescue processes and resources;

(5) considering whether minimum qualifications should be set for participation in backcountry search and rescue operations and whether backcountry search and rescue responders who are not state employees should be provided with insurance coverage;

(6) considering the feasibility of establishing an online database of missing persons that would provide automatic notice to first responders;

(7) developing methods of financing search and rescue operations, including consideration of methods used in other states such as:

(A) establishing an outdoor recreation search and rescue card available for purchase by users of outdoor recreation resources on a voluntary basis to help reimburse the expenses of search and rescue missions;

(B) imposing fees on recreational and outdoor licenses and permits; and

(C) permitting recovery of expenses from any person whose negligent conduct required a search and rescue response and, if so, who should bring such an action and who should be reimbursed; and

(8) proposing any statutory changes that the committee identifies as necessary to improve the conduct and supervision of backcountry search and rescue activities in Vermont.

(e) Report. The committee shall report its findings and recommendations, together with draft legislation if any legislative action is recommended, to the general assembly on or before January 15, 2013.

(f) Reimbursement. Members of the committee who are not employees of the state of Vermont shall be reimbursed at the per diem rate set forth in 32 V.S.A. § 1010.

(g) The legislative council shall provide administrative and drafting support to the committee.

After passage, the title of the bill is to be amended to read:

An act relating to a study of search and rescue operations.

(Committee vote: 5-0-0)

**AMENDMENT TO S. 169 TO BE OFFERED BY SENATOR ILLUZZI
ON BEHALF OF THE COMMITTEE ON ECONOMIC
DEVELOPMENT, HOUSING AND GENERAL AFFAIRS**

Senator Illuzzi, on behalf of the Committee on Economic Development, Housing, and General Affairs moves that the bill be amended by adding Secs. 3–13 as follows:

Sec. 3. 18 V.S.A. § 901 is amended to read:

§ 901. POLICY

It is the policy of the state of Vermont that all persons who suffer sudden and unexpected illness or injury should have access to the emergency medical services system in order to prevent loss of life or the aggravation of the illness or injury, and to alleviate suffering. The system should include competent emergency medical care provided by adequately trained, licensed, and equipped personnel acting under appropriate medical control. Persons involved in the delivery of emergency medical care should be encouraged to maintain and advance their levels of training and certification, and to upgrade the quality of their vehicles and equipment.

Sec. 4. 18 V.S.A. § 903 is amended to read:

§ 903. AUTHORIZATION FOR PROVISION OF EMERGENCY
MEDICAL SERVICES

Notwithstanding any other provision of law, including provisions of chapter 23 of Title 26, persons who are ~~certified~~ licensed to provide emergency medical care pursuant to the requirements of this chapter and implementing

regulations are hereby authorized to provide such care without further certification, registration or licensing.

Sec. 5. 18 V.S.A. § 904 is amended to read:

§ 904. ADMINISTRATIVE PROVISIONS

(a) In order to carry out the purposes and responsibilities of this chapter, the department of health may contract for the provision of specific services.

(b) The secretary of human services, upon the recommendation of the ~~department~~ commissioner of health, may issue regulations to carry out the purposes and responsibilities of this chapter.

Sec. 6. 18 V.S.A. § 906 is amended to read:

§ 906. EMERGENCY MEDICAL SERVICES DIVISION;
RESPONSIBILITIES

To implement the policy of section 901, the department of health shall be responsible for:

(1) Developing and implementing minimum standards for training emergency medical personnel in basic life support and advanced life support, and ~~certifying their~~ licensing emergency medical personnel according to their level of training and competence.

(2) Developing and implementing minimum standards for vehicles used in providing emergency medical care, designating the types and quantities of equipment that must be carried by these vehicles, and registering those vehicles according to appropriate classifications.

(3) Developing a statewide system of emergency medical services including but not limited to planning, organizing, coordinating, improving, expanding, monitoring and evaluating emergency medical services.

(4) Establishing by rule minimum standards for the credentialing of emergency medical personnel by their affiliated agency, which shall be required in addition to the licensing requirements of this chapter.

(5) Training, or assisting in the training of, emergency medical personnel.

~~(5)~~(6) Assisting hospitals in the development of programs which will improve the quality of in-hospital services for persons requiring emergency medical care.

~~(6)~~(7) Developing and implementing procedures to insure that emergency medical services are rendered only with appropriate medical control. For the provision of advanced life support, appropriate medical control shall include at a minimum:

(A) written protocols between the appropriate officials of receiving hospitals and ~~ambulance services~~ emergency medical services districts defining their operational procedures;

(B) where necessary and practicable, direct communication between emergency medical personnel and a physician or person acting under the direct supervision of a physician;

(C) when such communication has been established, a specific order from the physician or person acting under the direct supervision of the physician to employ a certain medical procedure;

(D) use of advanced life support, when appropriate, only by emergency medical personnel who are certified by the department of health to employ advanced life support procedures.

~~(7)~~(8) Establishing requirements for the collection of data by emergency medical personnel and hospitals as may be necessary to evaluate emergency medical care.

~~(8)~~(9) Establishing, by rule, ~~levels of individual certification and application forms for advanced emergency medical care~~ license levels for emergency medical personnel. The commissioner shall use the guidelines established by the National Highway Traffic Safety Administration (NHTSA) in the U.S. Department of Transportation as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:

(A) An individual may apply for and obtain one or more additional ~~certifications~~ licenses, including ~~certification~~ licensure as an advanced emergency medical technician or as a paramedic.

(B) An individual ~~certified~~ licensed by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is ~~affiliated with a licensed ambulance service, fire department, or rescue service~~ credentialed by an affiliated agency, shall be able to practice fully within the scope of practice for such level of ~~certification~~ licensure as defined by NHTSA's National EMS Scope of Practice Model ~~notwithstanding any law or rule to the contrary~~ consistent with the license level of the affiliated agency, and subject to the medical direction of the ~~commissioner or designee~~ emergency medical services district medical advisor.

(C) Unless otherwise provided under this section, an individual seeking any level of ~~certification~~ licensure shall be required to pass an examination approved by the commissioner for that level of ~~certification~~ licensure. Written and practical examinations shall not be required for

~~recertification relicensure~~; however, to maintain certification licensure, all individuals shall complete a specified number of hours of continuing education as established by rule by the commissioner.

(D) If there is a hardship imposed on any applicant for a certification license under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary or permanent waiver of one or more of the certification licensure requirements, which the commissioner may grant for good cause.

(E) An applicant who has served as ~~an advanced emergency medical technician, such as~~ a hospital corpsman or a medic in the United States Armed Forces, or who is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified licensed emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification licensure and further provided that the applicant is affiliated with a rescue service, fire department, or licensed ambulance service credentialed by an affiliated agency.

(F) An applicant who is ~~certified~~ registered on the National Registry of Emergency Medical Technicians as an ~~EMT basic, EMT intermediate, emergency medical technician, an advanced emergency medical technician,~~ or a paramedic shall be granted certification licensure as a Vermont ~~EMT basic, EMT intermediate, emergency medical technician, an advanced emergency medical technician,~~ or a paramedic without the need for further testing, provided he or she is affiliated with an ambulance service, fire department, or rescue service, credentialed by an affiliated agency or is serving as a medic with the Vermont National Guard.

~~(G) No advanced certification shall be required for a trainee in established advanced training programs leading to certification as an advanced emergency medical technician, provided that the trainee is supervised by an individual holding a level of certification for which the trainee is training and the student is enrolled in an approved certification program.~~

(10) The commissioner shall adopt rules related to expenditures authorized from the special fund created in section 908 of this chapter.

Sec. 7. 18 V.S.A. § 908 is added to read:

§ 908. EMERGENCY MEDICAL SERVICES SPECIAL FUND

The emergency medical services special fund is established pursuant to 32 V.S.A. chapter 7, subchapter 5 comprising revenues received by the department from public and private sources as gifts, grants, and donations

together with additions and interest accruing to the fund. The commissioner of health shall administer the fund to the extent funds are available to support training programs, injury prevention, data collection and analysis, and other activities relating to the training of emergency medical personnel and delivery of emergency medical services and ambulance services in Vermont, as determined by the commissioner. Any balance at the end of the fiscal year shall be carried forward in the fund.

Sec. 8. 18 V.S.A. § 909 is added to read:

§ 909. EMS ADVISORY COMMITTEE

(a) The commissioner shall establish an advisory committee to advise on matters relating to the delivery of emergency medical services (EMS) in Vermont.

(b) The advisory committee shall be chaired by the commissioner or his or her designee and shall include the following 14 other members:

(1) four representatives of EMS districts. The representatives shall be selected by the EMS districts in four regions of the state. Those four regions shall correspond with the geographic lines used by the public safety districts pursuant to 20 V.S.A. § 5. For purposes of this subdivision, an EMS district located in more than one public safety district shall be deemed to be located in the public safety district in which it serves the greatest number of people;

(2) a representative from the Vermont Ambulance Association;

(3) a representative from the initiative for rural emergency medical services program at the University of Vermont;

(4) a representative from the professional firefighters of Vermont;

(5) a representative from the Vermont Career Fire Chiefs Association;

(6) a representative from the Vermont State Firefighters' Association;

(7) an emergency department director of a Vermont hospital appointed by the Vermont Association of Emergency Department Directors;

(8) an emergency department nurse manager of a Vermont hospital appointed by the Vermont Association of Emergency Department Nurse Managers;

(9) a pediatric emergency medicine specialist appointed by the American Academy of Pediatrics, Vermont Chapter;

(10) a representative from the Vermont Association of Hospitals and Health Systems; and

(11) one public member not affiliated with emergency medical services, firefighter services, or hospital services, appointed by the governor.

(c) The committee shall meet not less than quarterly in the first year and not less than twice annually each subsequent year and may be convened at any time by the commissioner or his or her designee or at the request of seven committee members.

(d) Beginning January 1, 2013, the committee shall report annually on the emergency medical services system to the house committees on commerce and economic development and on human services and to the senate committees on economic development, housing and general affairs and on health and welfare. The committee's initial report shall include each EMS district's response times to 911 emergencies in the previous year based on information collected from the Vermont department of health's division of emergency medical services and recommendations on the following:

(1) whether Vermont EMS districts should be consolidated such as along the geographic lines used by the four public safety districts established under 20 V.S.A. § 5; and

(2) whether every Vermont municipality should be required to have in effect an emergency medical services plan providing for timely and competent emergency responses.

Sec. 9. 24 V.S.A. § 2651 is amended to read:

§ 2651. DEFINITIONS

As used in this chapter:

(1) "Advanced emergency medical treatment" means those portions of emergency medical treatment as defined by the department of health, which may be performed by ~~certified~~ licensed emergency medical services personnel acting under the supervision of a physician within a system of medical control approved by the department of health.

* * *

(4) "Basic emergency medical treatment" means those portions of emergency medical treatment, as defined by the department of health, which may be exercised by ~~certified~~ licensed emergency medical services personnel acting under their own authority.

* * *

(6) "Emergency medical personnel" means persons, including volunteers, ~~certified~~ licensed by the department of health to provide emergency medical treatment ~~on behalf of an organization such as an ambulance service or first responder service~~ and credentialed by an affiliated agency whose

primary function is the provision of emergency medical treatment. The term does not include duly licensed or registered physicians, dentists, nurses or physicians' assistants when practicing in their customary work setting.

* * *

(15) "Volunteer personnel" means persons who are ~~certified~~ licensed by the department of health and credentialed by an affiliated agency to provide emergency medical treatment without expectation of remuneration for the treatment rendered other than nominal payments and reimbursement for expenses, and who do not depend in any significant way on the provision of such treatment for their livelihood.

(16) "Affiliated agency" means an ambulance service or first responder service licensed under this chapter, including a fire department, rescue squad, police department, ski patrol, hospital, or other agency so licensed.

Sec. 10. 24 V.S.A. § 2657 is amended to read:

§ 2657. PURPOSES AND POWERS OF EMERGENCY MEDICAL SERVICES DISTRICTS

(a) It shall be the function of each emergency medical services district to foster and coordinate emergency medical services within the district, in the interest of affording adequate ambulance services within the district. Each emergency medical services district shall have powers which include, but are not limited to, the power to:

* * *

(3) Enter into agreements and contracts for furnishing technical, educational ~~or~~, and support services and credentialing related to the provision of emergency medical treatment.

* * *

(8) Sponsor or approve programs of education approved by the department of health which lead to the ~~certification~~ licensure of emergency medical services personnel.

(9) ~~Cooperate~~ Establish medical control within the district with physicians and representatives of medical facilities ~~to establish medical control within the district, including written protocols with the appropriate officials of receiving hospitals defining their operational procedures.~~

(10) Assist the department of health in a program of testing for ~~certification~~ licensure of emergency medical services personnel.

(11) Assure that each affiliated agency in the district has implemented a system for the credentialing of all its licensed emergency medical personnel.

* * *

Sec. 11. 24 V.S.A. § 2682 is amended to read:

§ 2682. POWERS OF STATE BOARD

(a) The state board shall administer this subchapter and shall have power to:

(1) Issue licenses for ambulance services and first responder services under this subchapter.

* * *

(3) Make, adopt, amend, and revise, as it deems necessary or expedient, reasonable rules in order to promote and protect the health, safety, and welfare of members of the public using, served by, or in need of, emergency medical treatment. Any rule may be repealed within 90 days of the date of its adoption by a majority vote of all the district boards. Such rules may cover or relate to:

(A) Age, training, credentialing, and physical requirements for emergency medical services personnel.

* * *

Sec. 12. REPEAL

Sec. 20(c) of No. 142 of the Acts of the 2009 Adj. Sess. (2010) (EMS services exceeding scope of practice of affiliated agency) is repealed.

Sec. 13. EFFECTIVE DATE

This act shall take effect on passage.

and that after passage the title of the bill be amended to read: "An act relating to a study of search and rescue operations and emergency medical services"

S. 204.

An act relating to creating an expert panel on the creation of a state bank.

PENDING QUESTION: Shall the bill be amended as recommended by the Committee on Finance?

(For text of the recommendation of amendment of the Committee on Finance, see Senate Journal of April 18, 2012, page 741.)

Favorable with Proposal of Amendment

H. 78.

An act relating to wages for laid-off employees.

PENDING QUESTION: Shall the Senate propose to the House to amend the bill as recommended by the Committee on Economic Development, Housing and General Affairs?

H. 523.

An act relating to revising the state highway condemnation law.

Reported favorably with recommendation of proposal of amendment by Senator Nitka for the Committee on Judiciary.

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

Sec. 1. LEGISLATIVE INTENT

(a) The intent of the changes to the definition of necessity made in this act is to state the definition in accordance with State Transportation Board v. May, 137 Vt. 320 (1979), and to reorganize the definition for the sake of clarity. No substantive change is intended.

(b) The standard of review of the agency of transportation's determination of necessity established in 19 V.S.A. § 505(a)(3) of this act is intended to replace the former language of 19 V.S.A. § 507(a) stating that "the exercise of reasonable discretion upon the part of the agency shall not be presumed," as well as to replace the standard of review adopted in Latchis v. State Hwy. Bd., 120 Vt. 120 (1957) and relied upon in subsequent cases.

Sec. 2. 19 V.S.A. chapter 5 is amended to read:

CHAPTER 5. CONDEMNATION FOR STATE HIGHWAY PROJECTS

§ 500. INTENT

The purpose of this chapter is to ensure that a property owner receives fair treatment and just compensation when the owner's property is taken for state highway projects, and that condemnation proceedings are conducted expeditiously so that highway projects in the public interest are not unnecessarily delayed.

§ 501. DEFINITIONS

The following words and phrases as used in this chapter shall have the following meanings:

(1) “Necessity” ~~shall mean~~ means a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Due Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

(A) adequacy of other property and locations ~~and to;~~

(B) ~~the~~ quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking. In this matter the court shall view the problem from both a long range agricultural land use viewpoint as well as from the immediate taking of agricultural lands which may be involved. Consideration also shall be given to the;

(C) effect upon home and homestead rights and the convenience of the owner of the land; ~~to the~~

(D) effect of the highway upon the scenic and recreational values of the highway; ~~to the~~

(E) need to accommodate present and future utility installations within the highway corridor; ~~to the~~

(F) need to mitigate the environmental impacts of highway construction; and ~~to the~~

(G) effect upon town grand lists and revenues.

(2) Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property, which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.

(3) “Interested person” or “person interested in lands” or “property owner” means a person who has a legal interest of record in the property affected taken or proposed to be taken.

§ 502. AUTHORITY; PRECONDEMNATION PROCEDURE HEARING

(a) Authority. ~~The transportation board agency, when in its judgment the interest of the state requires, shall request the agency to~~ may take any land or rights in land, including easements of access, air, view and light, deemed property necessary to lay out, relocate, alter, construct, reconstruct, maintain, repair, widen, grade, or improve any state highway, including affected portions of town highways. All property rights shall be taken in fee simple whenever practicable. In furtherance of these purposes, the agency may enter upon ~~land adjacent to the proposed highway or upon other lands for the purpose of examination and making necessary surveys. However, that lands to conduct necessary examinations and surveys; however, the agency shall do this work shall be done~~ with minimum damage to the land and disturbance to the owners and shall be subject to liability for actual damages. All property taken permanently shall be taken in fee simple whenever practicable. For all state highway projects involving property acquisitions, the agency shall follow the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act (“Act”) and its implementing regulations, as may be amended.

(b) The agency, in the construction and maintenance of limited access highway facilities, may also take any land or rights of the landowner in land under 9 V.S.A. chapter 93, subchapter 2, relating to advertising on limited access highways.

(c) Public hearing; notice of hearing.

(1) A public hearing shall be held for the purpose of receiving suggestions and recommendations from the public prior to the agency’s initiating proceedings under this chapter for the acquisition of any ~~lands or rights property~~. The hearing shall be conducted by the agency. ~~Public notice shall be given by printing~~

(2) The agency shall prepare an official notice stating the purpose for which the property is desired and generally describing the highway project.

(3) Not less than 30 days prior to the hearing, the agency shall:

(A) cause the official notice not less than 30 days prior to the hearing to be printed in a newspaper having general circulation in the area affected. ~~A;~~

(B) mail a copy of the notice ~~shall be mailed to the board, to the legislative bodies of the municipalities affected;~~ and ~~a copy sent~~

(C) by certified mail a copy of the notice to all known owners of lands and rights in land affected by whose property may be taken as a result of the proposed improvement.

~~The notice shall set forth the purpose for which the land or rights are desired and shall generally describe the improvement to be made.~~

~~(4) The board may designate one or more members to attend the hearing and shall do so if a written request is filed with the board at least 10 days prior to the public hearing. At the hearing, the agency shall set forth the reasons for the selection of the route intended and shall hear and consider all objections, suggestions for changes, and recommendations made by any person interested. If no board member attended the hearing, a written request may be filed with the board within 30 days after the public hearing asking the board to review the project and the record of the hearing. In such event, the board shall complete its review within 30 days after the request. Following the hearing, unless otherwise directed by the board, the agency may proceed to lay out the highway and survey and acquire the land to be taken or affected, giving consideration to any objections, suggestions, and recommendations received from the public in accordance with this chapter.~~

* * *

§ 503. PRECONDEMNATION NECESSITY DETERMINATION; SURVEY AND APPRAISAL; OFFER OF JUST COMPENSATION; NOTICE OF RIGHTS; NEGOTIATION; STIPULATION

(a) ~~When~~ Necessity determination; appraisal.

(1) After conducting the hearing required under section 502 of this chapter and considering the objections, suggestions, and recommendations received from the public, if the agency of transportation desires to acquire land or any rights in land finds the taking of property to be necessary for the purpose of laying out, relocating, altering, constructing, reconstructing, maintaining, repairing, widening, grading, or improving a state highway, it shall cause the ~~land~~ property proposed to be acquired or affected to be surveyed and shall make a written determination of necessity consistent with subdivision 501(1) of this chapter. Prior to initiating negotiations under this section, the agency shall cause property proposed to be taken to be appraised unless:

(A) the property owner offers to donate the property after being fully informed by the agency of the right to receive just compensation for damages and releasing the agency from any obligation to conduct an appraisal; or

(B) the agency determines that an appraisal is unnecessary because the valuation question is uncomplicated and the agency estimates the property to have a low fair market value, in accordance with 49 C.F.R. § 24.102.

(2) The agency shall prepare a waiver valuation if an appraisal is not conducted, pursuant to subdivision (1)(B) of this subsection (a).

(3) The property owner or his or her designee shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(b) Offer of just compensation. Prior to the initiation of negotiations, the agency shall prepare a written offer of just compensation, which shall include a statement of the basis for the offer and a legal description of the property proposed to be acquired.

(c) Negotiation. Prior to instituting condemnation proceedings under section 504 of this chapter, the agency shall make every reasonable effort to acquire property expeditiously by negotiation and shall comply with subsection (d) of this section.

(d) Notice and other documents. The agency shall hand-deliver or send by mail to interested persons a notice of procedures and rights and the offer of just compensation. The notice of procedures and rights shall include an explanation of the proposed state highway project and its purpose, and statements that:

(1) The agency is seeking to acquire the property described in the offer of just compensation for the project.

(2) Agency representatives are available to discuss the offer of just compensation.

(3) The agency does not represent the property owner, and he or she may benefit from the advice of an attorney.

(4) If the agency and the property owner are unable to reach agreement on the agency's legal right to take the property, the agency may file a complaint in superior court to determine this issue. The property owner has the right to challenge the taking by contesting the necessity of the taking, the public purpose of the project, or both, but must contest these issues by filing an answer to the complaint with the court. If the owner does not file a timely answer, the court may enter a default judgment in favor of the agency.

(5) The property owner may enter into an agreement with the agency stipulating to the agency's legal right to take his or her property without waiving the owner's right to contest the amount of the agency's offer of compensation.

(6) If the agency and the property owner agree that a taking is lawful, or if a court issues a judgment authorizing the agency to take the owner's property, title to the property will transfer to the agency only after the agency files documentation of the agreement or judgment with the town clerk, pays or tenders payment to the owner, and sends or delivers to the owner a notice of taking.

(7) To contest the amount of compensation received, the owner must file an action with the transportation board or in superior court within 30 days of the notice of taking, except that the issue of compensation (“damages”) must be decided by the superior court if the owner’s demand exceeds the agency’s offer of just compensation by more than \$25,000.00. The owner or the agency may appeal a decision of the board to the superior court, and may appeal a decision of the superior court to the supreme court. Either party is entitled to demand a trial by jury in superior court on the issue of damages.

(8) A copy of an appraisal or an estimated valuation (“waiver valuation”) shall be furnished by the agency at the owner’s request.

(9) Summarize the property owner’s right to relocation assistance, if applicable.

(e) Agreement on taking, damages.

(1) An interested person may enter into an agreement with the agency stipulating to the necessity of the taking and the public purpose of the project, to damages, or to any of these. The agreement shall include:

(A) a statement that the person executing the agreement has examined a survey or appraisal of the property to be taken;

(B) an explanation of the legal and property rights affected;

(C) a statement that the person has received the documents specified in subsection (d) of this section; and

(D) if the agreement concerns only the issues of necessity or public purpose, a statement that the right of the person to object to the amount of compensation offered is not affected by the agreement.

(2) If an interested person executes an agreement stipulating to the necessity of the taking and the public purpose of the project in accordance with subdivision (1) of this subsection, the agency shall prepare, within 10 business days of entering into the agreement, a notice of condemnation and shall file it in accordance with section 506 of this chapter. The notice of condemnation shall include a legal description of the property to be taken.

§ 504. PETITION FOR HEARING TO DETERMINE NECESSITY COMPLAINT; SERVICE; ANSWER

(a) Upon completion of the survey the agency may petition a superior judge, setting forth in the petition that it proposes to acquire certain land, or rights in land, and describing the lands or rights, and the survey shall be attached to the petition and made a part of the petition. The petition shall set forth the purposes for which the land or rights are desired, and shall contain a request that the judge fix a time and place when he or she, or some other

~~superior judge, will hear all parties concerned and determine whether the taking is necessary.~~ Verified complaint. If a property owner has not entered into an agreement stipulating to the necessity of a taking and the public purpose of a highway project, and the agency wishes to proceed with the taking, the agency shall file a verified complaint in the civil division of the superior court in a county where the project is located seeking a judgment of condemnation. The complaint shall name as defendants each interested person who has not stipulated to a proposed taking, and shall include:

(1) statements that the agency has complied with subsection 503(d) of this chapter;

(2) the agency's written determination of necessity;

(3) a general description of the negotiations undertaken; and

(4) a survey of the proposed project, and legal descriptions of the property and of the interests therein proposed to be taken.

(b) Service and notice.

(1) Except as otherwise provided in this section, the agency shall serve the complaint and summons in accordance with the Vermont Rules of Civil Procedure and section 519 of this chapter.

(2) The agency shall publish a notice of the complaint, the substance of the summons, and a description of the project and of the lands to be taken in a newspaper of general circulation in the municipalities where the project is located, once a week on the same day of the week for three consecutive weeks. The agency shall mail a copy of the newspaper notice to the last known address of an interested person not otherwise served, if any address is known. Upon affidavit by the secretary that diligent inquiry has been made to find all interested persons and, if applicable, that service on a known interested person cannot with due diligence be made in or outside the state by another method prescribed in Rule 4 of the Vermont Rules of Civil Procedure, the newspaper publication shall be deemed sufficient service on all unknown interested persons and all known interested persons who cannot otherwise be served. Service by newspaper publication is complete the day after the third publication.

(3) Unless otherwise served under subdivision (1) of this subsection, the agency shall mail a copy of the complaint to the clerk, legislative body, and board of listers of each municipality in which land is proposed to be taken. The clerk with responsibility over the land records shall record the copy of the complaint (including the survey), and shall enter the names of the property owners named in the complaint in the general index of transactions affecting the title to real estate.

(c) Necessity, public purpose; default. If an interested person does not file a timely answer denying the necessity of a taking or the public purpose of the project, the court may enter a judgment of condemnation by default.

§ 505. HEARING TO DETERMINE NECESSITY ON PROPOSED TAKING; JUDGMENT; APPEAL AND STAY

~~(a) The superior judge to whom the petition is presented shall fix the time for hearing, which shall not be more than 60 nor less than 40 days from the date he or she signs the order. Likewise, he or she shall fix the place for hearing, which shall be the superior court or any other place within the county in which the land in question is located. If the superior judge to whom the petition is presented cannot hear the petition at the time set he or she shall call upon the administrative judge to assign another superior judge to hear the cause at the time and place assigned in the order. Hearing.~~

(1) If a timely answer is filed denying the necessity of a taking or the public purpose of the project, the court shall schedule a final hearing to determine the contested issues, which shall be held within 90 days of expiration of the deadline for filing an answer by the last interested person served. Absent good cause shown, the final hearing date shall not be postponed beyond the 90-day period.

(2) At the hearing, the agency shall present evidence on any contested issue.

(3)(A) The court shall presume that the agency's determination of the necessity for and public purpose of a project is correct, unless a party demonstrates bad faith or abuse of discretion on the part of the agency.

(B) The court shall review de novo the agency's determination of the need to take a particular property and to take it to the extent proposed.

~~(b) If the land proposed to be acquired extends into two or more counties, then a single hearing to determine necessity may be held in one of the counties. In fixing the place for hearing, the superior judge to whom the petition is presented shall take into consideration the needs of the parties. Discovery. Absent a showing of unfair prejudice, the right to discovery on the issues of necessity and public purpose shall be limited to the plans, surveys, studies, reports, data, decisions, and analyses relating to approving and designing the highway project.~~

(c) Judgment. If the court finds a proposed taking lawful, it shall issue a judgment of condemnation describing the property authorized to be taken, declaring the right of the agency to take the property by eminent domain, and declaring that title to the property will be transferred to the agency after the agency, in accordance with section 506 of this chapter, has recorded the

judgment, tendered or deposited payment, and notified the owner of the recording and payment. The court may in its judgment modify the extent of a proposed taking.

(d) Litigation expenses. The court shall award the property owner his or her costs and reasonable litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding, if the final judgment of the court is that the agency cannot acquire all of the property proposed to be taken by condemnation, or if the agency abandons the condemnation proceeding other than under a settlement. If the final judgment of the court substantially reduces the scope of the agency's proposed taking, the court shall award the owner a share of his or her costs and reasonable litigation expenses that is proportional to the reduction in the proposed taking.

(e) Appeal, stay. A judgment of condemnation may be appealed or stayed as a final judgment for possession of real estate under the Vermont Rules of Civil Procedure and the Vermont Rules of Appellate Procedure. A judgment that that the agency cannot acquire the property by condemnation likewise may be appealed.

§ 506. SERVICE AND PUBLICATION OF NECESSITY PETITION AND NOTICE OF HEARING; ANSWER RECORDING OF JUDGMENT OR NOTICE OF CONDEMNATION; PAYMENT; VESTING OF TITLE

~~(a)(1) The agency shall prepare a notice of the necessity hearing. The notice shall include the names of the municipalities in which the lands to be taken or affected are located; the names of all interested persons within the meaning of subdivision 501(2) of this chapter; and a brief statement identifying the proposed project and its location, and the date, time and place of the necessity hearing. The agency shall make service of copies of the petition, the notice of hearing and the survey (for the purposes of this section, "survey" means a plan, profile, or cross section of the proposed project) as follows:~~

~~(1) Upon interested persons in accordance with the Vermont Rules of Civil Procedure for service of process, except as stated in subsection (b) of this section and in section 519 of this title or, with respect to interested parties with no known residence or place of business within the state, by certified mail, return receipt requested. The copy of the survey that is served upon interested persons need include only the particular property in which those persons have an interest.~~

~~(2) One copy each upon the clerk, legislative body, and board of listers of each affected municipality by certified mail. The clerk shall record the notice of hearing in the municipal land records, at the agency's expense, and shall enter the names of the interested persons in the general index of transactions affecting the title to real estate. Within 15 business days of the~~

issuance of a judgment of condemnation by the court or of the preparation of a notice of condemnation by the agency in accordance with subdivision 503(e)(2) of this chapter, the agency shall:

(A) record the judgment or notice, including the description of the property taken, in the office of the clerk of the town where the land is situated; and

(B) tender to the property owner, or deposit with the court, the amount of the offer of just compensation prepared under subsection 503(b) of this chapter or any other amount agreed to by the owner.

(2) For the purposes of this chapter, if an interested person has not provided the agency identification information necessary to process payment, or if an interested person refuses an offer of payment, payment shall be deemed to be tendered when the agency makes payment into an escrow account that is accessible by the interested person upon his or her providing any necessary identification information.

~~(b) The agency also shall publish the notice of hearing in a newspaper of general circulation in the municipalities in which the proposed project lies. Publication shall be made once a week for three consecutive weeks on the same day of the week, the last publication to be not less than five days before the hearing. When service on an interested person cannot with due diligence be made within or outside the state, upon affidavit of the secretary of transportation or the secretary's designee that diligent inquiry has been made to find the interested person, the publication shall be deemed sufficient service on that person. The affidavit shall be accompanied by an affidavit of the person attempting service that the location of the interested person is unknown and that the interested person has no known agent upon whom service can be made. Title in the property shall vest in the state, and the agency may proceed with the project, upon the later of:~~

(1) the agency's complying with the requirements of subsection (a) of this section; and

(2) the agency's mailing or delivering to the owner a notice of taking stating that it has complied with the requirements of subsection (a) of this section.

~~(c) Compliance with these provisions of this title shall constitute sufficient notice to and service upon all interested persons and municipalities. Except in the case of agreed compensation, an owner's acceptance and use of a payment under this section does not affect his or her right to contest or appeal damages under sections 511-513 of this chapter, but shall bar the owner's right to contest necessity and public purpose.~~

~~(d) No service need be made upon any interested person or municipality that has stipulated to necessity in accordance with section 508 of this chapter. Upon the agency's recording of the judgment or notice of condemnation, the clerk with responsibility over land records shall enter the name of each property owner named in the judgment or notice as a grantor in the general index of transactions affecting the title to real estate. The agency shall comply with the provisions of 27 V.S.A. chapter 17 governing the composition and recording of project layout plats.~~

~~(e) Unless an answer denying the necessity or propriety of the proposed taking is filed by one or more parties served or appearing in the proceedings on or before the date set in the notice of hearing on the petition, the necessity and propriety shall be deemed to be conceded, and the court shall so find. [Repealed.]~~

~~§ 507. HEARING AND ORDER OF NECESSITY CATTLE-PASSES~~

~~(a) At the time and place appointed for the hearing, the court, consisting of the superior judge signing the order or the other superior judge as may be assigned and, if available within the meaning of 4 V.S.A. § 112, the assistant judges of the county in which the hearing is held shall hear all persons interested and wishing to be heard. If any person owning or having an interest in the land to be taken or affected appears and objects to the necessity of taking the land included within the survey or any part of the survey, then the court shall require the agency of transportation to proceed with the introduction of evidence of the necessity of the taking. The burden of proof of the necessity of the taking shall be upon the agency of transportation and shall be established by a fair preponderance of the evidence, and the exercise of reasonable discretion upon the part of the agency shall not be presumed. The court may cite in additional parties including other property owners whose interest may be concerned or affected and shall cause to be notified, the legislative body of all adjoining cities, towns, villages, or other municipal corporations affected by any taking of land or interest in land based on any ultimate order of the court. The court shall make findings of fact and file them and any party in interest may appeal under the Vermont Rules of Appellate Procedure adopted by the supreme court. The court shall, by its order, determine whether the necessity of the state requires the taking of the land and rights as set forth in the petition and may find from the evidence that another route or routes are preferable in which case the agency shall proceed in accordance with section 502 of this title and this section and may modify or alter the proposed taking in such respects as to the court may seem proper.~~

~~(b) By in its order of condemnation, the court may also direct the agency of transportation to install passes under the highway as specified in this chapter for the benefit of the large modern farm properties, the fee title of which is~~

owned by any party to the proceedings, where a reasonable need is shown by the owner. The court may consider evidence relative to present and anticipated future highway traffic volume, future land development in the area, and the amount and type of acreage separated by the highway in determining the need for an underpass of larger dimensions than a standard cattle-pass of reinforced concrete, metal, or other suitable material which provides usable dimensions five feet wide by six feet three inches high. Where a herd of greater than 50 milking cows is consistently maintained on the property, the court may direct that the dimensions of the larger underpass shall be eight feet in width and six feet three inches in height to be constructed of reinforced concrete, and the owner of the farm property shall pay one-fourth of the difference in overall cost between the standard cattle-pass and the larger underpass. Where the owner of the farm property desires an underpass of dimensions greater than eight feet in width and six feet three inches in height, the underpass may be constructed if feasible and in accordance with acceptable design standards, and the total additional costs over the dimensions specified shall be paid by the owner. The provisions of this section shall not be interpreted to prohibit the agency of transportation and the property owner from determining the specifications of a cattle-pass or underpass by mutual agreement at any time, either prior or subsequent to the date of the court's order. The owner of a fee title shall be interpreted to include lessees of so-called lease land.

§ 508. ~~STIPULATION OF NECESSITY~~

~~(a) A person or municipality owning or having an interest in lands or rights to be taken or affected, a municipality in which the land is to be taken or affected, and other interested persons may stipulate as to the necessity of the taking.~~

~~(b) The stipulation shall be an affidavit sworn to before a person authorized to take acknowledgments, and, in the case of a municipality, shall be executed by a majority of its legislative body. The stipulation shall be in a form approved by the attorney general and shall include but not be limited to the following:~~

~~(1) a recital that the person or persons executing the stipulation have examined the applicable plan and survey of the lands or rights to be taken;~~

~~(2) an explanation of the legal and property rights affected; and~~

~~(3) that the right of the person to adequate compensation is not affected by executing the stipulation.~~

~~(c) The stipulation shall be invalid unless within two years of the date of the stipulation an order of necessity is granted. [Repealed.]~~

§ 509. ~~PROCEDURE~~

~~(a) The stipulation shall be filed with the appropriate superior court, together with the petition for an order of necessity. Notice of the hearing on the petition shall be published in accordance with section 506 of this title. Other interested persons who have not stipulated to necessity shall be notified and served in accordance with section 506 of this title. The court may also cite in additional parties in accordance with section 507 of this title.~~

~~(b) If a person claiming to be affected or concerned files a notice of objection to a proposed finding of necessity prior to the date of the hearing, the court shall at the hearing determine if the person has an interest in lands or rights to be taken such as to be entitled to object to the proposed finding of necessity, and, if he is so affected or concerned, whether there is necessity for the taking, in accordance with section 507 of this title. Nothing in this section shall prohibit an interested person from consenting to necessity. The court may continue the hearing to allow proper preparation by the agency of transportation and interested parties.~~

~~(c) If all interested persons and municipalities stipulate as to the necessity of the taking, the court may immediately issue an order of necessity.~~

~~(d) Interested persons or municipalities who do not consent to necessity are entitled to a necessity hearing in accordance with the provisions of this chapter.~~

~~(e) A copy of the order finding necessity shall be mailed to each person and municipality who consented by stipulation to necessity, by certified mail, return receipt requested.~~

~~(f) The stipulation of necessity shall not affect the rights of the person with regard to fixing the amount of compensation to be paid in accordance with sections 511-514 of this title. However, the transportation board may enter into an agreement for purchase of lands or rights affected, provided the agreement is conditioned upon the issuance of an order of necessity. [Repealed.]~~

~~§ 510. APPEAL FROM ORDER OF NECESSITY~~

~~(a) If the state, municipal corporation or any owner affected by the order of the court is aggrieved by the order, an appeal may be taken to the supreme court. In the event an appeal is taken according to these provisions from an order of necessity, its effect may be stayed by the superior court or the supreme court where the person requesting the stay establishes:~~

~~(1) that he or she has a likelihood of success on the merits;~~

~~(2) that he or she will suffer irreparable harm in the absence of the requested stay;~~

~~(3) that other interested parties will not be substantially harmed if a stay is granted; and~~

~~(4) that the public interest supports a grant of the proposed stay.~~

~~(b) If no stay is granted or, if a stay is granted, upon final disposition of the appeal, a copy of the order of the court shall be recorded within 30 days in the office of the clerk of each town in which the land affected lies.~~

~~(c) Thereafter for a period of one year, the agency of transportation may request the transportation board to institute proceedings for the condemnation of the land included in the survey as finally approved by the court without further hearing or consideration of any question of the necessity of the taking. In no event shall title to or possession of the appealing landowner's property pass to the state until there is a final adjudication of the issue of the necessity and propriety of the proposed taking.~~

~~(d) If the agency of transportation is delayed in requesting the transportation board to institute condemnation proceedings within the one-year period by court actions or federal procedural actions, the time lost pending final determination shall not be counted as part of the one-year necessity period. [Repealed.]~~

~~§ 511. HEARING TO DETERMINE AMOUNT OF COMPENSATION
DETERMINATION OF DAMAGES~~

~~(a) Following a determination of the necessity of the taking as above provided, when an Disputes between a property owner of land or rights and the agency of transportation are unable to agree on the amount of compensation to be paid, and if the agency of transportation desires to proceed with the taking, the transportation board as a result of a taking shall be resolved as follows:~~

~~(1) If the owner's demand exceeds the agency's offer of just compensation by \$25,000.00 or less, the owner may obtain a determination of damages by either:~~

~~(A) petitioning the transportation board, or~~

~~(B) filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.~~

~~(2) If the owner's demand exceeds the agency's offer of just compensation by more than \$25,000.00, the owner may obtain a determination of damages by filing a complaint or, if applicable, a motion to re-open a judgment of condemnation, in superior court.~~

~~(3) A property owner may file a petition, complaint, or motion under subdivisions (1) or (2) of this subsection no later than 30 days after the date of the notice of taking required under subsection 506(b) of this chapter.~~

(4) A petition improperly filed with the board shall be transferred to the superior court and, upon such transfer, the owner shall be responsible for applicable court filing fees.

(b) The board or the court shall appoint a time and place in the a county where the land is situated for examining the premises and a hearing parties interested, giving the parties at least 10 days' written notice in writing to the person owning the land or having an interest in the land. At that time and place, a member or members of the transportation board shall hear any person having an interest in the land and desiring to be heard.

(b) If the land proposed to be acquired of the hearing. If the property taken extends into two or more counties, the board or court may hold a single hearing in one of the counties to determine compensation damages. In fixing the place for the hearing, the transportation board or court shall take into consideration consider the needs of the parties.

(c) Unless the parties otherwise agree or unless the board or the court determines that it is in the public interest to proceed on the question of damages, any proceedings to determine damages shall be stayed pending the final disposition of any appeal of the questions of necessity or public purpose.

(d) Upon demand, a party is entitled to a jury trial in superior court on the issue of damages.

(e) The board or the court shall first determine the total damages as between the agency and all interested persons claiming an interest in a subject property, and the agency may thereafter withdraw from further proceedings with respect to that property. The board or the court shall then determine any further questions in the matter, including the apportionment of damages among interested persons. Any board decision on damages shall include findings of fact, and shall be served on the parties immediately after its issuance.

§ 512. ORDER FIXING COMPENSATION PAYMENT FOLLOWING DECISION ON DAMAGES; INVERSE CONDEMNATION; RELOCATION ASSISTANCE CREDIT OF STATE PLEDGED

(a) Within 30 days after the compensation hearing, the board shall by its order fix the compensation to be paid to each person from whom land or rights are taken. Within 30 days of the board's order a final decision on damages and the exhaustion or expiration of all appeal rights, the agency shall file and record the order in the office of the clerk of the town where the land is situated, deliver to each person a copy of that portion of the order directly affecting the person, and pay or tender the owner the amount, if any, by which the award to each the person entitled exceeds the amount previously paid or tendered by the agency. A person to whom a compensation award is paid or tendered under this subsection may accept, retain, and dispose of the award to his or her own

~~use without prejudice to the person's right of appeal, as provided in section 513 of this title. Upon the payment or tender of the award as above provided, the agency may proceed with the work for which the land is taken.~~

~~(b) In the event the plaintiff prevails against the state in an action for inverse condemnation, arising under this title or as a result of the acquisition of real property for a program or project undertaken by a federal agency, or with federal financial assistance, the court shall determine an award or allow to the plaintiff as part of its judgment such sum as will, in the opinion of the court, reimburse the plaintiff for his or her reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the proceeding. [Repealed.]~~

~~(c) When federal funds are available to provide relocation assistance and payments to persons displaced as a result of federal and federally assisted programs, any state agency may match the federal funds to the extent provided by federal law and grant relocation assistance and payments in the instances and on the conditions set forth by federal law and regulations. [Repealed.]~~

(d) The credit of the state of Vermont is pledged to the payment of all amounts awarded or allowed under the provisions of the chapter, and these amounts shall be lawful obligations of the state of Vermont.

§ 513. APPEAL FROM ORDER FIXING COMPENSATION OF DAMAGES DECISION; JURY TRIAL

~~(a) A person or a municipal corporation interested in the lands affected by a relocation who is party dissatisfied with the a decision of the transportation board as to the amount or apportionment of damages awarded for the lands, may appeal to the a superior court where the land is situated within ninety 30 days after the report has been filed date of the decision, and any number of persons aggrieved may join in the appeal.~~

~~(b) Any person A party appealing the award of damages made by the transportation board, and the agency of transportation, shall be is entitled to a jury trial in the superior court upon demand.~~

~~(c) A party aggrieved by a superior court decision on damages under this section or section 511 of this chapter may appeal to the supreme court in accordance with the Vermont Rules of Appellate Procedure.~~

§ 514. AWARD OF COSTS IN DAMAGES ACTION; LITIGATION EXPENSES IN INVERSE CONDEMNATION ACTION

~~(a) When the appellant is allowed a sum greater than was awarded by the transportation board, the court shall tax costs against the agency of transportation. When the award fixed by the transportation board is upheld, the court shall tax costs against the appellant. The court shall fix the time for~~

paying the damages awarded. If a damages award by a court is more than the agency's offer of just compensation or offer of judgment, whichever is greater, the court shall award the property owner his or her reasonable costs. If the damages award is less than or equal to the greater of the agency's offer of just compensation or offer of judgment, the court shall award the agency its reasonable costs.

(b) If a court renders judgment in favor of a property owner in an inverse condemnation action or if the agency effects a settlement of an inverse condemnation action, the court shall award the owner his or her reasonable costs and other litigation expenses, including reasonable attorney, appraisal, and engineering fees actually incurred because of the proceeding.

§ 515a. ~~EVIDENCE OF HIGHWAY COMPLETION~~

~~The lack of a certificate of completion of a highway shall not alone constitute conclusive evidence that a highway is not public. [Repealed.]~~

* * *

§ 517. ~~VESTING OF TITLE~~

~~Title to the lands taken, or other rights acquired, under this chapter, shall vest in the state upon the filing for record with the town clerk of the transportation board's order as provided in section 512 of this chapter, unless previously acquired by deed or other appropriate instrument. [Repealed.]~~

* * *

§ 519. CONDOMINIUMS; COMMON AREAS AND FACILITIES

(a) For purposes of this section, the terms "apartment owner," "association of owners," "common areas and ~~facilities~~ facilities," and "declaration" shall have the same meanings as in the Condominium Ownership Act, 27 V.S.A. chapter 15.

(b) Notwithstanding any other provision of law, whenever the agency under this chapter ~~5 of this title~~ proposes to acquire any common areas and facilities of a condominium, the association of owners shall constitute the interested person or persons interested in lands in lieu of the individual apartment owners for purposes of the necessity hearing, the compensation hearing, and any appeals therefrom.

(c) The agency shall serve one copy of the ~~necessity petition~~ complaint and summons upon the association of owners through one of its officers or agents, instead of upon the individual apartment owners.

(d) The agency shall make the compensation check payable to the association of owners, which shall then make proportional payments to the apartment owners as their interests appear in the declaration.

Sec. 3. 19 V.S.A. § 1(12) is amended to read:

(12) “Highways” are only such as are laid out in the manner prescribed by statute; or roads which have been constructed for public travel over land which has been conveyed to and accepted by a municipal corporation or to the state by deed of a fee or easement interest; or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located; or such as may be from time to time laid out by the agency or town. However, the lack of a certificate of completion of a state or town highway shall not alone constitute conclusive evidence that the highway is not public. The term “highway” includes rights-of-way, bridges, drainage structures, signs, guardrails, areas to accommodate utilities authorized by law to locate within highway limits, areas used to mitigate the environmental impacts of highway construction, vegetation, scenic enhancements, and structures. The term “highway” does not include state forest highways, management roads, easements, or rights-of-way owned by or under the control of the agency of natural resources, the department of forests, parks and recreation, the department of fish and wildlife, or the department of environmental conservation.

* * * Conforming Changes * * *

Sec. 4. 5 V.S.A. § 652 is amended to read:

§ 652. ~~PETITION TO~~ SUPERIOR COURT

The secretary of transportation or the legislative body of a municipality, as defined in 24 V.S.A. § 2001, or the committee representing two or more municipalities, when authorized by vote of their legislative bodies, may ~~petition a~~ proceed in superior ~~judge~~ court as provided in 19 V.S.A. chapter 5, except as otherwise provided in this subchapter.

Sec. 5. REPEAL

5 V.S.A. § 654 (answer in airport condemnation proceedings) and 10 V.S.A. § 959 (determination of damages for taking of land for flood control project) are repealed.

Sec. 6. 10 V.S.A. §§ 958 and 960 are amended to read:

§ 958. EMINENT DOMAIN; DETERMINING NECESSITY

(a) The commissioner of the department of environmental conservation may ~~petition~~ file a complaint in the superior court for any county in which a portion of the real estate lies to determine that necessity requires that the state acquire real estate within the state, including real estate held for public use in the name of the state or any municipality, for the purpose of flood control projects.

* * *

(c) The ~~petition~~ complaint, the service thereof and the proceedings in relation thereto, including rights of appeal, shall conform with and be controlled by ~~chapter 5 of~~ Title 19 chapter 5.

§ 960. ENTRY AUTHORIZED

The commissioner of the department of environmental conservation or his or her authorized agents may enter upon any real estate at reasonable times and places for the purpose of making surveys or other investigations under this section, subsection 952(b) and sections 953, ~~957-959~~ 957-958, and 961 of this title. The owners of damaged real estate may recover for damages sustained by reason of the preliminary entry authorized by this section in an action at law against the commissioner.

Sec. 7. 24 V.S.A. § 4012 is amended to read:

§ 4012. EMINENT DOMAIN; EXEMPTION OF PROPERTY FROM EXECUTION

(a) An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this chapter after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the power of eminent domain in the manner provided for the condemnation of land or rights therein ~~by the state transportation board~~ as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519 and acts amendatory thereof or supplementary thereto. Property already devoted to a public use may be acquired, provided that no real property belonging to the city, county, state, or any political subdivision thereof may be acquired without its consent.

* * *

Sec. 8. 24 V.S.A. § 5104 is amended to read:

§ 5104. PURPOSES AND POWERS

(a) The authority may purchase, own, operate, or provide for the operation of land transportation facilities, and may contract for transit services, conduct studies, and contract with other governmental agencies, private companies, and individuals.

(b) The authority shall be a body politic and corporate with the powers incident to a municipal corporation under the laws of the state of Vermont consistent with the purposes of the authority, and may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its functions, including, ~~but not limited to,~~ the following:

* * *

(11) within its area of operation, to acquire by the exercise of the power of eminent domain any real property which it may have found necessary for its purposes, in the manner provided for the condemnation of land or rights therein as set forth in 19 V.S.A. §§ ~~501-514~~ 500-514 and 519.

* * *

* * * Transition Provision * * *

Sec. 9. TRANSITION

(a) The state highway condemnation procedures of 19 V.S.A. chapter 5 in effect prior to July 1, 2012 shall continue to apply to all superior court and transportation board proceedings brought by the agency prior to July 1, 2012.

(b) With respect to any superior court proceeding brought by the agency on or after July 1, 2012 under 19 V.S.A. chapter 5, as amended by this act, the agency shall be required to demonstrate that it has satisfied the requirements of this act with respect to precondemnation appraisals, offers of just compensation, and negotiations with property owners.

Sec. 10. REPORT

By October 15, 2013, the agency shall submit to the house and senate committees on judiciary and on transportation a report listing:

(1) every acquisition of property, whether by agreement or through condemnation, for which the agency prepared a waiver valuation in fiscal year 2013;

(2) the value of the property estimated in the waiver valuation;

(3) whether an appraisal of the property was obtained by the agency or the property owner and, if so, the appraised value of the property;

(4) the date and the amount of the first offer made to the property owner;

(5) the date and the amount of the final payment to the property owner for the property; and

(6) whether the final payment to the property owner resulted from an agreement prior to the filing of a condemnation action, an agreement following the filing of a condemnation action, or a board or court decision on compensation.

Sec. 11. TRAINING OF TRANSPORTATION BOARD MEMBERS

(a) Within 30 days after the effective date of this act, the executive secretary of the transportation board shall arrange for transportation board members to be trained on:

(1) the methodology of condemnation appraisals;

(2) the law of Vermont, including court decisions, governing the determination of damages resulting from a condemnation for a state highway project; and

(3) provisions of the Uniform Relocation Assistance and Real Property Acquisition Properties Act related to the determination of damages.

(b) Within 30 days of a new member joining the board, the executive secretary of the board shall arrange for the new member to be trained as described in subsection (a) of this section.

* * * Effective Date * * *

Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (transition provision), and Sec. 11 (training of board members) of this act shall take effect on passage.

(b) All other sections shall take effect on July 1, 2012.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 14, 2012, page 593; March 15, 646.)

H. 556.

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

Reported favorably with recommendation of proposal of amendment by Senator Doyle for the Committee on Economic Development, Housing and General Affairs.

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

(Committee vote: 3-0-2)

(For House amendments, see House Journal for April 19, 2012, page 11.)

Reported favorably by Senator Kitchel for the Committee on Appropriations.

(Committee vote: 7-0-0)

H. 600.

An act relating to mandatory mediation in foreclosure proceedings.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Judiciary.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 2, 12 V.S.A. § 4631, in subsection (c), by striking out the words “a randomized” and inserting in lieu thereof the words an objective and neutral

Second: In Sec. 6, in subsection (a) and (c), by striking out the following: “December 3, 2013” where it twice appears and inserting in lieu thereof the following: December 31, 2013

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 1, 5, and 6 of this act shall take effect on passage.

(b) Secs. 2, 3, and 4 of this act shall take effect on July 1, 2012.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 15, 2012, page 645.)

**PROPOSAL OF AMENDMENT TO H. 600 TO BE OFFERED BY
SENATOR CAMPBELL**

Senator Campbell moves that the Senate propose to the House that the bill be amended by adding a new Sec. 4a to read as follows:

Sec. 4a. 12 V.S.A. 4633(e) is amended to read:

(e) The mediator may permit a party identified in subdivision (d)(1) of this section to participate in mediation by telephone or teleconferencing, provided that a party’s attorney may not participate in the mediation by telephone or teleconferencing unless the mediator makes written findings based on specific evidence particular to the case that permitting a party’s attorney to participate by telephone or teleconferencing will not unduly prejudice the mediation or the other party.

H. 745.

An act relating to the Vermont prescription monitoring system.

Reported favorably with recommendation of proposal of amendment by Senator Ayer for the Committee on Health and Welfare.

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

Sec. 1. PURPOSE

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

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

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

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

* * *

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

§ 4215b. IDENTIFICATION

Prior to dispensing a prescription for a Schedule II, III, or IV controlled substance, a pharmacist shall require the individual receiving the drug to provide a signature and show valid and current government-issued

photographic identification as evidence that the individual is the patient for whom the prescription was written, the owner of the animal for which the prescription was written, or the bona fide representative of the patient or animal owner. If the individual does not have valid, current government-issued photographic identification, the pharmacist may request alternative evidence of the individual's identity, as appropriate.

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

§ 4218. ENFORCEMENT

* * *

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

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

(f) The department of public safety shall adopt a written policy and protocols for accessing pharmacy records through the authority granted in this section. These policies and protocols shall be a public record.

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING POLICIES AND PROTOCOLS

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written policy and protocols used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the policy and protocols are substantively amended by the department, it shall submit the amended policy and protocols to the same committees as soon as practicable.

Sec. 4. [Deleted.]

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

§ 4282. DEFINITIONS

As used in this chapter:

* * *

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

medical director of the department of Vermont health access and authorized by a health care provider or dispenser, the chief medical examiner, or the medical director to request information from the VPMS relating to a bona fide current patient of the health care provider or dispenser, to a bona fide investigation or inquiry into an individual's death, or to a patient for whom a Medicaid claim for a Schedule II, III, or IV controlled substance has been submitted.

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

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

(8) "Evidence-based" means based on criteria and guidelines that reflect high-quality, cost-effective care. The methodology used to determine such guidelines shall meet recognized standards for systematic evaluation of all available research and shall be free from conflicts of interest. Consideration of the best available scientific evidence does not preclude consideration of experimental or investigational treatment or services under a clinical investigation approved by an institutional review board.

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

§ 4283. CREATION; IMPLEMENTATION

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

* * *

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

* * *

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

§ 4284. PROTECTION AND DISCLOSURE OF INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

~~(5)(D)~~ The relevant occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider. The licensing or certification authority may report the data that are the evidence for the suspected fraudulent or illegal activity to a ~~trained law enforcement officer~~ drug diversion investigator.

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

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

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

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

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

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

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

(d) The commissioner shall offer health care providers and dispensers training in the proper use of information they may receive from VPMS.

Training may be provided in collaboration with professional associations representing health care providers and dispensers.

~~(e) A trained law enforcement officer who may receive information pursuant to this section shall not have access to VPMS except for information provided to the officer by the licensing or certification authority. [Deleted.]~~

(f) The department is authorized to use information from VPMS for research, trend analysis, and other public health promotion purposes provided that data are aggregated or otherwise de-identified. The department shall post the results of trend analyses on its website for use by health care providers, dispensers, and the general public. When appropriate, the department shall send alerts relating to identified trends to health care providers and dispensers by electronic mail.

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

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

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

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

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

§ 4286. ADVISORY COMMITTEE

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

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

(3) The committee shall develop guidelines for use of VPMS by dispensers ~~and~~, health care providers, and delegates, and shall make

recommendations concerning under what circumstances, if any, the department shall or may give VPMS data, including data thresholds for such disclosures, to law enforcement personnel. The committee shall also review and approve advisory notices prior to publication.

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

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

* * *

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

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

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

§ 4287. RULEMAKING

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

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

§ 4288. RECIPROCAL AGREEMENTS

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

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

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

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

treatment of chronic pain and for other medical conditions to be determined by the licensing authority.

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

(2) If the VPMS shows that a patient has filled a prescription for a controlled substance written by a health care provider who is not a registered user of VPMS, the commissioner of health shall notify such provider by mail of the provider's registration requirement pursuant to subdivision (1) of this subsection.

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

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

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

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

(3) Each professional licensing authority for health care providers and dispensers shall consider the standards adopted pursuant to this section in disciplinary proceedings when determining whether a licensee has complied with the applicable standard of care.

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

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

§ 4290. REPLACEMENT PRESCRIPTIONS AND MEDICATIONS

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

(b) When a patient or a patient's parent or guardian requests a replacement prescription for a Schedule II, III, or IV controlled substance, the patient's health care provider shall query the VPMS prior to writing the replacement

prescription to determine whether the patient may be receiving more than a therapeutic dosage of the controlled substance.

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

(d) When a dispenser fills a replacement prescription, the dispenser shall report the required information to the VPMS and shall indicate that the prescription is a replacement by completing the VPMS field provided for such purpose. In addition, the dispenser shall report to the VPMS the name of the person picking up the replacement prescription, if not the patient.

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

Sec. 13. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY COUNCIL

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

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

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

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

(3) the commissioner of mental health or designee;

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

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

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

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

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

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

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

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

(12) a representative of the federally qualified health centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

(13) a representative of the Vermont Ethics Network;

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

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

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

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

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

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

(20) a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the board of psychological examiners;

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

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

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

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

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

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

(2) to identify and recommend components of evidence-based training modules and minimum requirements for the continuing education of all licensed health care providers in the state who treat chronic pain or addiction or prescribe controlled substances in Schedule II, III, or IV consistent with a unified pain management system;

(3) to identify and recommend evidence-based training modules for all employees of the agency of human services who have direct contact with recipients of services provided by the agency or any of its departments; and

(4) to identify and recommend system goals and planned assessment tools to ensure that the initiative's progress can be monitored and adapted as needed.

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

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

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM

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

Sec. 15. ADVISORY COMMITTEE REPORT

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

Sec. 16. SPENDING AUTHORITY

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

Sec. 17. INTEGRATION; LEGISLATIVE INTENT

It is the intent of the general assembly that the initiatives described in this act should be integrated to the extent possible with the Blueprint for Health and the mental health system of care.

Sec. 18. EFFECTIVE DATES

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

(b) Secs. 10 (18 V.S.A. § 4288; reciprocal agreements), 11 (18 V.S.A. § 4289; standards and guidelines), and 12 (18 V.S.A. § 4290; replacement prescriptions) and Sec. 7(b)(2)(G) (18 V.S.A. § 4284(b)(2)(G); interstate data sharing) shall take effect on October 1, 2012.

(c) The remaining sections of this act shall take effect on July 1, 2012.

(Committee vote: 4-0-1)

Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as recommended by the Committee on Health and Welfare, with the following amendment thereto:

In Sec. 13, Unified Pain Management System Advisory Council, in subsection (c), following “state”, by inserting the following: or whose participation is not supported through their employment or association

(Committee vote: 6-0-1)

(For House amendments, see House Journal of March 20, 2012, page 728.)

PROPOSAL OF AMENDMENT TO H. 745 TO BE OFFERED BY SENATORS SEARS, CUMMINGS, SNELLING AND WHITE

Senators Sears, Cummings, Snelling and White move that the recommendation of amendment of the Committee on Health and Welfare be amended as follows:

First: By striking out Secs. 3 and 3a in their entirety and inserting in lieu thereof a new Sec. 3 and 3a to read as follows:

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

§ 4218. ENFORCEMENT

* * *

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

(e) Notwithstanding subsection (d) of this section, a drug diversion investigator, as defined in section 4282 of this title, may request VPMS data from the department of health pursuant to subdivision 4284(b)(3) of this title.

(f) The department of public safety shall adopt standard operating guidelines for accessing pharmacy records through the authority granted in this section. Any person authorized to access pharmacy records pursuant to subsection (a) of this section shall follow the department of public safety's guidelines. These guidelines shall be a public record.

Sec. 3a. DEPARTMENT OF PUBLIC SAFETY; REPORTING STANDARD OPERATING GUIDELINES

No later than December 15, 2012, the commissioner of public safety shall submit to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare the department's written standard operating guidelines used to access pharmacy records at individual pharmacies pursuant to 18 V.S.A. § 4218. Subsequently, if the guidelines are substantively amended by the department, it shall submit the amended guidelines to the same committees as soon as practicable.

Second: In Sec. 7, 18 V.S.A. § 4284, subsection (b), by striking out subdivision (2)(F) in its entirety and relettering the remaining subdivision to be alphabetically correct

Third: In Sec. 7, 18 V.S.A. § 4284, subsection (b), by adding a new subdivision (3) to read as follows:

(3)(A) The department shall provide data available to the department through the VPMS to a drug diversion investigator in accordance with this subdivision (3). The department shall release data pursuant to a request by an officer conducting:

(i) an investigation with a reasonable, good faith belief that it could lead to the filing of criminal proceedings related to a violation of this title; or

(ii) an investigation that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution related to a violation of this title in the foreseeable future.

(B) An investigation under subdivision (A) of this subdivision (3) shall be based upon a report from a pharmacist or a health care provider.

(C) Upon a request in compliance with subdivision (A) of this subdivision (3), the department shall provide the officer with only the following information:

(i) Name and date of birth of the subject of the request.

(ii) The name and address of any pharmacy that has provided a Schedule II, III, or IV regulated drug to the subject of the request.

(iii) The name and address of any health care provider who has prescribed a Schedule II, III, or IV regulated drug to the subject of the request.

(D) An investigation under this subdivision shall be identified by a law enforcement case number for tracking and documentation purposes.

Fourth: In Sec. 7, 18 V.S.A. § 4284, by striking out subsection (j) in its entirety

Fifth: By adding Secs. 4a–4d to read as follows:

Sec. 4a. 7 V.S.A. § 656 is amended to read:

§ 656. MINORS MISREPRESENTING AGE, PROCURING, POSSESSING, OR CONSUMING LIQUORS; FIRST OFFENSE; CIVIL VIOLATION

(a) A minor 16 years of age or older shall not:

(1) falsely represent his or her age for the purpose of procuring or attempting to procure malt or vinous beverages or spirituous liquor from any licensee, state liquor agency, or other person or persons;

(2) possess malt or vinous beverages or spirituous liquor for the purpose of consumption by himself or herself or other minors, except in the regular performance of duties as an employee of a licensee licensed to sell alcoholic liquor; or

(3) consume malt or vinous beverages or spirituous liquors. A violation of this subdivision may be prosecuted in a jurisdiction where the minor has consumed malt or vinous beverages or spirituous liquors, or in a jurisdiction where the indicators of consumption are observed.

(b)(1) A law enforcement officer shall issue a notice of violation, in a form approved by the court administrator, to a person who violates this section if the person has not previously been adjudicated in violation of this section or

convicted of violating section 657 of this title. The notice of violation shall require the person to provide his or her name and address, and shall explain procedure under this section, including that:

(A) the person must contact the diversion board in the county where the offense occurred within 15 days;

(B) failure to contact the diversion board within 15 days will result in the case being referred to the judicial bureau, where the person, if found liable for the violation, will be subject to a penalty of \$300.00 and a 90-day suspension of the person's operator's license, and may face substantially increased insurance rates;

(C) no money should be submitted to pay any penalty until after adjudication; and

(D) the person shall notify the diversion board if the person's address changes.

(2) When a person is issued a notice of violation under subdivision (1) of this subsection, the law enforcement officer shall complete a summons and complaint for the offense and send it to the diversion board in the county where the offense occurred. The summons and complaint shall not be filed with the judicial bureau at that time.

(3) Within 15 days after receiving a notice of violation issued under subdivision (1) of this subsection, the person shall contact the diversion board in the county where the offense occurred and register for the teen alcohol and drug safety program. If the person fails to do so, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under 4 V.S.A. chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(c) A person who violates this section commits a civil violation and shall be subject to a civil penalty of \$300.00, and the person's operator's license and privilege to operate a motor vehicle shall be suspended for a period of 90 days. The state may obtain a violation under this section or a conviction under section 657 of this title, but not both.

(d) If a person fails to pay a penalty imposed under this section by the time ordered, the judicial bureau shall notify the commissioner of motor vehicles, who shall suspend the person's operator's license and privilege to operate a motor vehicle until payment is made.

(e) Upon adjudicating a person in violation of this section, the judicial bureau shall notify the commissioner of motor vehicles, who shall maintain a

record of all such adjudications which shall be separate from the registry maintained by the department for motor vehicle driving records. The identities of persons in the registry shall only be revealed to a law enforcement officer determining whether the person has previously violated this section.

(f)(1) Upon receipt from a law enforcement officer of a summons and complaint completed under subdivision (b)(2) of this section, the diversion board shall send the person a notice to report to the diversion board. The notice to report shall provide that:

(A) The person is required to complete all conditions related to the offense imposed by the diversion board, including substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both.

(B) If the person does not satisfactorily complete the substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, the case will be referred to the judicial bureau, where the person, if found liable for the violation, shall be assessed a penalty of \$300.00, the person's driver's license will be suspended for 90 days, and the person's automobile insurance rates may increase substantially.

(C) If the person satisfactorily completes the substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense imposed by the diversion board, no penalty shall be imposed and the person's operator's license will not be suspended.

(2)(A) Upon being contacted by a person who has been issued a notice of violation under subdivision (b)(1) of this section, the diversion board shall register the person in the teen alcohol and drug safety program. Pursuant to the teen alcohol and drug safety program, the diversion board shall impose conditions on the person. The conditions imposed shall include only conditions related to the offense, and in every case shall include a condition requiring satisfactory completion of substance abuse screening and, if deemed appropriate following the screening, substance abuse education or substance abuse counseling, or both. If the screener recommends substance abuse counseling, the person shall choose a state-certified or state-licensed substance abuse counselor or substance abuse treatment provider to provide the services.

(B) Substance abuse screening required under this subsection shall be completed within 60 days after the diversion board receives a summons and complaint completed under subdivision (b)(2) of this section. The person shall complete all conditions at his or her own expense.

(3) When a person has satisfactorily completed substance abuse screening, any required substance abuse education or substance abuse counseling, and any other conditions related to the offense which the diversion board has imposed, the diversion board shall:

(A) void the summons and complaint with no penalty due; and

(B) send copies of the voided summons and complaint to the judicial bureau and to the law enforcement officer who completed them. Before sending copies of the voided summons and complaint to the judicial bureau under this subdivision, the diversion board shall redact all language containing the person's name, address, social security number or any other information which identifies the person.

(4) If a person does not satisfactorily complete substance abuse screening, any required substance abuse education or substance abuse counseling, or any other conditions related to the offense imposed by the diversion board, or if the person fails to pay the diversion board any required program fees, the diversion board shall file the summons and complaint with the judicial bureau for adjudication under 4 V.S.A. chapter 29 of Title 4. The diversion board shall provide a copy of the summons and complaint to the law enforcement officer who issued the notice of violation, and shall provide two copies to the person charged with the violation.

(5) A person aggrieved by a decision of the diversion board or alcohol counselor may seek review of that decision pursuant to Rule 75 of the Vermont Rules of Civil Procedure.

(g) The state's attorney may dismiss without prejudice a violation brought under this section.

Sec. 4b. 18 V.S.A. § 4230 is amended to read:

§ 4230. MARIJUANA

(a) Possession and cultivation.

(1) A person knowingly and unlawfully possessing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of more than one ounce containing any marijuana shall be imprisoned not more than six months or fined not more than \$500.00, or both. A person convicted of a second or subsequent offense under this subdivision shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. Upon an adjudication of guilt for a first offense under this subdivision, the court may defer sentencing as provided in 13 V.S.A. § 7041 except that the court may in its discretion defer sentence without the filing of a presentence investigation report and except that sentence may be imposed at any time within two years from and after the date of entry of

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

* * *

Sec. 4c. 18 V.S.A. § 4230a is added to read:

§ 4230a. MARIJUANA; CIVIL PENALTY

(a) No person shall knowingly and unlawfully possess marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or less containing any marijuana.

(b) A person 21 years of age or older who violates this section shall be assessed a civil penalty of not more than \$100.00. For a fifth or subsequent violation of this section, a person 21 years of age or older shall be fined not more than \$500.00.

(c) Except as otherwise provided in this section, a person under the age of 21 who violates subsection (a) of this section shall be punished in accordance with the provisions set forth in 7 V.S.A. §§ 656 and 657 regarding minors misrepresenting age and procuring, possessing, or consuming liquors.

(d)(1) Except as otherwise provided in this section, a person who possesses one ounce or less of marijuana or who possesses paraphernalia for marijuana use shall not be penalized or sanctioned in any manner by the state or any of its political subdivisions or denied any right or privilege under state law, including:

(A) denying the offender student financial aid, unemployment benefits, public housing, or any other form of public financial assistance;

(B) denying the offender's right to operate a motor vehicle; or

(C) disqualifying an offender from serving as a foster or adoptive parent.

(2) A violation of this section shall not result in the creation of a criminal history record of any kind, and information about the violation shall not be maintained in any criminal record or database.

(e) This section shall not:

(1) exempt any person from arrest or prosecution for being under the influence of marijuana while operating a vehicle of any kind;

(2) be construed to repeal or modify existing laws or policies concerning the operation of vehicles of any kind while under the influence of marijuana;

(3) be construed to prohibit a municipality from regulating, prohibiting, or providing additional penalties for the use of marijuana in public places;

(4) be construed to limit the authority of primary and secondary schools to impose noncriminal penalties for the possession of marijuana on school property;

(5) be construed to affect the search and seizure laws afforded to duly authorized law enforcement officers under the laws of this state.

(f) If a person suspected of violating this section challenges the presence of cannabinoids, the person may request that the state crime laboratory test the substance at the person's expense. If the substance tests negative for the presence of cannabinoids, the state shall reimburse the person at state expense.

(g) Upon request by a law enforcement officer who reasonably suspects that a person has committed or is committing a violation of this section, the person shall give his or her name and address to the law enforcement officer and shall produce a Vermont operator's license, a Vermont identification card, a passport, or another suitable form of identification.

(h) The enforcement of this section by villages, towns, and cities shall be by a local law enforcement officer or a law enforcement officer by contract with the village, town, or city. Law enforcement officers under this subsection shall have met minimum training requirements as provided in 20 V.S.A. § 2358.

(i) Fifty percent of the fines and penalties imposed by the judicial bureau for violations of this section shall be retained by the state for the funding of law enforcement officers on the drug task force, except for a \$12.50 administrative charge for each violation which shall be retained by the state. The remaining 50 percent shall be paid to the court diversion program for funding of the teen alcohol and drug and safety program.

Sec. 4d. 4 V.S.A. § 1102 is amended to read:

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau shall have jurisdiction of the following matters:

* * *

(23) Violations of 18 V.S.A. § 4230a, relating to possession of one ounce or less of marijuana.

* * *

Sixth: By striking Sec. 14 in its entirety and inserting a new Sec. 14 to read as follows:

Sec. 14. UNUSED DRUG DISPOSAL PROGRAM PROPOSAL

(a) No later than October 15, 2012, the commissioners of health and of public safety shall provide recommendations to the house and senate committees on judiciary, the house committee on human services, and the senate committee on health and welfare regarding implementation of a statewide drug disposal program for unused over-the-counter and prescription drugs at no charge to the consumer. In preparing their recommendations, the commissioners shall consider successful unused drug disposal programs in Vermont, including the Bennington County sheriff's department's program, and in other states.

(b) The commissioners of health and of public safety shall take steps toward implementing a program prior to October 15, 2012, if practicable.

Seventh: By adding a Sec. 14a to read as follows:

Sec. 14a. TRACK AND TRACE PILOT PROJECT

(a) The departments of health and of Vermont health access shall establish a track and trace pilot project with one or more manufacturers of buprenorphine to create a high-integrity monitoring tool capable of use across disciplines. The tool shall be designed to identify irregularities related to dosing and quality in a manner that disrupts practice operations to the least extent possible. The departments shall work with all willing Medicaid-enrolled prescribing practices and pharmacies to utilize the tool.

(b) No later than January 15, 2013, the commissioners of health and of Vermont health access shall provide testimony on the status of the pilot project established pursuant to this section to the house committees on human services and on judiciary and the senate committees on health and welfare and on judiciary.

Eighth: By adding a Sec. 14b to read as follows:

Sec. 14b. DEPARTMENT OF HEALTH REPORT; OPIOID ANTAGONISTS

No later than November 15, 2012, the department of health shall report to the general assembly detailed recommendations for permitting a practitioner to lawfully prescribe and dispense naloxone or another opioid antagonist to a person at risk of experiencing an opiate-related overdose or to a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose.

H. 780.

An act relating to compensation for certain state employees.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

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

* * * Exempt Employees in the Executive Branch * * *

Sec. 1. RESTORATION OF SALARY

(a) The amount equal to the three-percent reduction in salaries taken on July 1, 2010 by exempt employees in the executive branch who earned less than \$60,000.00 annually may be restored to those salaries in fiscal year 2013.

(b) The amount equal to the five-percent reduction in salaries taken on January 1, 2009 by exempt employees in the executive branch who earned \$60,000.00 or more annually may be restored to those salaries in fiscal year 2013.

(c) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns less than \$60,000.00 annually and was hired or promoted after July 1, 2010 reflects a three-percent reduction in pay, the secretary may restore the amount equal to the three-percent reduction to that salary in fiscal year 2013.

(d) If the secretary of administration determines that the salary of an exempt employee in the executive branch who earns \$60,000.00 or more annually and was hired or promoted after January 1, 2009 reflects a five-percent reduction in pay, the secretary may restore the amount equal to the five-percent reduction to that salary in fiscal year 2013.

Sec. 2. COST-OF-LIVING ADJUSTMENTS

(a) Exempt employees in the executive branch earning less than \$60,000.00 annually may receive a cost-of-living adjustment in fiscal year 2013 of two percent.

(b) Exempt employees in the executive branch earning \$60,000.00 or more annually may or may not receive a cost-of-living adjustment in fiscal year 2013.

(c) Exempt employees in the executive branch may receive a cost-of-living adjustment in fiscal year 2014.

Sec. 3. RATE OF ADJUSTMENT

For purposes of determining annual salary adjustments, special salary increases, and bonuses under 32 V.S.A. §§ 1003(b) and 1020(b), the “total rate of adjustment available to classified employees under the collective bargaining agreement” shall be deemed to be 2.85 percent in fiscal year 2013 and 3.7 percent in fiscal year 2014.

* * * Veterans’ Home * * *

Sec. 4. 32 V.S.A. § 1003(b)(1) is amended to read:

(1) Heads of the following departments, ~~offices~~ and agencies:

	Base Salary as of July 8, 2007	<u>Base</u> Salary as of July 1, 2012
(A) Administration	90,745	<u>90,745</u>
(B) Agriculture, food and markets	90,745	<u>90,745</u>
(C) Banking, insurance, securities, and health care administration <u>Financial regulation</u>	84,834	<u>84,834</u>
(D) Buildings and general services	84,834	<u>84,834</u>
(E) Children and families	84,834	<u>84,834</u>
(F) Commerce and community development	90,745	<u>90,745</u>
(G) Corrections	84,834	<u>84,834</u>
(H) Defender general	76,953	<u>76,953</u>
(I) Disabilities, aging, and independent living	84,834	<u>84,834</u>
(J) Economic, housing, and community development	76,953	<u>76,953</u>
(K) Education	84,834	<u>84,834</u>
(L) Environmental conservation	84,834	<u>84,834</u>
(M) Finance and management	84,834	<u>84,834</u>
(N) Fish and wildlife	76,953	<u>76,953</u>

(O) Forests, parks and recreation	76,953	<u>76,953</u>
(P) Health	84,834	<u>84,834</u>
(Q) Housing and community affairs	76,953	[Repealed.]
(R) Human resources	84,834	<u>84,834</u>
(S) Human services	90,745	<u>90,745</u>
(T) Information and innovation	84,834	<u>84,834</u>
(U) Labor	84,834	<u>84,834</u>
(V) Libraries	76,953	<u>76,953</u>
(W) Liquor control	76,953	<u>76,953</u>
(X) Lottery	76,953	<u>76,953</u>
(Y) Mental Health	84,834	<u>84,834</u>
(Z) Military	84,834	<u>84,834</u>
(AA) Motor vehicles	76,953	<u>76,953</u>
(BB) Natural resources	90,745	<u>90,745</u>
(CC) Natural resources board chairperson	76,953	<u>76,953</u>
(DD) Public Safety	84,834	<u>84,834</u>
(EE) Public service	84,834	<u>84,834</u>
(FF) Taxes	84,834	<u>84,834</u>
(GG) Tourism and marketing	76,953	<u>76,953</u>
(HH) Transportation	90,745	<u>90,745</u>
(II) Vermont health access	84,834	<u>84,834</u>
(JJ) Veterans <u>Veterans' home</u>	76,953	<u>84,834</u>

* * * Judicial Branch * * *

Sec. 5. 32 V.S.A. § 1003(c) is amended to read:

(c) The annual salaries of the officers of the judicial branch named below shall be as follows:

Annual	<u>Annual</u>	<u>Annual</u>
Salary	<u>Salary</u>	<u>Salary</u>
as of	<u>as of</u>	<u>as of</u>
July 8,	<u>July 1,</u>	<u>July 14,</u>

	<u>2007</u>	<u>2012</u>	<u>2013</u>
(1) Chief justice of supreme court	\$135,421	<u>\$139,280</u>	<u>\$144,434</u>
(2) Each associate justice	129,245	<u>132,928</u>	<u>137,847</u>
(3) Administrative judge	129,245	<u>132,928</u>	<u>137,847</u>
(4) Each superior judge	122,867	<u>126,369</u>	<u>131,045</u>
(5) Each district judge	122,867	<u>[Repealed.]</u>	
(6) Each magistrate	92,641	<u>95,281</u>	<u>98,807</u>
(7) Each judicial bureau hearing officer	92,641	<u>95,281</u>	<u>98,807</u>

Sec. 6. 32 V.S.A. § 1141 is amended to read:

§ 1141. ASSISTANT JUDGES

(a)(1) The compensation of each assistant judge of the superior court shall be ~~\$142.04~~ \$146.09 a day as of ~~July 8, 2007,~~ July 1, 2012 and \$151.49 a day as of July 14, 2013 for time spent in the performance of official duties and necessary expenses as allowed to classified state employees. Compensation under this section shall be based on a two-hour minimum and hourly thereafter.

* * *

Sec. 7. 32 V.S.A. § 1142 is amended to read:

§ 1142. PROBATE JUDGES

(a) The annual salaries of the probate judges in the several probate districts, which shall be paid by the state in lieu of all fees or other compensation, shall be as follows:

		<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 1,</u> <u>2012</u>	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 14,</u> <u>2013</u>
(1) Addison	\$48,439	<u>\$49,820</u>	<u>\$51,663</u>
(2) Bennington	61,235	<u>62,980</u>	<u>65,310</u>
(3) Caledonia	42,956	<u>44,180</u>	<u>45,815</u>
(4) Chittenden	91,395	<u>105,104</u>	<u>108,993</u>
(5) Essex	12,000	<u>12,342</u>	<u>12,799</u>

(6) Franklin	48,439	<u>49,820</u>	<u>51,663</u>
(7) Grand Isle	42,000	<u>42,342</u>	<u>42,799</u>
(8) Lamoille	33,816	<u>34,780</u>	<u>36,067</u>
(9) Orange	40,214	<u>41,360</u>	<u>42,890</u>
(10) Orleans	39,300	<u>40,420</u>	<u>41,916</u>
(11) Rutland	86,825	<u>89,300</u>	<u>92,604</u>
(12) Washington	66,718	<u>68,619</u>	<u>71,158</u>
(13) Windham	53,923	<u>55,460</u>	<u>57,512</u>
(14) Windsor	73,116	<u>75,200</u>	<u>77,982</u>

* * *

~~(c) A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge shall be eligible only for the least expensive medical benefit plan option available to state employees or may apply the state share of the premium for which the judge is eligible toward the purchase of another state or private health insurance plan. A probate judge whose salary is less than 50 percent of the salary of the most highly paid probate judge may participate in other state employee benefit plans.~~ All probate judges, regardless of the number of hours worked annually, shall be eligible to participate in all employee benefits that are available to exempt employees of the judicial department.

Sec. 8. COURT ADMINISTRATOR; WEIGHTED CASELOAD STUDY

The court administrator shall conduct a weighted caseload study of the probate division and report its findings to the senate and house committees on government operations by January 31, 2013.

* * * Sheriffs * * *

Sec. 9. 32 V.S.A. § 1182 is amended to read:

§ 1182. SHERIFFS

(a) The annual salaries of the sheriffs of all counties except Chittenden shall be ~~\$65,812.00~~ \$67,688.00 as of ~~July 8, 2007~~ July 1, 2012 and ~~\$70,192.00~~ \$71,631.00 as of ~~July 14, 2013~~ July 1, 2012 and ~~\$74,281.00~~ \$74,281.00 as of ~~July 14, 2013~~ July 14, 2013.

(b) Compensation under subsection (a) of this section shall be reduced by 10 percent for any sheriff who has not completed the full-time training requirements under 20 V.S.A. § 2358.

* * * State's Attorneys * * *

Sec. 10. 32 V.S.A. § 1183 is amended to read:

§ 1183. STATE'S ATTORNEYS

(a) The annual salaries of state's attorneys shall be:

	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 8,</u> <u>2007</u>	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 1,</u> <u>2012</u>	<u>Annual</u> <u>Salary</u> <u>as of</u> <u>July 14,</u> <u>2013</u>
(1) Addison County	\$89,020	<u>\$91,557</u>	<u>\$94,945</u>
(2) Bennington County	89,020	<u>91,557</u>	<u>94,945</u>
(3) Caledonia County	89,020	<u>91,557</u>	<u>94,945</u>
(4) Chittenden County	93,069	<u>95,721</u>	<u>99,263</u>
(5) Essex County	66,766	<u>68,669</u>	<u>71,210</u>
(6) Franklin County	89,020	<u>91,557</u>	<u>94,945</u>
(7) Grand Isle County	66,766	<u>68,669</u>	<u>71,210</u>
(8) Lamoille County	89,020	<u>91,557</u>	<u>94,945</u>
(9) Orange County	89,020	<u>91,557</u>	<u>94,945</u>
(10) Orleans County	89,020	<u>91,557</u>	<u>94,945</u>
(11) Rutland County	89,020	<u>91,557</u>	<u>94,945</u>
(12) Washington County	89,020	<u>91,557</u>	<u>94,945</u>
(13) Windham County	89,020	<u>91,557</u>	<u>94,945</u>
(14) Windsor County	89,020	<u>91,557</u>	<u>94,945</u>

(b) In settlement of their accounts the commissioner of finance and management shall allow the state's attorneys the expense of printing briefs in cases in which the state's attorney has represented the state and their necessary and actual expenses under the rules and regulations pertaining to classified state employees.

* * * Appropriations * * *

Sec. 11. PAY ACT FUNDING

The compensation provided in this act shall be funded by appropriations made in H.781 of the 2011–2012 session of the general assembly in Sec. B.1200 for fiscal year 2013 and in Sec. BB.1200 for fiscal year 2014.

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 4-0-1)

Reported favorably with recommendation of proposal of amendment by Senator Illuzzi for the Committee on Appropriations.

The Committee recommends that the Senate propose to the House to amend the bill as follows:

First: In Sec. 5, 32 V.S.A. § 1003(c), in subdivision (7) (each judicial bureau hearing officer), by striking out “95,281” and inserting in lieu thereof 92,641 and by striking out “98,807” and inserting in lieu thereof 92,641

Second: By striking out Sec. 12 (effective date) and inserting in lieu thereof the following:

* * * Study * * *

Sec. 12. COMMISSIONER OF HUMAN RESOURCES; JUSTICE SYSTEM; PAY PARITY REVIEW

(a) The commissioner of human resources, in consultation with the defender general and state’s attorneys, shall review and compare the annual salaries and professional duties of employees within the justice system, including the judicial bureau hearing officers and magistrates; the attorney general and assistant attorneys general; the defender general and public defenders; and the state’s attorneys and deputy state’s attorneys. Pursuant to the review and comparison, the commissioner shall specifically determine whether the salaries of the defender general, public defenders, and deputy state’s attorneys should be increased relative to other employees within the justice system in light of the following factors: the complexity of their professional duties; the volume of their work, including, among other duties, court caseload; the quality of professional judgment and temperament expected by the public; and the rising cost of legal education and resulting loan debt.

(b) By March 15, 2013, the commissioner shall report his or her findings to the senate and house committees on appropriations and on government operations.

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 7-0-0)

(No House amendments.)

House Proposal of Amendment

S. 106

An act relating to miscellaneous changes to municipal government law.

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

* * * Violations; Penalties * * *

Sec. 1. 10 V.S.A. § 2675 is amended to read:

§ 2675. PENALTIES

A person who commits a violation under subsection 2645(a) or 2648(a) of this title shall be subject to a fine of not more than ~~\$25.00~~ \$75.00 per violation. In the case of a violation which continues after the issuance of a fire prevention complaint, each day's continuance may be deemed a separate violation.

Sec. 2. 24 V.S.A. § 1974a is amended to read:

§ 1974a. ENFORCEMENT OF CIVIL ORDINANCE VIOLATIONS

(a) A civil penalty of not more than ~~\$500.00~~ \$800.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.

(b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is ~~\$500.00~~ \$800.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than ~~\$500.00~~ \$800.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in the criminal division of the superior court, unless the matter relates to enforcement under chapter 117 of this title, in which instance the action shall be brought in the environmental division of the superior court.

* * *

Sec. 3. 24 V.S.A. § 4451 is amended to read:

§ 4451. ENFORCEMENT; PENALTIES

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than ~~\$100.00~~ \$200.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if

the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than ~~\$100.00~~ \$200.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

* * * Damages by Dogs * * *

Sec. 4. REPEAL

20 V.S.A. §§ 3741 (election of remedy), 3742 (notice of damage; appraisal), 3743 (examination of certificate), 3744 (fees and travel expenses), 3745 (identification and killing of dogs), 3746 (action against town), and 3747 (action by town against owner of dogs) are repealed.

Sec. 5. 20 V.S.A. § 3622 is amended to read:

§ 3622. FORM OF WARRANT

Such warrant shall be in the following form:

State of Vermont:)
)

_____ County, ss.)

To _____, constable or police officer of the town or city of _____:

By the authority of the state of Vermont, you are hereby commanded forthwith to impound ~~and destroy in a humane way or cause to be destroyed in a humane way~~ all dogs and wolf-hybrids not duly licensed according to law, except as exempted by ~~section 20 V.S.A. § 3587 of 20 V.S.A.;~~ and you are further required to make and return complaint against the owner or keeper of any such dog or wolf-hybrid. A dog or wolf-hybrid that is impounded may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home for the dog or wolf-hybrid. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days, or a greater number of days established by the municipality, the dog or wolf-hybrid may be destroyed in a humane way.

Hereof fail not, and due return make of this warrant, with your doings thereon, within 90 days from the date hereof, stating the number of dogs or wolf-hybrids destroyed and the names of the owners or keepers thereof, and whether all unlicensed dogs or wolf-hybrids in such town (or city) have been destroyed, and the names of persons against whom complaints have been made under the provisions of 20 V.S.A. chapter 193, subchapters 1, 2, and 4 of chapter 193 of 20 V.S.A., and whether complaints have been made and returned against all persons who have failed to comply with the provisions of such subchapter.

Given under our (my) hands at _____ aforesaid, this _____ day of _____, 19 20 _____.

Legislative Body

* * * Taxes * * *

Sec. 6. 24 V.S.A. § 1535 is amended to read:

§ 1535. ABATEMENT

(a) The board may abate in whole or part taxes, interest, ~~and~~ or collection fees, other than those arising out of a corrected classification of homestead or nonresidential property, accruing to the town in the following cases:

* * *

* * * General Municipal Powers and Duties * * *

Sec. 7. 24 V.S.A. § 1972 is amended to read:

§ 1972. PROCEDURE

(a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. ~~The full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published~~ legislative body shall arrange for one formal publication of the ordinance or rule or a concise summary thereof in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, the information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title, and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.

(2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by ~~section~~ subsection 1973(e) of this title.

* * *

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law, or particular statute.

Sec. 8. 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:

* * *

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to 23 V.S.A. §§ ~~1141-1147~~ chapter 13, subchapter 12; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

* * *

(6) To regulate the location, installation, maintenance, repair, and removal of utility poles, wires and conduits, water pipes or mains, or gas mains and sewers, upon, under, or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof, provided that an ordinance adopted under this subdivision shall be consistent with section 2295 of this title and shall not prohibit, reduce, or limit discharge at any existing sport shooting range, as that term is defined in 10 V.S.A. § 5227-.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise, or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon, or other conveyance, excepting persons selling fruits, vegetables, or other farm produce.

* * *

(11) To regulate, license, tax, or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.

* * *

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

* * *

(16) To name and rename streets and to number and renumber lots pursuant to section ~~4421~~ 4463 of this title.

* * *

* * * Poor Relief * * *

Sec. 9. 24 V.S.A. § 1236 is amended to read:

§ 1236. POWERS AND DUTIES IN PARTICULAR

The manager shall have authority and it shall be his or her duty:

* * *

(2) To perform all duties now conferred by law upon the ~~selectmen~~ selectboard, except that he or she shall not prepare tax bills, sign orders on the general fund of the town, ~~other than orders for poor relief~~, call special or annual town meetings, lay out highways, establish and lay out public parks, make assessments, award damages, act as member of the board of civil authority, nor make appointments to fill vacancies which the ~~selectmen are~~ selectboard is now authorized by law to fill; but he or she shall, in all matters herein excepted, render the ~~selectmen~~ selectboard such assistance as ~~they~~ it shall require;

* * *

(4) To have charge and supervision of all public town buildings, repairs thereon, and repairs of buildings of the town school district upon requisition of the school directors; and all building done by the town or town school district, unless otherwise specially voted, shall be done under his or her charge and supervision;

(5) To perform all the duties now conferred by law upon the road commissioner of the town, including the signing of orders; provided, however, that when an incorporated village lies within the territorial limits of a town which is operating under a town manager, and such village fails to pay to such town for expenditure on the roads of the town outside the village, at least ~~fifteen~~ 15 percent of the last highway tax levied in such village, the legal voters residing in such town, outside such village, may elect one or two road commissioners who shall have and exercise all powers of road commissioner within that part of such town as lies outside such village;

* * *

Sec. 10. 24 V.S.A. § 1762 is amended to read:

§ 1762. LIMITS

(a) A municipal corporation shall not incur an indebtedness for public improvements which, with its previously contracted indebtedness, shall, in the aggregate, exceed ten times the amount of the last grand list of such municipal corporation. Bonds or obligations given or created in excess of the limit authorized by this subchapter and contrary to its provisions shall be void.

(b) However, the provisions of this subchapter as to the debt limit shall not apply to bonds issued under sections 1752, or 1754 ~~and 1769~~ of this title, relating to the ordinary expenses of a municipality, ~~nor to bonds issued for poor relief.~~

Sec. 11. REPEAL

24 V.S.A. §§ 1769 (notes and bonds for poor relief) and 1770 (application) are repealed.

* * * Glebe Lands * * *

Sec. 12. REPEAL

24 V.S.A. §§ 2404 (rents of other lands, how divided and applied) and 2405 (contract under previous law not affected) are repealed.

* * * Municipal Planning and Development * * *

Sec. 13. 24 V.S.A. § 4303 is amended to read:

§ 4303. DEFINITIONS

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

* * *

(33) “Public road” means a state highway as defined in 19 V.S.A. § 1 or a class 1, 2, or 3 town highway as defined in 19 V.S.A. § 302(a). A municipality may, at its discretion, define a public road to also include a class 4 town highway as defined in 19 V.S.A. § 302(a).

Sec. 14. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

* * *

(3) Required frontage on, or access to, public roads, class 4 town highways, or public waters. Land development may be permitted on lots that

do not have frontage either on a public road, class 4 town highway, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, through a process and pursuant to standards defined in bylaws adopted for the purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width.

* * *

Sec. 15. 24 V.S.A. § 4442 is amended to read:

§ 4442. **ADOPTION OF BYLAWS AND RELATED REGULATORY TOOLS; AMENDMENT OR REPEAL**

* * *

(c) Routine adoption.

(1) A bylaw, bylaw amendment, or bylaw repeal shall be adopted by a majority of the members of the legislative body at a meeting that is held after the final public hearing, and shall be effective 21 days after adoption unless, by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.

(2) However, a rural town ~~with a population of fewer than 2,500 persons as defined in section 4303 of this chapter~~, by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaws, bylaw amendments, or bylaw repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.

* * *

* * * Property; Filing of Land Plats * * *

Sec. 16. 27 V.S.A. § 1404(b) is amended to read:

(b) Survey plats prepared and filed in accordance with ~~section 4416 of Title 24 V.S.A. § 4463~~ shall be exempt from subdivision ~~1403(b)(6)~~ 1403(b)(5) of this title. Survey plats or plans filed under this exemption shall contain a title area, the location of the land and scale expressed in engineering units. In addition, they shall include inscriptions and data required by zoning and planning boards.

Sec. 17. 27 V.S.A. § 1403(b) is amended to read:

(b) Plats filed in accordance with this chapter shall also conform with the following further requirements:

* * *

(8) The recordable plat materials shall be composed in one of the following processes:

(A) fixed-line photographic process on stable base polyester film; or

(B) pigment ink on stable base polyester film or linen tracing cloth.

Sec. 18. REPEAL

27 V.S.A. § 1403(b)(8) (process for recordable plat materials) is repealed on July 1, 2013.

* * * Unorganized Towns and Gores * * *

Sec. 19. 24 V.S.A. § 1408 is amended to read:

§ 1408. SUPERVISOR; GENERAL DUTIES

~~Such~~ The supervisor shall act as ~~selectman~~ a selectperson in matters of road encroachment, planning, and related bylaws, as school director and truant officer, as constable, as collector of taxes ~~and~~, as town clerk in the matter of licensing dogs, ~~and as town clerk and board of civil authority in the matter of tax appeals from the decisions of the board of appraisers.~~

Sec. 20. 32 V.S.A. § 4408 is amended to read:

§ 4408. HEARING BY BOARD

(a) On the date so fixed by the town clerk and from day to day thereafter, the board of civil authority shall hear such appellants as appear in person or by agents or attorneys, until all such objections have been heard and considered. All objections filed in writing with the board of civil authority at or prior to the time fixed for hearing appeals shall be determined by the board notwithstanding that the person filing the objections fails to appear in person, or by agent or attorney.

~~(b) Ad hoc board for unorganized towns and gores. For purposes of hearing appeals under this subchapter only, the supervisor shall create an ad hoc board composed of:~~

~~(1) the supervisor; and~~

~~(2) one member from each adjoining municipality's board of civil authority, to be appointed by each respective board of civil authority, representing no fewer than three and no more than five of the adjoining municipalities, at the discretion of the supervisor. [Repealed.]~~

(c) ~~The ad hoc board provided for in subsection (b) of this section shall, for purposes of hearing appeals under this subchapter only, act as a board of civil authority, and an aggrieved party shall have further appeal rights as though the party had appealed to a board of civil authority. [Repealed.]~~

* * * Unified Towns and Gores in Essex County * * *

Sec. 21. REIMBURSEMENT FOR GRIEVANCE HEARING EXPENDITURES

(a) A unified town or gore shall be entitled to claim reimbursement for expenditures incurred in conducting grievance hearings when:

(1) the hearing was held between July 1, 2009 and February 23, 2011;

(2) the expenditures related to hiring a person or persons to participate in the grievance hearing; and

(3) the expenditures were necessary to comply with 32 V.S.A. § 4408.

(b) Claims shall be filed with the department of taxes within 60 days of the effective date of this act, with receipts or other documentation as the department may require.

* * * Public Service; Renewable Pilot Program * * *

Sec. 22. 30 V.S.A. § 8102 is amended to read:

§ 8102. INCENTIVES; ~~CUSTOMER CONNECTIONS~~

(a) Notwithstanding any other provision of law, the The clean energy development fund created under 40 V.S.A. § 6523 section 8015 of this title shall provide at least \$100,000.00 in incentives to customers who will connect to a certified Vermont village green renewable project. Any such incentive shall be applied by the customer to the cost of constructing the customer's connection to the project.

(b) Notwithstanding the provisions of subsection (a) of this section or any other law, on and after April 1, 2012, the clean energy development fund shall make up to \$100,000.00 of funds that would otherwise have been available to customers connecting to Vermont village green renewable projects under this section available to other district heating on a competitive basis. The use of such funds shall not be limited to customer connections. For the purpose of this subsection, it shall not be necessary that the district heating be proposed by a municipality, serve a downtown development district or growth center under 24 V.S.A. § 2793 or 2793c, or obtain certification under this chapter.

* * * Auditor of Accounts; Internal Financial Controls * * *

Sec. 23. 32 V.S.A. § 163 is amended to read:

§ 163. DUTIES OF THE AUDITOR OF ACCOUNTS

In addition to any other duties prescribed by law, the auditor of accounts shall:

* * *

~~(6) Report on or before February 15 of each year to the house and senate committees on appropriations in which he or she shall summarize significant findings, and make such comments and recommendations as he or she finds necessary. [Repealed.]~~

* * *

(11) Make available to all counties, municipalities, and supervisory unions as defined in 16 V.S.A. § 11(23) and supervisory districts as defined in 16 V.S.A. § 11(24) a document designed to determine the internal financial controls in place to assure proper use of all public funds. The auditor shall consult with the Vermont School Boards Association, the Vermont Association of School Business Officials, and the Vermont League of Cities and Towns in the development of the document. The auditor shall strive to limit the document to one letter-size page. The auditor shall also make available to public officials charged with completing the document instructions to assist in its completion.

(12) Make available to all county, municipality, and school district officials with fiduciary responsibilities an education program. The program shall provide instruction in fiduciary responsibility, faithful performance of duties, the importance and components of a sound system of internal financial controls, and other topics designed to assist the officials in performing the statutory and fiduciary duties of their offices. The auditor shall consult with the Vermont School Boards Association, the Vermont Association of School Business Officials, and the Vermont League of Cities and Towns in the development of the education program.

Sec. 24. AUDITOR WEBSITE; AUDIT FINDINGS

(a) By July 1, 2012, the auditor of accounts shall prominently post on his or her official state website the following information:

(1) a summary of all embezzlements and other financial fraud against any agency or department of the state committed within the last five years, whether committed by a state employee, contractor, or other person. The summary shall include the names of all persons or entities convicted of those offenses; and

(2)(A) all reports with findings that result from audits conducted under 32 V.S.A. § 163(1); and

(B) a summary of significant recommendations arising out of the audits that are contained in audit reports conducted under 32 V.S.A. § 163(1) and issued since January 1, 2012, and the dates on which corrective actions were taken related to those recommendations. Recommendation follow-up shall be conducted at least biennially and for at least four years from the date of the audit report.

(b) The auditor of accounts shall notify the general assembly of the initial posting made on his or her website pursuant to subsection (a) of this section by electronic or other means.

* * * Municipalities; Internal Financial Controls * * *

Sec. 25. 24 V.S.A. § 832 is amended to read:

§ 832. BONDS; REQUIREMENTS

Before the school directors, constable, road commissioner, collector of taxes, treasurer, assistant treasurer when appointed by the ~~selectmen~~ selectboard, and clerk, and any other officer or employee of the town who has authority to receive or disburse town funds enter upon the duties of their offices, the ~~selectmen~~ selectboard shall require each to give a bond conditioned for the faithful performance of his or her duties; the school directors, to the town school district; the other named officers, to the town. The treasurer, assistant treasurer when appointed by the ~~selectmen~~ selectboard, and collector shall also be required to give a bond to the town school district for like purpose. All such bonds shall be in sufficient sums and with sufficient sureties as prescribed and approved by the ~~selectmen~~ selectboard. If the ~~selectmen~~ selectboard at any time ~~consider~~ considers a bond of any such officer or employee to be insufficient, ~~they~~ it may require, by written order, ~~such~~ the officer or employee to give an additional bond in such sum as ~~they deem~~ it deems necessary. If an officer or employee, so required, neglects for ten days after such request to give such original or additional bond, his or her office shall be vacant. A bond furnished pursuant to the provisions of this section shall not be valid if signed by any other officer of the same municipality as surety thereon.

Sec. 26. 24 V.S.A. § 872 is amended to read:

§ 872. ~~SELECTMEN~~ SELECTBOARD; GENERAL POWERS AND DUTIES

(a) The ~~selectmen~~ selectboard shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns

and town school districts not committed by law to the care of any particular officer.

(b) The selectboard shall annually, on or before July 31, acknowledge receipt of and review the document made available by the auditor of accounts pursuant to 32 V.S.A. § 163(11) regarding internal financial controls and which has been completed and provided to the selectboard by the treasurer pursuant to section 1571 of this title.

(c) The selectboard may require any other officer or employee of the town who has the authority to receive or disburse town funds to complete and provide to the selectboard a copy of the document made available by the auditor of accounts pursuant to 32 V.S.A. § 163(11). The officer or employee shall complete and provide the document to the selectboard within 30 days of the selectboard's requirement. The selectboard shall acknowledge receipt of and review the completed document within 30 days of receiving it from the officer or employee.

Sec. 27. 24 V.S.A. § 1571 is amended to read:

§ 1571. ACCOUNTS; REPORTS

(a) The town treasurer shall keep an account of moneys, bonds, notes, and evidences of debt paid or delivered to him or her, and of moneys paid out by him or her for the town and the town school district, which accounts shall at all times be open to the inspection of persons interested.

(b) Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body.

(c) The town treasurer shall file quarterly reports with the legislative body regarding his or her actions set forth in subsections (a) and (b) of this section.

(d) The town treasurer shall annually, on or before June 30, complete and provide to the selectboard a copy of the document made available by the auditor of accounts pursuant to 32 V.S.A. § 163(11) regarding internal financial controls.

Sec. 28. 24 V.S.A. § 1686 is amended to read:

§ 1686. PENALTY

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

* * *

* * * Supervisory Unions and Supervisory Districts;
Internal Financial Controls * * *

Sec. 29. 16 V.S.A. § 242a is added to read:

§ 242a. INTERNAL FINANCIAL CONTROLS

(a) The superintendent or his or her designee shall annually, on or before December 31, complete and provide to the supervisory union board and to all member district boards a copy of the document regarding internal financial controls made available by the auditor of accounts pursuant to 32 V.S.A. § 163(11).

(b) The supervisory union board shall review the document provided by the superintendent within two months of receiving it.

Sec. 30. EFFECTIVE DATE

This act shall take effect on July 1, 2012 except for the following sections, which shall take effect on passage:

(1) Sec. 22 (amending 30 V.S.A. § 8102); and

(2) Sec. 24 (auditor website; audit findings).

and that after passage the title of the bill be amended to read: “An act relating to miscellaneous changes to municipal government law and to internal financial controls”

House Proposal of Amendment

S. 136

An act relating to vocational rehabilitation.

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

First: By striking Sec. 2 and inserting in lieu thereof a new Sec. 2 to read:

Sec. 2. STUDY

(a) The department of labor in consultation with the department of disabilities, aging, and independent living and other interested parties including vocational rehabilitation counselors shall study the following:

(1) what performance standards should apply to vocational rehabilitation counselors;

(2) whether the department of disabilities, aging, and independent living should be allowed to provide workers’ compensation vocational rehabilitation services and charge the fees for those services to insurance companies and whether providing services to state employees would represent a conflict of interest;

(3) whether injured workers receiving vocational rehabilitation services are receiving those services in a timely manner; and

(4) whether the current vocational rehabilitation screening process is effective and whether entities other than the department of disabilities, aging, and independent living should be permitted to provide screening to avoid conflicts of interest.

(b) The department of labor shall report its findings as well as any recommendations by January 15, 2013, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs.

Second: By adding a Sec. 3 to read:

Sec. 3. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

* * *

(2) “Child” includes a stepchild, adopted child, posthumous child, grandchild, and ~~an acknowledged illegitimate~~ a child for whom parentage has been established pursuant to 15 V.S.A. chapter 5, but does not include a married child unless the child is a dependent.

* * *

House Proposal of Amendment

S. 203

An act relating to child support enforcement.

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

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

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

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

§ 603. CONTEMPT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The person to participate in an employment services program, which may provide referrals for employment, training, counseling, or other services, including those listed in section 658 of this title. Any report provided from such a program shall be presumed to be admissible without the appearance of a witness from the program in accordance with the provisions in 4 V.S.A. § 466(f).

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

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

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

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

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

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

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

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

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

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

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

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

§ 653. DEFINITIONS

As used in this subchapter:

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

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

* * *

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

* * *

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

§ 658. SUPPORT

* * *

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

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate;
- (12) the provision of child care services to an individual who is participating in a community service program; and

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

* * *

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

§ 660. MODIFICATION

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

(2) The office of child support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.

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

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

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

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

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

(d) A motion to modify a support order under subsection (b) or (c) of this section shall be accompanied by an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court. Upon proof of service, and if the calculations

demonstrate cause for modification, the ~~clerk of the court~~ magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing. The court shall conduct a hearing within 20 days of the request. No order shall be modified without a hearing if one is requested.

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

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

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

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

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

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

(1) The obligor is presently able to pay.

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

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

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

§ 662. INCOME STATEMENTS

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

documenting the affidavit. The court may require a party who fails to comply with this section to pay an economic penalty to the other party.

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

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

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

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

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

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

§ 668. MODIFICATION OF ORDER

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

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

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

(a) State policy. It is the policy of this state that principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses, and how the state

responds to persons who are in contempt of child support orders. The policy goal is a community response to a person's wrongdoing at its earliest onset, and a type and intensity of sanction tailored to each instance of wrongdoing. Policy objectives are to:

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

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

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

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

§ 3. GENERAL DEFINITIONS

Whenever used in this title:

* * *

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

* * *

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

§ 352. SUPERVISED COMMUNITY SENTENCE

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

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

* * *

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

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

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

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

§ 910a. REPARATIVE BOARDS; FUNCTIONS

* * *

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

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

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

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

* * *

Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2012

House Proposal of Amendment

S. 217

An act relating to closely held benefit corporations.

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

In Sec. 1, in 11A V.S.A. § 21.10(e)(1), immediately preceding “is not required” by adding “except in the case of a corporation with annual gross revenue of one million dollars or more in each of the two years preceding his or her appointment.”

House Proposal of Amendment

S. 237

An act relating to the genuine progress indicator.

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

Sec. 1. PURPOSE, DEFINITION, AND INTENT

(a) Purpose. The purpose of the genuine progress indicator (“GPI”) is to measure the state of Vermont’s economic, environmental, and societal well-being as a supplement to the measurement derived from the gross state product and other existing statistical measurements.

(b) Definition. The GPI is an estimate of the net contributions of economic activity to the well-being and long-term prosperity of our state’s citizens, calculated through adjustments to gross state product that account for positive and negative economic, environmental, and social attributes of economic development.

(c) Intent. It is the intent of the general assembly that once established and tested, the GPI will assist state government in decision-making by providing an additional basis for budgetary decisions, including outcomes-based budgeting; by measuring progress in the application of policy and programs; and by serving as a tool to identify public policy priorities, including other measures such as human rights.

Sec. 2. GENUINE PROGRESS INDICATOR

(a) Establishment; maintenance.

(1) The secretary of administration shall negotiate and enter into a memorandum of understanding with the Gund Institute for Ecological Economics of the University of Vermont (the “Gund Institute”) to work in collaboration to establish and test a genuine progress indicator (GPI). The memorandum shall provide the process by which the GPI is established and, once tested, how and by whom the GPI shall be maintained and updated. The memorandum shall further provide that in the establishment of the GPI, the secretary of administration, in collaboration with the Gund Institute, shall create a Vermont data committee made up of individuals with relevant expertise to inventory existing datasets and to make recommendations that may be useful to all data users in Vermont’s state government, nonprofit organizations, and businesses.

(2) The GPI shall use standard genuine progress indicator methodology and additional factors to enhance the indicator, which shall be adjusted periodically as relevant and necessary.

(b) Accessibility. Once established, the GPI and its underlying datasets that are submitted by the Gund Institute to the secretary of administration shall be posted on the state of Vermont website.

(c) Updating data. The secretary of administration shall cooperate in providing data as necessary in order to update and maintain the GPI.

Sec. 3. PROGRESS REPORTS

By January 15, 2013 and once every other year thereafter, the secretary of administration shall report to the house committees on government operations and on commerce and economic development and the senate committees on government operations and on economic development, housing, and general affairs a progress report regarding the maintenance, including the cost of maintenance, and usefulness of the GPI.

Sec. 4. DATASETS

Any datasets submitted to the secretary of administration pursuant to this act shall be considered a public record under chapter 5 of Title 1.

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment

S. 245

An act relating to requiring cardiovascular care instruction in public and independent schools.

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

First: In Sec. 1, 16 V.S.A. § 131, by striking out subdivision (3)(B) in its entirety and inserting in lieu thereof a new subdivision (3)(B) to read:

(B) information regarding and practice of cardiopulmonary resuscitation by people who are not health care professionals and the use of automated external defibrillators;

Second: By striking out Sec. 2 in its entirety and by renumbering “Sec. 3” to be “Sec. 2”

Third: By striking out Sec. 4 in its entirety and inserting in lieu thereof a new section to be Sec. 3 to read:

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

House Proposal of Amendment to Senate Proposal of Amendment

H. 403

An act relating to foreclosure of mortgages

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

First: By striking Sec. 3 in its entirety and inserting in lieu thereof the following:

Sec. 3. [DELETED]

Second: By striking Sec. 4 in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

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

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

H. 413

An act relating to creating a civil action against those who abuse, neglect, or exploit a vulnerable adult

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

By striking Sec. 4 in its entirety and renumbering the remaining sections to be numerically correct

H. 761

An act relating to executive branch fees, including motor vehicle and fish and wildlife fees

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

In Sec. 2a, by striking out Sec. 2a and inserting in lieu thereof a new Sec. 2a to read:

Sec. 2a. 26 V.S.A. § 4806 is amended to read:

§ 4806. FEES; DISPOSITIONS

(a) Notwithstanding the fee provisions of 3 V.S.A. § 125, applicants and persons regulated under this chapter shall pay the following fees:

(1) Annual event permit applications:

- (A) Auto racing \$ 800.00;
- (B) Go-cart, snowmobile, or motorcycle racing \$ 500.00;

(2) Unlimited event permit applications:

- (A) Auto racing \$ 1,250.00;
- (B) Go-cart, snowmobile, or motorcycle racing \$ 1,250.00;

(3) Single event permit applications:

- (A) Auto racing \$ 500.00;
- (B) Go-cart, snowmobile, or motorcycle racing \$ 500.00;

(4) Annual event permit biennial ~~renewal~~ renewals:

- (A) Auto racing \$ 500.00;
- (B) Go-cart, snowmobile, or motorcycle racing \$ 500.00;

(5) Unlimited event permit biennial ~~renewal~~ renewals:

- (A) Auto racing \$ 2,500.00;
- (B) Go-cart, snowmobile, or motorcycle racing \$ 2,500.00.

(b) A municipality where a race is to be held may charge an additional fee, not to exceed the municipality's costs associated with the race.

(c) A single event permit shall authorize any number of events within a 10-day period in the same location and on the same racing track. An annual-event permit shall authorize any number of events within two 10-day periods in consecutive years and may be renewed every two years.

(d) Notwithstanding the provisions of subdivision (a)(3)(B) of this section, a person in good standing incorporated or authorized to transact business as a nonprofit corporation under Title 11B shall pay a fee of \$100.00 for a single-event snowmobile racing permit.

NEW BUSINESS

Third Reading

H. 412.

An act relating to harassment and bullying in educational settings.

H. 467.

An act relating to limited liability for a landowner who permits a person to enter the owner's land for recreational use.

H. 730.

An act relating to miscellaneous consumer protection laws.

Second Reading

Favorable with Recommendation of Amendment

H. 535.

An act relating to racial disparities in the Vermont criminal justice system.

Reported favorably with recommendation of amendment by Senator Snelling for the Committee on Judiciary.

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

Sec. 1. DATA COLLECTION AND ANALYSIS; APPROPRIATION

(a) Research regarding sentencing practices routinely concludes that two variables drive sentencing decisions—the seriousness of the offense and the defendant's risk to reoffend. The Vermont Center for Justice Research (“the center”) shall examine the effect of these and other variables, including the race of the defendant, on sentencing decisions in Vermont, for a five-year period. The center shall use data from the Federal Bureau of Investigation Interstate Identification Index, the department of motor vehicles, the Vermont criminal information center, the department of corrections, and the Vermont courts to explain if the disparities are based on legal or nonlegal factors. The center's research shall focus on the following:

(1) How do the sentences of people of particular census categories, in the aggregate and by national incident-based reporting system race data fields (NIBRS), which currently include white, black, Asian, Native American or Alaskan Native, and Hispanic, compare to the sentences of white defendants with respect to sentence type, length of sentence, and level of restriction?

(2) How does the actual time spent by people of particular census categories, in the aggregate and by NIBRS race data fields, under department of corrections' supervision (and the degree of restriction) compare to the time spent by (and the degree of restriction of) white defendants?

(3) If disparate sentencing patterns or disparate service patterns exist for people of particular census categories, in the aggregate and by NIBRS race data fields, what variables included in the study design explain the disparity?

(b) On or before December 15, 2012, results of the study shall be reported to the house and senate committees on judiciary, to the court administrator, and to each organization or entity represented on the governor's criminal justice cabinet.

(c) The human rights commission is authorized to transfer \$20,000.00 from its existing budget to the Vermont Center for Justice Research to finance this data collection analysis and report and is authorized to apply for and receive grants for the same purpose.

Sec. 2. 20 V.S.A. § 2366 is added to read:

§ 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING POLICY; RACE DATA COLLECTION

(a) No later than January 1, 2013, every state, local, county, and municipal law enforcement agency that employs one or more certified law enforcement officers shall adopt a bias-free policing policy. The policy shall contain the essential elements of such a policy as determined by the Law Enforcement Advisory Board after its review of the current Vermont State Police Policy and the most current model policy issued by the office of the attorney general.

(b) The policy shall encourage ongoing bias-free law enforcement training for state, local, county, and municipal law enforcement agencies.

(c) State, local, county, and municipal law enforcement agencies that employ one or more certified law enforcement officers are encouraged to work with the Vermont association of chiefs of police to extend the collection of roadside-stop race data uniformly throughout state law enforcement agencies, with the goal of obtaining uniform roadside-stop race data for analysis.

Sec. 3. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS

* * *

(e) The criteria for all minimum training standards under this section shall include anti-bias training approved by the Vermont criminal justice training council.

Sec. 4. 24 V.S.A. § 1939 is amended as follows:

§ 1939. LAW ENFORCEMENT ADVISORY BOARD

* * *

(e) The board shall examine how individuals make complaints to law enforcement and suggest, on or before December 15, 2012, to the senate and house committees on judiciary what procedures should exist to file a complaint.

Sec. 5. CRIMINAL JUSTICE AGENCIES; BIAS-FREE CRIMINAL JUSTICE POLICY

The general assembly encourages all criminal justice entities through their professional rules of conduct to ensure that all actions taken are done in a manner that is free of bias.

(Committee vote: 4-0-1)

Reported favorably by Senator Snelling for the Committee on Appropriations.

(Committee vote: 4-1-2)

(For House amendments, see House Journal of March 27, 2012, page 818.)

H. 766.

An act relating to the national guard.

Reported favorably with recommendation of amendment by Senator Illuzzi for the Committee on Economic Development, Housing and General Affairs.

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

Sec. 1. 20 V.S.A. § 946 is added to read:

§ 946. COMMANDING OFFICER'S NONJUDICIAL DISCIPLINE

(a) It is the purpose of this section to rehabilitate a service member who may have violated certain provisions of the Uniform Code of Military Justice that, in the discretion of the commanding officer, are deemed to be de minimus. Any action taken pursuant to this section shall be taken to rehabilitate the member and deter the underlying conduct.

(b) Any field grade or above commander in the national guard not in the service of the United States may, in addition to or in lieu of admonition or reprimand, impose nonjudicial discipline in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States, except that there shall be no right to demand trial by courts-martial when the commander notifies the accused prior to using the nonjudicial discipline option that the maximum punishment to be considered in the event that the accused is found guilty beyond a reasonable doubt will be the loss of one rank, restriction, loss of pay, or extra duty. The member shall be entitled to the same federal protections and rights in any proceeding under this section as he or she would be under the Uniform Code of Military Justice.

Sec. 2. 20 V.S.A. § 369 is added to read:

§ 369. AWARDS AND MEDALS

Upon the approval of the governor, the adjutant general may, from time to time, create and design such awards and medals to recognize meritorious service or outstanding achievement for members of the Vermont National Guard. The adjutant general will cause to be published a roster of these awards and medals, the criteria and process for awarding them, and a description or specification of the award and medals. All awards and medals will be presented in the name of the state of Vermont and be awarded to a member or retired member of the Vermont National Guard or if the member is deceased to the member's spouse, child, parent, sibling, or grandchild or, if none, to a person designated by the executor of the estate.

Sec. 3. 20 V.S.A. § 603 is amended to read:

§ 603. ARMS AND EQUIPMENT; PAY AND RATIONS

When the national guard, or part thereof, is ordered out under the provisions of section 366, 601, or 602 of this title, the state shall furnish arms and equipment necessary for each officer, warrant officer, and enlisted person; and they shall be entitled to ~~pay and rations~~ pay, subsistence, and quarters allowance equivalent to that paid to members of the armed forces of the United States for officers, warrant officers, and enlisted persons of corresponding grade and time in service as designated in the U.S. pay tables.

Sec. 4. 20 V.S.A. § 608 is added to read:

§ 608. CIVILIAN LEAVE OPTION

If any member of the Vermont national guard is ordered to state active duty by the governor, the service member shall have the right to take leave without pay from his or her civilian employment. No member of the national guard shall be required to use or exhaust his or her vacation or other accrued leave from his or her civilian employment for a period of active service.

Sec. 5. 20 V.S.A. § 609 is added to read:

§ 609. STAY OF LEGAL PROCEEDINGS BECAUSE OF SERVICE IN NATIONAL GUARD

(a)(1) If a service member of the Vermont National Guard who is ordered to state active duty by the governor is a party to a civil or administrative proceeding in any Vermont court, the proceeding:

(A) may be stayed by the court on its own motion; or

(B) shall be stayed by application of the member or person acting on behalf of the member, unless the court finds that the proceeding would not be

materially affected by reason of the member's absence or that the member can participate by telephone or other electronic means.

(2) A motion for a stay under this subsection may be filed or the court may issue such a stay at any time during the period of active service. Any stay issued shall not remain in effect for more than 30 days after the completion of state active duty.

(b) An application for a stay pursuant to subdivision (a)(1)(B) of this section shall include a letter or other communication from the member or a person on his or her behalf setting forth facts stating the manner in which the member's duty requirements materially affect the member's ability to appear and stating a date when the member is expected to be available to appear, together with any information from the member's commanding officer.

(c)(1) This section shall not apply to:

(A) proceedings involving relief from abuse orders under 15 V.S.A. chapter 21, subchapter 1;

(B) proceedings involving orders against stalking or sexual assault under 12 V.S.A. chapter 178;

(C) proceedings involving abuse prevention orders for vulnerable adults under 33 V.S.A. chapter 69, subchapter 1; or

(D) civil operator's license suspension proceedings under 23 V.S.A. § 1205.

(2) If a service member is unable to appear at a hearing due to responsibilities related to state active duty service, the court may issue interim or ex parte orders in proceedings identified in subdivision (A), (B), or (C) of this subsection, and the department of motor vehicles may suspend a civil operator's license. If the court issued any order while the member was on state active duty, upon the member's return, he or she shall, upon request, be entitled to a hearing and the opportunity to move to strike or modify the order or suspension issued in his or her absence. If the civil operator's license is reinstated, there shall be no reinstatement fee.

Sec. 5a. 12 V.S.A. § 553 is amended to read:

§ 553. MEMBER OF ARMED SERVICES; TOLLING STATUTE OF LIMITATIONS

When an inhabitant of this state is in the military or naval service of the United States; or is a member of the Vermont National Guard and has been ordered to state active duty and, at the time of entering such service or duty, had a cause of action against another person, or another person had a cause of action against him or her, the time spent in such military or naval service out of

this state or the time spent in state active duty shall not be taken as part of the time limited for the bringing of an action by or against him or her founded on such causes. The limitation period for a cause of action shall be tolled during the duration of the person's out of state military or naval service, or state active duty service, plus an additional 60 days.

Sec. 6. 21 V.S.A. § 492 is amended to read:

§ 492. RIGHTS AND BENEFITS

* * *

(c)(1) If any member of the Vermont National Guard with civilian employer-sponsored insurance coverage is ordered to state active duty by the governor for up to 30 days, the service member may, at the member's option, continue his or her civilian health insurance under the same terms and conditions as were in effect for the month preceding the member's call to state active duty, including a continuation of the same levels of employer and employee contributions toward premiums and cost-sharing.

(2) If a member of the Vermont National Guard is called to state active duty for more than 30 days, the member may continue his or her civilian health insurance. For a member whose employer chooses not to continue regular contributions toward premiums and cost-sharing during the period of the member's state active duty in excess of 30 days, the state of Vermont shall be responsible for paying the employer's share of the premium and cost-sharing.

(3) The office of the adjutant general shall administer this subsection and may adopt policies, procedures, and guidelines to carry out the purposes of this subsection, including developing employee notice requirements, enforcement provisions, and a process for the state to remit the employer's share of premiums and cost-sharing to the appropriate entities pursuant to subdivision (2) of this subsection.

Sec. 7. 16 V.S.A. § 2537 is amended to read:

§ 2537. ARMED SERVICES SCHOLARSHIPS

* * *

(b) Definitions:

(1) "Vermont National ~~guard~~ Guard" as used in this section will be deemed to include Vermont army national guard and Vermont air national guard.

(2) "Active duty for ~~national guard~~ Vermont National Guard and for active reserve forces" means full-time duty in the active military service of the United States and includes full-time training duty, annual training duty, and

attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(3) “Inactive duty” means training performed by members of a reserve component while not on active duty and includes unit training assemblies, training periods, military flight periods and other equivalent duty and while on state duty on order of the governor or the governor’s representative.

(4) “Armed forces of the United States” means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(5) “Child” means a natural or adoptive child of a member of the Vermont National Guard or armed forces, and includes a stepchild.

Sec. 8. 16 V.S.A. § 2856 is amended to read:

§ 2856. EDUCATIONAL ASSISTANCE; INTEREST FREE LOANS

(a) An active member of the Vermont ~~army national guard or the air national guard~~ National Guard may be eligible for an interest-free loan in an academic year for financial assistance to pay for tuition and fees for courses taken at a Vermont college, university, regional technical center, or other programs approved pursuant to policies adopted in accordance with subsection (f) of this section. ~~Academic year awards may be up to the in-state tuition rate at the University of Vermont for that year.~~

(b) To be eligible for an educational loan under this section, a person shall:

(1) be an active member in good standing of a ~~federally recognized~~ federally recognized unit of the Vermont ~~army national guard or air national guard~~ National Guard;

(2) have successfully completed basic training or commissioning; and

(3) ~~not hold a baccalaureate degree or higher; and~~

(4) be enrolled in a program that leads to a postsecondary degree, diploma or be studying for relevant continuing education purposes.

(c) A loan made under this section shall be interest free and may be partially or completely cancelled and forgiven for a person who:

(1) submits certification that the person has successfully completed the course; and

(2) submits certification that the person has completed two years of national guard service for each full academic year award. Service requirements for less than a full academic year award shall be proportionate to the amount of the award. The board shall determine the amount of loan to be cancelled for each completed year of service. The amount cancelled for each year of service shall not exceed 50 percent of the loan.

(d) ~~The adjutant general shall provide a certificate documentation of eligibility to each person who has been found to be eligible for educational assistance under this section for each academic period. The certificate shall be valid for one academic year.~~

(e) ~~A person shall not be eligible for educational assistance under this section for any courses taken after he or she has been awarded a baccalaureate degree or is no longer an active member in good standing of the Vermont army national guard or the air national guard. The loan of a person who loses eligibility under this section while enrolled in a course shall go into repayment pursuant to the terms of the loan, and the person shall be ineligible for further assistance under this section until the loan is repaid in full.~~

(f) The board, in consultation with the office of the adjutant general, shall adopt ~~rules~~ policies, procedures, and guidelines necessary to implement the provisions of this section, which shall include application requirements, annual loan requirements, loan forgiveness requirements, and annual loan amounts based on available funds. ~~Rules~~ The policies, procedures, and guidelines shall include definitions of “successful completion of a course,” “relevant continuing education courses” and what constitutes an “academic year.” Rules adopted by the Vermont ~~state colleges~~ State Colleges under section 2183 of this title, prior to its repeal, shall remain valid under this section and shall be administered by the corporation.

(g) [Repealed.]

(h) The availability of loans made under this subchapter is subject to funds appropriated to the Vermont ~~army or air national guard~~ National Guard for that purpose.

and that after passage the title of the bill be amended to read: “An act relating to the rehabilitation of Vermont National Guard members and certain rights and responsibilities of guard members and their employers”

(Committee vote: 3-0-2)

Reported favorably by Senator Starr for the Committee on Appropriations.

(Committee vote: 5-0-2)

(No House amendments.)

H. 771.

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

Reported favorably with recommendation of amendment by Senator Baruth for the Committee on Education.

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

* * * Technical Corrections * * *

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

§ 212. COMMISSIONER'S DUTIES GENERALLY

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

* * *

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

* * *

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

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

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

* * *

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

* * *

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

§ 429. LOANS

~~The Notwithstanding subsection 4029(b) of this title, a school board may draw orders for loans without interest to the town town's general fund and the board of selectmen town selectboard may draw orders for loans without interest to the town school district fund, the loans to be secured by notes signed by the board of selectmen or the school directors as the case may be and stipulating the terms agreed upon between the board of school directors and the board of selectmen. The notes shall be payable on demand or mature within~~

three months from date of issue a note signed by both the selectboard and the school board that stipulates mutually agreeable terms and conditions. A note shall be payable not more than 90 days after its issuance and shall be payable on demand anytime within the 90-day term. The school board shall report all loans to the department pursuant to subsection 4029(f) of this title. For purposes of this section, "town" and "selectboard" shall have the same meaning as they have in 1 V.S.A. § 139.

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

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

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

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

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

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

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

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

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

(c) Notwithstanding subsection (a) of this section, without previous authorization by the electorate, a school board ~~without previous authorization by the electorate~~ in a district that operates an elementary school may pay tuition for elementary pupils who reside near a public elementary school in an adjacent district upon request of the pupil's parent or guardian, if in the board's judgment the pupil's education can be more conveniently furnished there due to geographic considerations. Within 30 days of the board's decision, a parent or guardian who is dissatisfied with the decision of the board under this subsection may request a determination by the commissioner, who shall have

authority to direct the school board to pay all, some, or none of the pupil's tuition and whose decision shall be final.

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

Sec. 5. REPEAL

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

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

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

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

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

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

§ 4015. SMALL SCHOOL SUPPORT

(a) In this section:

* * *

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

* * *

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

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

* * * Prekindergarten Rules * * *

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

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

Sec. 10. PREKINDERGARTEN EDUCATION; RULES

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

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

Sec. 11. REPEAL

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

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

Subchapter 5. Harassment, Hazing, and Bullying

§ 570. HARASSMENT, HAZING, AND BULLYING PREVENTION POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

(G) other members selected by the commissioner.

(e) Definitions. In this subchapter:

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

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

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

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

§ 570a. HARASSMENT

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

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

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

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

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

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

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

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

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

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

(b) Independent review.

(1) A student who desires independent review under this subsection because the student is either dissatisfied with the final determination of the school officials as to whether harassment occurred or believes that, although a final determination was made that harassment occurred, the school's response was inadequate to correct the problem shall make such request in writing to the headmaster or superintendent of schools. Upon such request, the headmaster or superintendent shall initiate an independent review by a neutral person selected from a list developed jointly by the commissioner of education and the human rights commission and maintained by the commissioner. Individuals shall be placed on the list on the basis of their objectivity, knowledge of harassment issues, and relevant experience.

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

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

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

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

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

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

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

§ 570b. HAZING

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

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

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

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

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

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

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

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

§ 570c. BULLYING

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

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

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

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

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

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

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

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

Sec. 13. IMPLEMENTATION

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

* * * Special Education Advisory Council * * *

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

(a) There is created an advisory council on special education that shall consist of ~~47~~ 19 members. All members of the council shall serve for a term of three years or until their successors are appointed. Terms shall begin on April 1 of the year of appointment. A majority of the members shall be either individuals with disabilities or parents of children with disabilities.

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

* * *

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

(K) special education administrators; and

(L) two at-large members.

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

Sec. 15. IMPLEMENTATION

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

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

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

(b) The council shall be composed of:

* * *

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

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

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

* * * Regional Technical Center School Districts;

Unorganized Towns, Grants, and Gores * * *

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

(1) The makeup of the governing board. At least 60 percent of the board members shall be elected by direct vote of the voters, or chosen from member school district boards by the member school district boards, or a combination of the two. If the board is to have additional members, who may constitute up to 40 percent of the board, the additional members shall be appointed by the elected and chosen members from member school district boards for the purpose of acquiring expertise in areas they consider desirable. The appointed members may be selected from nominations submitted by the regional

workforce investment board or other workforce organizations, or may be chosen without nomination by an organization. Notwithstanding any provision of law to the contrary, a resident of an unorganized town, grant, or gore that sits within the regional technical center school district who is otherwise eligible to vote under 17 V.S.A. § 2121 may vote for the board members and may be elected to or appointed as a member of the governing board;

* * * Audits * * *

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

§ 261a. DUTIES OF SUPERVISORY UNION BOARD

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

* * *

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

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

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

* * *

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

§ 323. AUDIT BY PUBLIC ACCOUNTANT

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

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

§ 425. OTHER TOWN SCHOOL DISTRICT OFFICERS

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

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

§ 491. ELECTION; NOTICE TO CLERK

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

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

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

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

(10) Shall prepare and distribute to the electorate, not less than ten days prior to the district's annual meeting, a report of the conditions and needs of the district school system, including the superintendent's, supervisory union treasurer's, and school district treasurer's annual report for the previous school year; and the balance of any reserve funds established pursuant to 24 V.S.A. § 2804, ~~a summary of the town auditor's report as to fiscal years which are audited by town auditors as required by 24 V.S.A. § 1681, a summary of the public accountant's report as to fiscal years which are audited by a public accountant, and a notice of the time and place where the full report of the town auditor or the public accountant will be available for inspection and copying at cost. Each town auditor's and public accountant's report shall comply with 24 V.S.A. § 1683(a).~~ At a school district's annual meeting, the electorate may vote to provide notice of availability of the report required by this subdivision to the electorate in lieu of distributing the report. If the electorate of the school district votes to provide notice of availability, it must specify how notice of availability shall be given, and such notice of availability shall be provided to the electorate at least 30 days before the district's annual or special meeting.

Sec. 24. REPEAL

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

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

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

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

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

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

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

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

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

- (1) A statement of the board concerning the affairs of the union district;
- (2) The budget proposed for the next year;
- (3) A statement of the superintendent of schools for the union district concerning the affairs of the union;
- (4) A treasurer's report;
- (5) ~~A summary of an auditor's report prepared pursuant to subchapter 5 of chapter 51 of Title 24. The summary shall include a list of the fiscal years which are audited by the auditors and a notice of the time when and the place where the full report of the auditor will be available for inspection and copying at cost. The union district clerk shall distribute copies of the annual report as provided by 24 V.S.A. § 1173. [Repealed.]~~

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

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

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

§ 1681. AUDITORS; DUTIES; MEETING

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

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

§ 1683. CONTENTS OF REPORT

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

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

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

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

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

§ 1686. PENALTY

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

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

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

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

* * * Definitions * * *

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

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

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

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

* * * Public High School Choice * * *

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

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

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

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

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

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

(c) ~~The school board may both maintain a high school and furnish high school education by paying tuition to a public school as in the judgment of the board may best serve the interests of the pupils, or~~ A district that maintains a high school may pay tuition pursuant to this chapter to an approved independent school or an independent school meeting school quality standards on behalf of one or more pupils if the school board judges that a pupil has unique educational needs that cannot be served within the district or at a ~~nearby~~ another public school. Its judgment shall be final in regard to the institution the pupils may attend at public cost.

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

§ 822a. PUBLIC HIGH SCHOOL CHOICE

(a) Definitions. In this section:

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

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

(b) Limits on transferring students. A sending high school board may limit the number of resident students who transfer to another high school under this section in each year; provided that in no case shall it limit the potential number

of new transferring students to fewer than five percent of the resident students enrolled in the sending high school as of October 1 of the academic year in which the calculation is made or 10 students, whichever is fewer; and further provided that in no case shall the total number of transferring students in any year exceed 10 percent of all resident high school students or 40 students, whichever is fewer.

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

(d) Lottery.

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

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

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

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

(e) Application and notification.

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

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

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

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

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

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

(1) the student graduates;

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

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

(g) Tuition and other costs.

(1) Unless the sending and receiving schools agree to a different arrangement, no tuition or other cost shall be charged by the receiving district or paid by the sending district for a student transferring to a different high school under this section; provided, however, a sending high school district shall pay special education and technical education costs for resident students pursuant to the provisions of this title.

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

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

(h) Special education. If a student who is eligible for and receiving special education services chooses to enroll in a high school other than in the high school district of residence, then the receiving high school shall carry out the individualized education plan, including placement, developed by the sending high school district. If the receiving high school believes that a student not on an individualized education plan may be eligible for special education services or that an existing individualized education plan should be altered, it shall notify the sending high school district. When a sending high school district

considers eligibility, development of an individualized education plan, or changes to a plan, it shall give notice of meetings to the receiving high school district and provide an opportunity for representatives of that district to attend the meetings and participate in making decisions.

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

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

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

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

(m) Report. Annually, on or before January 15, the commissioner shall report to the senate and house committees on education on the implementation of public high school choice as provided in this section, including a quantitative and qualitative evaluation of the program's impact on the quality of educational services available to students and the expansion of educational opportunities.

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

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

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

* * *

Sec. 36. REPEAL

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

Sec. 37. REPORT

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

* * * Effective Dates * * *

Sec. 38. EFFECTIVE DATES

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

(Committee vote: 5-0-0)

Reported favorably by Senator Starr for the Committee on Appropriations.

(Committee vote: 4-1-2)

(No House amendments.)

Favorable with Proposal of Amendment

H. 781

Reported favorably with recommendation of proposal of amendment by Senator Kitchel for the Committee on Appropriations.

(For text of Report, see Senate Calendar Addendum of April 24, 2012)

(For House amendments, see House Journal of March 22, 2012, page 790.)

**AMENDMENTS TO PROPOSAL OF AMENDMENT OF THE
COMMITTEE ON APPROPRIATIONS TO H. 781 TO BE OFFERED
BY SENATOR KITCHEL ON BEHALF OF THE COMMITTEE ON
APPROPRIATIONS**

Senator Kitchel, on behalf of the Committee on Appropriations, moves to amend the proposal of amendment of the Committee on Appropriations by adding two new sections to be numbered Sec. E.101.1 and Sec. E.101.2 to read as follows:

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

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

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

* * *

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

* * *

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

* * *

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

* * *

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

* * *

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

- (A) an acquisition cost assessment;
- (B) a technology architecture review;
- (C) an implementation plan assessment;
- (D) a cost analysis and a model for benefit analysis; and
- (E) a procurement negotiation advisory services contract.

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

* * *

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

§ 901. DEPARTMENT OF INFORMATION AND INNOVATION

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

* * *

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

* * *

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

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

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

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

* * *

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

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

**PROPOSAL OF AMENDMENT TO H. 781 TO BE OFFERED BY
SENATORS ILLUZZI AND GALBRAITH**

Senators Illuzzi and Galbraith move that the Senate propose to the House to amend the bill by adding Sec. C. 102 to read as follows:

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

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

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

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

Report of Committee of Conference

S. 37.

An act relating to expungement of a nonviolent misdemeanor criminal history record.

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House Bill entitled:

S. 37. An act relating to expungement of a nonviolent misdemeanor criminal history record.

Respectfully reports that it has met and considered the same and recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. chapter 230 is added to read:

CHAPTER 230. EXPUNGEMENT AND SEALING OF CRIMINAL HISTORY RECORDS

§ 7601. DEFINITIONS

As used in this chapter:

(1) “Court” means the criminal division of the superior court.

(2) “Criminal history record” means all information documenting an individual’s contact with the criminal justice system, including data regarding identification, arrest or citation, arraignment, judicial disposition, custody, and supervision.

(3) “Predicate offense” means a criminal offense that can be used to enhance a sentence levied for a later conviction, and includes operating a vehicle under the influence of intoxicating liquor or other substance in violation of 23 V.S.A. § 1201, domestic assault in violation of section 1042 of this title, and stalking in violation of section 1062 of this title.

(4) “Qualifying crime” means:

(A) a misdemeanor offense which is not a listed crime as defined in subdivision 5301(7) of this title, an offense involving sexual exploitation of children in violation of chapter 64 of this title, an offense involving violation

of a protection order in violation of section 1030 of this title, a prohibited act as defined in section 2632 of this title, or a predicate offense;

(B) a violation of subsection 3701(a) of this title related to criminal mischief; or

(C) a violation of section 2501 of this title related to grand larceny.

§ 7602. EXPUNGEMENT AND SEALING OF RECORD, POSTCONVICTION; PROCEDURE

(a)(1) A person who was convicted of a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction. The state's attorney or attorney general shall be the respondent in the matter.

(2) The court shall grant the petition without hearing if the petitioner and the respondent stipulate to the granting of the petition. The respondent shall file the stipulation with the court, and the court shall issue the petitioner a certificate and provide notice of the order in accordance with this section.

(b)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 10 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction, or if the person has successfully completed the terms and conditions of an indeterminate term of probation that commenced at least 10 years previously.

(B) The person has not been convicted of a crime arising out of a new incident or occurrence since the person was convicted for the qualifying crime.

(C) Any restitution ordered by the court has been paid in full.

(D) The court finds that expungement of the criminal history record serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), and (C) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

(c)(1) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if the following conditions are met:

(A) At least 20 years have elapsed since the date on which the person successfully completed the terms and conditions of the sentence for the conviction.

(B) The person has not been convicted of a felony arising out of a new incident or occurrence since the person was convicted of the qualifying crime.

(C) The person has not been convicted of a misdemeanor during the past 15 years.

(D) Any restitution ordered by the court for any crime of which the person has been convicted has been paid in full.

(E) After considering the particular nature of any subsequent offense, the court finds that expungement of the criminal history record for the qualifying crime serves the interest of justice.

(2) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if the conditions of subdivisions (1)(A), (B), (C), and (D) of this subsection are met and the court finds that:

(A) sealing the criminal history record better serves the interest of justice than expungement; and

(B) the person committed the qualifying crime after reaching 19 years of age.

§ 7603. EXPUNGEMENT AND SEALING OF RECORD, NO CONVICTION; PROCEDURE

(a) A person who was cited or arrested for a qualifying crime or qualifying crimes arising out of the same incident or occurrence may file a petition with the court requesting expungement or sealing of the criminal history record related to the citation or arrest if one of the following conditions is met:

(1) No criminal charge is filed by the state and the statute of limitations has expired.

(2) The court does not make a determination of probable cause at the time of arraignment or dismisses the charge at the time of arraignment and the statute of limitations has expired.

(3) The charge is dismissed before trial:

- (A) without prejudice and the statute of limitations has expired; or
- (B) with prejudice.

(4) The defendant and the respondent stipulate that the court may grant the petition to expunge and seal the record.

(b) The state's attorney or attorney general shall be the respondent in the matter. The petitioner and the respondent shall be the only parties in the matter.

(c) The court shall grant the petition and order that the criminal history record be expunged pursuant to section 7606 of this title if it finds that expungement of the criminal history record serves the interest of justice.

(d) The court shall grant the petition and order that all or part of the criminal history record be sealed pursuant to section 7607 of this title if:

(1) The court finds that sealing the criminal history record better serves the interest of justice than expungement.

(2) The person committed the qualifying crime after reaching 19 years of age.

§ 7604. NEW CHARGE

If a person is charged with a criminal offense after he or she has filed a petition for expungement pursuant to this chapter, the court shall not act on the petition until disposition of the new charge.

§ 7605. DENIAL OF PETITION

If a petition for expungement is denied by the court pursuant to this chapter, no further petition shall be brought for at least five years.

§ 7606. EFFECT OF EXPUNGEMENT

(a) Upon entry of an expungement order, the person whose record is expunged shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the expungement to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to expunge. The VCIC shall provide notice of the expungement to the Federal Bureau of Investigation's National Crime Information Center.

(b) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be

required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been expunged.

(c) Nothing in this section shall affect any right of the person whose record has been expunged to rely on it as a bar to any subsequent proceedings for the same offense.

(d)(1) The court may keep a special index of cases that have been expunged together with the expungement order and the certificate issued pursuant to section 7602 or 7603 of this title. The index shall list only the name of the person convicted of the offense, his or her date of birth, the docket number, and the criminal offense that was the subject of the expungement.

(2) The special index and related documents specified in subdivision (1) of this subsection shall be confidential and shall be physically and electronically segregated in a manner that ensures confidentiality and that limits access to authorized persons.

(3) Inspection of the expungement order and the certificate may be permitted only upon petition by the person who is the subject of the case or by the court if the court finds that inspection of the documents is necessary to serve the interest of justice. The administrative judge may permit special access to the index and the documents for research purposes pursuant to the rules for public access to court records.

(4) All other court documents in a case that are subject to an expungement order shall be destroyed.

(5) The court administrator shall establish policies for implementing this subsection.

(e) Upon receiving an inquiry from any person regarding an expunged record, an entity shall respond that "NO RECORD EXISTS."

§ 7607. EFFECT OF SEALING

(a) Upon entry of an order to seal, the person whose record is sealed shall be treated in all respects as if he or she had never been arrested, convicted, or sentenced for the offense. The court shall issue the person a certificate stating that such person's behavior after the conviction has warranted the issuance of the order and that its effect is to annul the record of arrest, conviction, and sentence. The court shall provide notice of the sealing to the respondent, Vermont crime information center (VCIC), the arresting agency, and any other entity that may have a record related to the order to seal. The VCIC shall provide notice of the sealing to the Federal Bureau of Investigation's National Crime Information Center.

(b) In any application for employment, license, or civil right or privilege or in an appearance as a witness in any proceeding or hearing, a person may be required to answer questions about a previous criminal history record only with respect to arrests or convictions that have not been sealed.

(c) Notwithstanding a sealing order:

(1) An entity that possesses a sealed record may continue to use it for any litigation or claim arising out of the same incident or occurrence or involving the same defendant.

(2) An entity may use the criminal history record sealed in accordance with section 7603 of this title, regarding a person who was cited or arrested, for future criminal investigations or prosecutions without limitation.

(d) Upon receiving a sealing order, an entity shall:

(1) Seal the investigation or prosecution record;

(2) Enter a copy of the sealing order into the record;

(3) Flag the record as “SEALED” to prevent inadvertent disclosure of sealed information; and

(4) Upon receiving an inquiry from any person regarding a sealed record, respond that “NO RECORD EXISTS.”

§ 7608. VICTIMS

(a) At the time a petition is filed pursuant to this chapter, the respondent shall give notice of the petition to any victim of the offense who is known to the respondent. The victim shall have the right to offer the respondent a statement prior to any stipulation or to offer the court a statement. The disposition of the petition shall not be unnecessarily delayed pending receipt of a victim’s statement. The respondent’s inability to locate a victim after a reasonable effort has been made shall not be a bar to granting a petition.

(b) As used in this section, “reasonable effort” means attempting to contact the victim by first class mail at the victim’s last known address and by telephone at the victim’s last known phone number.

Sec. 2. 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 expungement and sealing of criminal history records.

ALICE W. NITKA
RICHARD W. SEARS

DIANE B. SNELLING

Committee on the part of the Senate

THOMAS F. KOCH

SUSAN L. WIZOWATY

ELDRED M. FRENCH

Committee on the part of the House

NOTICE CALENDAR

Second Reading

Favorable with Proposal of Amendment

H. 524.

An act relating to the regulation of professions and occupations.

Reported favorably with recommendation of proposal of amendment by Senator White for the Committee on Government Operations.

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

* * * General Provisions * * *

Sec. 1. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An office of professional regulation is created within the office of the secretary of state. The office shall have a director who shall be appointed by the secretary of state and shall be an exempt employee. The following boards or professions are attached to the office of professional regulation:

* * *

(41) Audiologists and speech-language pathologists

(42) Landscape architects.

Sec. 2. 3 V.S.A. § 123 is amended to read:

§ 123. DUTIES OF OFFICE

(a) ~~Upon request, the~~ The office shall provide administrative, secretarial, financial, investigatory, inspection, and legal services to the boards. The administrative services provided by the office shall include:

* * *

(12) With the assistance of the boards, establishing a schedule of license renewal and termination dates so as to distribute the renewal work in the office as effectively as possible. Licenses may be issued and renewed according to that schedule for periods of up to two years with an appropriate pro rata adjustment of fees. A person whose initial license is issued within 90 days prior to the set renewal date shall not be required to renew the license until the end of the first full biennial licensing period following initial licensure.

* * *

Sec. 3. 3 V.S.A. § 125 is amended to read:

§ 125. FEES

(a) In addition to the fees otherwise authorized by law, a board may charge the following fees:

* * *

~~(6) Licenses granted under rules adopted pursuant to subdivision 129(a)(10) of this title, \$20.00.~~

* * *

Sec. 4. 3 V.S.A. § 129 is amended to read:

§ 129. POWERS OF BOARDS; DISCIPLINE PROCESS

(a) In addition to any other provisions of law, a board may exercise the following powers:

* * *

(10) Issue temporary licenses ~~to health care providers and veterinarians~~ during a declared state of emergency. ~~The health care provider or veterinarian~~ person to be issued a temporary license must be currently licensed, in good standing, and not subject to disciplinary proceedings in any other jurisdiction. The temporary license shall authorize the holder to practice in Vermont until the termination of the declared state of emergency or 90 days, whichever occurs first, as long as the licensee remains in good standing. Fees shall be waived when a license is required to provide services under this subdivision.

* * *

Sec. 5. 3 V.S.A. § 129a is amended to read:

§ 129a. UNPROFESSIONAL CONDUCT

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following

items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

* * *

(8) Failing to make available promptly to a person using professional health care services, that person's representative, or succeeding health care professionals or institutions, upon written request and direction of the person using professional health care services, copies of that person's records in the possession or under the control of the licensed practitioner, or failing to notify patients or clients how to obtain their records when a practice closes.

* * *

Sec. 6. Sec. F4 of No. 146 of the Acts of 2009 (2010) Adj. Sess. is amended to read:

Sec. F4. SECRETARY OF STATE; PUBLICATION OF PROPOSED RULES

(a) The secretary of state shall arrange for one formal publication, in a consolidated advertisement in newspapers having general circulation in different parts of the state as newspapers of record approved by the secretary of state, of information relating to all proposed rules that includes the following information:

- (1) the name of the agency and its Internet address;
- (2) the title or subject and a concise summary of the rule; and

(3) the office name, office telephone number, and office mailing address of an agency official able to answer questions and receive comments on the proposal.

(b) The secretary of state shall be reimbursed by agencies making publication so that all costs are prorated among agencies publishing at the same time.

Sec. 7. LEGISLATIVE COUNCIL; STATUTORY REVIEW AND CATALOG; "PHYSICIAN" AND "DOCTOR"

The legislative council is directed to prepare a catalog of the use of the words "physician" and "doctor" in the Vermont Statutes Annotated and to deliver the catalog to the general assembly no later than November 1, 2012.

* * * Chiropractic * * *

Sec. 8. 26 V.S.A. § 528 is amended to read:

§ 528. BOARD PROCEDURES

(a) Annually the board shall elect from among its members a chair ~~and a~~ vice chair, and secretary, each to serve for one year. No person shall serve as chair or vice chair for more than three consecutive years.

(b) ~~The board shall meet at least semiannually for the purpose of examining applicants, if applications are pending. Meetings may be called by the chair or upon the request of three other members. [Repealed.]~~

(c) ~~Meetings shall be warned and conducted in accordance with the provisions of chapter 5 of Title 1. [Repealed.]~~

(d) A majority of the members of the board constitutes a quorum for transacting business and all action shall be taken upon a majority vote of the members present and voting.

Sec. 9. 26 V.S.A. § 532 is amended to read:

§ 532. EXAMINATIONS

(a) The board, or an examination service selected by the board, shall examine applicants for licensure. The examinations may include the following subjects: anatomy, physiology, physiotherapy, diagnosis, hygiene, orthopedics, histology, pathology, neurology, chemistry, bacteriology, x-ray interpretation, x-ray technic and radiation protection, and principles of chiropractic. The board may use a standardized national examination.

* * *

Sec. 10. 26 V.S.A. § 534 is amended to read:

§ 534. LICENSE RENEWAL ~~AND REINSTATEMENT~~

(a) Licenses shall be renewed every two years upon application and payment of the required fee. Failure to comply with the provisions of this section shall result in suspension of all privileges granted by the license beginning on the expiration date of the license. A license which has lapsed shall be ~~reinstated~~ renewed upon payment of the biennial renewal fee and the late renewal penalty.

(b) The board may adopt rules necessary for the protection of the public to assure the board that an applicant whose license has lapsed for more than three years is professionally qualified before the license is ~~reinstated~~ renewed. Conditions imposed under this subsection shall be in addition to the requirements of subsection (a) of this section.

(c) In addition to the provisions of subsection (a) of this section, an applicant for renewal shall have satisfactorily completed continuing education as required by the board. For purposes of this subsection, the board may require, by rule, not more than 24 hours of approved continuing education as a condition of renewal.

Sec. 11. 26 V.S.A. § 541 is amended to read:

§ 541. DISCIPLINARY PROCEEDINGS; UNPROFESSIONAL CONDUCT

~~(a) A person licensed or registered under this chapter or a person applying for a license or reinstatement of a license shall not engage in unprofessional conduct.~~

~~(b) Unprofessional conduct means the following conduct and the conduct set forth in section 129a of Title 3 V.S.A. § 129a:~~

* * *

~~(14) Notwithstanding the provisions of 3 V.S.A. § 129a(a)(10), in the course of practice, failure to use and exercise that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent chiropractor engaged in similar practice under the same or similar conditions, whether or not actual injury to a patient has occurred. [Repealed.]~~

~~(15) Failing to inform a patient verbally and to obtain signed written consent from a patient before proceeding from advertised chiropractic services for which no payment is required to chiropractic services for which payment is required.~~

~~(c) In connection with a disciplinary action, the board may refuse to accept the return of a license or registration tendered by the subject of a disciplinary investigation.~~

~~(d) The burden of proof in a disciplinary action shall be on the state to show by a preponderance of the evidence that the person has engaged in unprofessional conduct.~~

~~(e) After hearing and upon a finding of unprofessional conduct, or upon approval of a negotiated agreement, the board may take disciplinary action against the licensee, registrant or applicant. That action may include any of the following conditions or restrictions which may be in addition to or in lieu of suspension:~~

~~(1) A requirement that the person submit to care or counseling.~~

~~(2) A restriction that a licensee practice only under supervision of a named individual or an individual with specified credentials.~~

~~(3) A requirement that a licensee participate in continuing education as defined by the board, in order to overcome specified deficiencies.~~

~~(4) A requirement that the licensee's scope of practice be restricted to a specified extent.~~

~~(f) The board may reinstate a revoked license on terms and conditions it deems proper.~~

* * * Dental * * *

Sec. 12. REPEAL

26 V.S.A. chapter 13 (dentists and dental hygienists) is repealed.

Sec. 13. 26 V.S.A. chapter 12 is added to read:

CHAPTER 12. DENTISTS, DENTAL HYGIENISTS, AND
DENTAL ASSISTANTS

Subchapter 1. General Provisions

§ 561. DEFINITIONS

As used in this chapter:

- (1) "Board" means the board of dental examiners.
- (2) "Director" means the director of the office of professional regulation.
- (3) "Practicing dentistry" means an activity in which a person:
 - (A) undertakes by any means or method to diagnose or profess to diagnose or to treat or profess to treat or to prescribe for or profess to prescribe for any lesions, diseases, disorders, for deficiencies of the human oral cavity, teeth, gingiva, maxilla, or mandible or adjacent associated structures;
 - (B) extracts human teeth or corrects malpositions of the teeth or jaws;
 - (C) furnishes, supplies, constructs, reproduces, or repairs prosthetic dentures, bridges, appliances, or other structures to be used or worn as substitutes for natural teeth or adjusts those structures, except on the written prescription of a duly licensed dentist and by the use of impressions or casts made by a duly licensed and practicing dentist;
 - (D) administers general dental anesthetics;
 - (E) administers local dental anesthetics, except dental hygienists as authorized by board rule; or
 - (F) engages in any of the practices included in the curricula of recognized dental colleges.
- (4) "Dental hygienist" means an individual licensed under this chapter.
- (5) "Dental assistant" means an individual registered under this chapter.
- (6) "Direct supervision" means supervision by a licensed dentist who is readily available at the dental facility for consultation or intervention.

§ 562. PROHIBITIONS

(a) No person may use in connection with a name any words, including “Doctor of Dental Surgery” or “Doctor of Dental Medicine,” or any letters, signs, or figures, including the letters “D.D.S.” or “D.M.D.,” which imply that a person is a licensed dentist when not authorized under this chapter;

(b) No person may practice as a dentist or dental hygienist unless currently licensed to do so under the provisions of this chapter.

(c) No person may practice as a dental assistant unless currently registered under the provisions of this chapter.

(d) A person who violates this section shall be subject to the penalties provided in 3 V.S.A. § 127.

§ 563. EXEMPTIONS

The provisions of this chapter shall not apply to the following:

(1) the rights and privileges of physicians licensed under the laws of this state.

(2) an unlicensed person from performing merely mechanical work upon inert matter in a dental office or laboratory.

(3) a dental student currently enrolled in a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association who:

(A) provides dental treatment under the supervision of a licensed dentist at a state hospital or under licensed instructors within a dental school, college, or dental department of a university recognized by the board;

(B) serves as an intern in any hospital approved by the board; or

(C) participates in a supervised externship program authorized by a dental school recognized by the board in order to provide dental treatment under the direct supervision of a dentist licensed under the provisions of this chapter.

(4) upon prior application and approval by the board, a student of a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association who provides dental treatment for purposes of clinical study under the direct supervision and instruction and in the office of a licensed dentist.

(5) a dentist licensed in another state from consulting with a dentist licensed under the provisions of this chapter.

§ 564. OWNERSHIP AND OPERATION OF A DENTAL OFFICE OR BUSINESS

(a) A dental practice may be owned and operated by the following individuals or entities, either alone or in a combination thereof:

(1) a dentist licensed under the provisions of this chapter;

(2) a health department or clinic of this state or of a local government agency;

(3) a federally qualified health center or community health center designated by the United States department of health and human services to provide dental services;

(4) a 501(c)(3) nonprofit or charitable dental organization;

(5) a hospital licensed under the laws of this state;

(6) an institution or program accredited by the Commission on Dental Accreditation of the American Dental Association to provide education and training.

(b) The surviving spouse, the executor, or the administrator of the estate of a licensed dentist or the spouse of an incapacitated licensed dentist may employ a dentist licensed under the provisions of this chapter to terminate the practice of the deceased or incapacitated dentist within a reasonable length of time.

§ 565. DISPLAY OF LICENSE OR REGISTRATION

Every dentist, dental hygienist, and dental assistant shall display a copy of his or her current license or registration at each place of practice and in such a manner so as to be easily seen and read.

§ 566. NONDENTAL ANESTHESIA

(a) A dentist may administer nondental anesthesia if he or she meets the following requirements:

(1) The administration of anesthesia occurs only in a hospital where the dentist is credentialed to perform nondental anesthesiology;

(2) The dentist holds an academic appointment in anesthesiology at an accredited medical school;

(3) The dentist has successfully completed a full anesthesiology residency in a program approved by the Accreditation Council for Graduate Medical Education;

(4) The dentist has a diploma from the National Board of Anesthesiology; and

(5) The dentist practicing nondental anesthesia is held to the same standard of care as a physician administering anesthesia under the same or similar circumstances.

(b) The board shall refer a complaint or disciplinary proceeding about a dentist arising from his or her administration of nondental anesthesiology to the board of medical practice, which shall have jurisdiction to investigate and sanction and limit or revoke the dentist's license to the same extent that it may for physicians licensed under chapter 23 of this title.

Subchapter 2. Board of Dental Examiners

§ 581. CREATION; QUALIFICATIONS

(a) The state board of dental examiners is created and shall consist of six licensed dentists in good standing who have practiced in this state for a period of five years or more and are in active practice; two licensed dental hygienists who have practiced in this state for a period of at least three years immediately preceding the appointment and are in active practice; one registered dental assistant who has practiced in this state for a period of at least three years immediately preceding the appointment and is in active practice; and two members of the public who are not associated with the practice of dentistry.

(b) Board members shall be appointed by the governor pursuant to 3 V.S.A. §§ 129b and 2004.

(c) No member of the board may be an officer or serve on a committee of his or her respective state or local professional dental, dental hygiene, or dental assisting organization, nor shall any member of the board be on the faculty of a school of dentistry, dental hygiene, or dental assisting.

§ 582. AUTHORITY OF THE BOARD

In addition to any other provisions of law, the board shall have the authority to:

(1) provide general information to applicants;

(2) explain complaint and appeal procedures to applicants, licensees, registrants, and the public;

(3) adopt rules pursuant to the Vermont Administrative Procedure Act as set forth in 3 V.S.A. chapter 25:

(A) as necessary to carry out the provisions of this chapter;

(B) relating to qualifications of applicants, examinations, and granting and renewal of licenses and registrations;

(C) relating to the granting or renewal of a license to those who do not meet active practice requirements;

(D) setting standards for the continuing education of persons licensed or registered under this chapter;

(E) establishing requirements for licensing dental hygienists with five years of regulated practice experience;

(F) setting educational standards and standards of practice for the administration of anesthetics in the dental office;

(G) for the administration of local anesthetics by dental hygienists, including minimum education requirements and procedures for administration of local anesthetics;

(H) setting guidelines for general supervision of dental hygienists with no less than three years of experience by dentists with no less than three years of experience to perform tasks in public or private schools or institutions; and

(I) prescribing minimum educational, training, experience, and supervision requirements and professional standards necessary for practice pursuant to this chapter as a dental assistant; and

(4) undertake any other actions or procedures specified in, required by, or appropriate to carry out the provisions of this chapter.

§ 583. MEETINGS

The board shall meet at least annually on the call of the chair or two members.

§ 584. UNPROFESSIONAL CONDUCT

The board may refuse to give an examination or issue a license to practice dentistry or dental hygiene or to register an applicant to be a dental assistant and may suspend or revoke any such license or registration or otherwise discipline an applicant, licensee, or registrant for unprofessional conduct. Unprofessional conduct means the following conduct and the conduct set forth in 3 V.S.A. § 129a by an applicant or person licensed or registered under this chapter:

(1) abandonment of a patient;

(2) rendering professional services to a patient if the dentist, dental hygienist, or dental assistant is intoxicated or under the influence of drugs;

(3) promotion of the sale of drugs, devices, appliances, goods, or services provided for a patient in a manner to exploit the patient for financial gain or selling, prescribing, giving away, or administering drugs for other than legal and legitimate therapeutic purposes;

(4) division of or agreeing to divide with any person for bringing or referring a patient the fees received for providing professional services to the patient;

(5) willful misrepresentation in treatments;

(6) practicing a profession regulated under this chapter with a dentist, dental hygienist, or dental assistant who is not legally practicing within the state or aiding or abetting such practice;

(7) gross and deceptive overcharging for professional services on single or multiple occasions, including filing of false statements for collection of fees for which services are not rendered;

(8) permitting one's name, license, or registration to be used by a person, group, or corporation when not actually in charge of or responsible for the treatment given;

(9) practicing dentistry or maintaining a dental office in a manner so as to endanger the health or safety of the public; or

(10) holding out to the public as being specially qualified or announcing specialization in any branch of dentistry by using terms such as "specialist in" or "practice limited to" unless:

(A) the American Dental Association has formally recognized the specialty and an appropriate certifying board for the specialty;

(B) the dentist has met the educational requirements and standards set forth by the Commission on Dental Accreditation for the specialty; or

(C) the dentist is a diplomate of the specialty certifying board recognized by the American Dental Association.

Subchapter 3. Dentists

§ 601. LICENSE BY EXAMINATION

To be eligible for licensure as a dentist, an applicant shall:

(1) have attained the age of majority;

(2) be a graduate of a dental college accredited by the Commission on Dental Accreditation of the American Dental Association; and

(3) meet the certificate, examination, and training requirements established by the board by rule.

§ 602. LICENSE BY ENDORSEMENT

(a) The board may grant a license to practice dentistry to an applicant who is a graduate of a dental college accredited by the Commission on Dental Accreditation of the American Dental Association and who:

(1) is currently licensed in good standing to practice dentistry in any jurisdiction of the United States or Canada which has licensing requirements deemed by the board to be substantially equivalent to those of this state;

(2) has successfully completed an approved emergency office procedures course;

(3) has successfully completed the dentist jurisprudence examination; and

(4) has met active practice requirements and any other requirements established by the board by rule.

(b) The board may grant a license to an applicant who is a graduate of a dental college accredited by the Commission on Dental Accreditation of the American Dental Association and who is licensed and in good standing to practice dentistry in a jurisdiction of the United States or Canada which has licensing requirements deemed by the board to be not substantially equivalent to those of this state if:

(1) the board has determined that the applicant's practice experience or education overcomes any lesser licensing requirement of the other jurisdiction in which the applicant is licensed; and

(2) the applicant:

(A) has been in full-time licensed practice of at least 1,200 hours per year for a minimum of five years preceding the application;

(B) is in good standing in all jurisdictions in which licensed;

(C) has successfully completed an approved emergency office procedures course;

(D) has successfully completed the dentist jurisprudence examination; and

(E) has met active practice requirements and any other requirements established by the board by rule.

Subchapter 4. Dental Hygienists

§ 621. LICENSE BY EXAMINATION

To be eligible for licensure as a dental hygienist, an applicant shall:

(1) have attained the age of majority;

(2) be a graduate of a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association;

(3) present to the board a certificate of the National Board of Dental Examiners;

(4) have completed an approved emergency office procedure course;

(5) have passed the American Board of Dental Examiners (ADEX) examination or other examination approved by the board; and

(6) have passed the dental hygienist jurisprudence examination.

§ 622. LICENSURE BY ENDORSEMENT

The board may grant a license to practice dental hygiene to an applicant who is a graduate of a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and who:

(1) is currently licensed in good standing to practice dental hygiene in any jurisdiction of the United States or Canada which has licensing requirements deemed by the board to be substantially equivalent to those of this state;

(2) has successfully completed an approved emergency office procedures course;

(3) has successfully completed the dental hygienist jurisprudence examination; and

(4) has met active practice and any other requirements established by the board by rule.

§ 623. LICENSURE BY ENDORSEMENT BASED ON TRAINING AND EXPERIENCE

The board may grant a license to an applicant who has met the training and experience requirements established by the board by rule under its authority provided in this chapter.

§ 624. PRACTICE

(a) A dental hygienist may perform duties for which the dental hygienist has been qualified by successful completion of the normal curriculum offered by programs of dental hygiene accredited by the American Dental Association or in continuing education courses approved by the board. A dental hygienist may perform tasks in the office of any licensed dentist consistent with the rules adopted by the board.

(b) In public or private schools or institutions, a dental hygienist with no less than three years of experience may perform tasks under the general supervision of a licensed dentist with no less than three years of experience as prescribed in guidelines adopted by the board by rule.

(c)(1) A dental hygienist, when authorized by the board by rule, may administer for dental hygiene purposes local anesthetics under the direct supervision and by the prescription of a licensed dentist.

(2) The license of a dental hygienist authorized by board rule to administer local anesthetics shall have a special endorsement to that effect.

Subchapter 5. Dental Assistants

§ 641. REGISTRATION

(a) No person shall practice as a dental assistant in this state unless registered for that purpose by the board.

(b) On a form prepared and provided by the board, each applicant shall state, under oath, that the dental assistant shall practice only under the supervision of a dentist.

(c) The supervising dentist shall be responsible for the professional acts of dental assistants under his or her supervision.

§ 642. PRACTICE

(a) Except as provided in subsection (b) of this section, a dental assistant may perform duties in the office of any licensed dentist consistent with rules adopted by the board and in public or private schools or institutions under the supervision of a licensed dentist or other dentist approved for the purpose by the board. The performance of any intraoral tasks shall be under the direct supervision of a dentist.

(b) The following tasks may not be assigned to a dental assistant:

(1) Diagnosis, treatment planning, and prescribing, including for drugs and medicaments or authorization for restorative, prosthodontic, or orthodontic appliances; or

(2) Surgical procedures on hard or soft tissues within the oral cavity or any other intraoral procedure that contributes to or results in an irremediable alteration of the oral anatomy.

Subchapter 6. Renewals, Continuing Education, and Fees

§ 661. RENEWAL OF LICENSE

(a) Licenses and registrations shall be renewed every two years on a schedule determined by the office of professional regulation.

(b) No continuing education reporting is required at the first biennial license renewal date following licensure.

(c) The board may waive continuing education requirements for licensees who are on active duty in the armed forces of the United States.

(d) Dentists.

(1) To renew a license, a dentist shall meet active practice requirements established by the board by rule and document completion of no fewer than 30 hours of board-approved continuing professional education which shall include an emergency office procedures course during the two-year licensing period preceding renewal.

(2) Any dentist who has not been in active practice for a period of five years or more shall be required to meet the renewal requirements established by the board by rule.

(e) Dental hygienists. To renew a license, a dental hygienist shall meet active practice requirements established by the board by rule and document completion of no fewer than 18 hours of board-approved continuing professional education which shall include an emergency office procedures course during the two-year licensing period preceding renewal.

(f) Dental assistants. To renew a registration, a dental assistant shall meet the requirements established by the board by rule.

§ 662. FEES

(a) Applicants and persons regulated under this chapter shall pay the following fees:

(1) Application

<u>(A) Dentist</u>	<u>\$ 225.00</u>
<u>(B) Dental hygienist</u>	<u>\$ 150.00</u>
<u>(C) Dental assistant</u>	<u>\$ 60.00</u>

(2) Biennial renewal

<u>(A) Dentist</u>	<u>\$ 355.00</u>
<u>(B) Dental hygienist</u>	<u>\$ 125.00</u>
<u>(C) Dental assistant</u>	<u>\$ 75.00</u>

(b) The licensing fee for a dentist or dental hygienist or the registration fee for a dental assistant who is otherwise eligible for licensure or registration and whose practice in this state will be limited to providing pro bono services at a

free or reduced-fee clinic or similar setting approved by the board shall be waived.

§ 663. LAPSED LICENSES OR REGISTRATIONS

(a) Failure to renew a license by the renewal date shall result in a lapsed license subject to late renewal penalties pursuant to 3 V.S.A. § 125(a)(1).

(b) A person whose license or registration has lapsed may not practice and may be subject to disciplinary action.

(c) Notwithstanding the provisions of subsection (a) of this section, a person shall not be required to pay renewal fees or late renewal penalties for years spent on active duty in the armed forces of the United States. A person who returns from active duty shall be required to pay only the most current biennial renewal fee.

* * * Nursing * * *

Sec. 14. 26 V.S.A. § 1591 is amended to read:

§ 1591. REGISTRY

The board of nursing shall establish, implement, and maintain a registry of nursing assistants and medication nursing assistants.

Sec. 15. 26 V.S.A. § 1592 is amended to read:

§ 1592. DEFINITIONS

As used in this subchapter:

(1) “Nursing assistant” means an individual, regardless of title, who performs nursing or nursing related functions under the supervision of a licensed nurse.

(2) “Nursing and nursing related functions” means nursing related activities as defined by rule which include basic nursing and restorative duties for which the nursing assistant is prepared by education and supervised practice.

(3) “Medication nursing assistant” means a licensed nursing assistant holding a currently valid endorsement authorizing the delegation to the nursing assistant of tasks of medication administration performed in a nursing home.

Sec. 16. 26 V.S.A. § 1592a is added to read:

§ 1592a. ENDORSEMENT OF MEDICATION ADMINISTRATION FOR LICENSED NURSING ASSISTANTS

(a) The board may issue an endorsement of medication administration to a current licensed nursing assistant who:

(1) has participated in and completed a board-approved medication administration education and competency evaluation program;

(2) has passed an examination approved by the board; and

(3) has paid the application fee.

(b) The endorsement shall be renewed by the medication nursing assistant according to a schedule established by the board and pursuant to any other requirements as the board may establish by rule.

Sec. 17. 26 V.S.A. § 1595 is amended to read:

§ 1595. ~~GROUND FOR DISCIPLINE~~ REGULATORY AUTHORITY; UNPROFESSIONAL CONDUCT

The board may deny an application for licensure or renewal or revoke, suspend, discipline, or otherwise condition the license of a nursing assistant who engages in the following conduct or the conduct set forth in ~~section 129a of Title 3 V.S.A. § 129a:~~

(1) has been convicted of a crime that evinces an unfitness to act as a nursing assistant; ~~or~~

(2) has been disciplined as a registered or licensed practical nurse or nursing assistant by competent authority in any jurisdiction; ~~or~~

(3) has been fraudulent or deceitful in procuring or attempting to procure a license, in filing or completing patient records, in signing reports or records or in submitting any information or records to the board; ~~or~~

(4) has abused or neglected a patient or misappropriated patient property; ~~or~~

(5) is unfit or incompetent to function as a nursing assistant by reason of any cause; ~~or~~

(6) has diverted or attempted to divert drugs for unauthorized use; ~~or~~

(7) is habitually intemperate or is addicted to the use of habit-forming substances; or

(8) has failed to report to the board any violation of this chapter or of the board's rules; ~~or~~

~~(9) has engaged in any act which before it was committed had been determined to be beyond the approved scope of practice of the nursing assistant.~~

Sec. 18. 26 V.S.A. § 1596 is amended to read:

§ 1596. APPROVAL OF PROGRAMS

(a) The board shall adopt standards for nursing assistant and medication nursing assistant education and competency evaluation programs and shall survey and approve those programs which meet the standards.

(b) After an opportunity for a hearing, the board may deny or withdraw approval or take lesser action when a program fails to meet the standards.

(c) A program whose approval has been denied or withdrawn may be reinstated upon satisfying the board that deficiencies have been remedied and the standards have been met.

Sec. 19. 26 V.S.A. § 1601 is amended to read:

§ 1601. EXEMPTIONS

* * *

(d) Nothing in this subchapter shall be construed to conflict with the administration of medication by nonlicensees pursuant to the residential care home licensing regulations promulgated by the department of disabilities, aging, and independent living.

Sec. 20. NURSING SUPERVISION LIMITATION; MEDICATION NURSING ASSISTANTS

No provision in 26 V.S.A. chapter 28 shall prohibit the refusal by a nurse practicing nursing in a nursing home on the effective date of this act to supervise a medication nursing assistant, as that term is defined in 26 V.S.A. § 1592, in that nursing home until the earliest date on which the nurse ceases to be employed by the nursing home.

Sec. 21. 26 V.S.A. § 1612 is amended to read:

§ 1612. PRACTICE GUIDELINES

(a) APRN licensees shall submit for review individual practice guidelines and receive board approval of the practice guidelines. Practice guidelines shall reflect current standards of advanced nursing practice specific to the APRN's role, population focus, and specialty.

(b) Licensees shall submit for review individual practice guidelines and receive board approval of the practice guidelines:

(1) prior to initial employment;

(2) if employed or practicing as an APRN, upon application for renewal of an APRN's registered nurse license; and

(3) prior to a change in the APRN's employment or clinical role, population focus, or specialty.

Sec. 22. Sec. 41 of No. 35 of the Acts of 2009 is amended to read:

Sec. 41. REPEAL

* * *

(c) ~~Sec. 26a~~ Sec. 26 (nursing education programs; faculty; educational experience) of this act shall be repealed on July 1, 2013.

* * * Optometry * * *

Sec. 23. 26 V.S.A. § 1703 is amended to read:

§ 1703. DEFINITIONS

As used in this chapter:

* * *

(5) "Contact lenses" means those lenses ~~with prescription power and those lenses without prescription power which~~ that are worn for cosmetic, therapeutic, or refractive purposes.

Sec. 24. 26 V.S.A. § 1719 is amended to read:

§ 1719. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a, whether or not taken by a license holder.

(b) Unprofessional conduct means:

* * *

(3) Any of the following with regard to the buyer's prescription or purchase of ophthalmic goods:

(A) ~~Failure to give to the buyer a copy of the buyer's spectacle lens prescription immediately after the eye examination is completed. Provided, an optometrist may refuse to give the buyer a copy of the buyer's prescription until the buyer has paid for the eye examination but only if that optometrist would have required immediate payment from that buyer had the examination revealed that no ophthalmic goods were required. If the buyer requests his or her contact lens prescription before the prescription is complete, the optometrist shall furnish a copy of the buyer's contact lens prescription to the buyer, clearly marked to indicate that it is not a complete contact lens prescription. [Repealed.]~~

* * *

(E) Failure to comply with prescription-released requirements established in the Federal Ophthalmic Practice Rule (~~CFR 16 C.F.R.~~ Part 456) or the Fairness to Contact Lens Consumers Act (~~USCA 15 U.S.C.A.~~ §§ 7601–7610).

(c) After hearing, the board may take disciplinary action against a licensee or applicant found guilty of unprofessional conduct.

Sec. 25. 26 V.S.A. § 1727 is amended to read:

§ 1727. EXPIRATION DATE

An optometrist shall state the expiration date on the face of every prescription written by that optometrist for contact lenses. The expiration date shall be ~~no earlier than~~ one year after the examination date unless a medical or refractive problem affecting vision requires an earlier expiration date. An optometrist may not refuse to give the buyer a copy of the buyer's prescription after the expiration date; however, the copy shall be clearly marked to indicate that it is an expired prescription.

Sec. 26. 26 V.S.A. § 1728d is redesignated to read:

§ 1728d. DURATION OF GLAUCOMA TREATMENT WITHOUT REFERRAL

Sec. 27. 26 V.S.A. § 1729a is amended to read:

§ 1729a. PREREQUISITES TO TREATING GLAUCOMA

A licensee who is already certified to use therapeutic pharmaceutical agents and who graduated from a school of optometry prior to 2003 and is not certified in another jurisdiction having substantially similar prerequisites to treating glaucoma shall, in addition to being certified to use therapeutic pharmaceutical agents, provide to the board verification of successful completion of an 18-hour course and examination offered by the State University of New York State College of Optometry or similar accredited institution. Successful completion shall include passing an examination substantially equivalent to the relevant portions on glaucoma and orals of the examination given to current graduates of optometry school and shall require the same passing grade. The course shall cover the diagnosis and treatment of glaucoma and the use of oral medications and shall be taught by both optometrists and ophthalmologists. In addition, the licensee shall collaborate with an optometrist who has been licensed to treat glaucoma for at least two years or an ophthalmologist regarding his or her current glaucoma patients for six months and at least five new glaucoma patients before treating glaucoma patients independently. These five new glaucoma patients shall be seen at least once by the collaborating glaucoma-licensed optometrist or ophthalmologist.

* * * Pharmacy * * *

Sec. 28. 26 V.S.A. § 2044 is amended to read:

§ 2044. RENEWAL OF LICENSES

Each ~~pharmacist and pharmacy technician~~ person or entity licensed or regulated under the provisions of this chapter shall apply for renewal biennially by a date established by the director of the office of professional regulation. ~~The board shall renew the license or registration of each pharmacist and pharmacy technician who is qualified.~~

* * * Veterinary * * *

Sec. 29. 26 V.S.A. § 2414 is amended to read:

§ 2414. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- | | |
|----------------------------------|---------------------|
| (1) Application | \$ 100.00 |
| (2) Biennial renewal | \$ 250.00 |
| (3) Temporary license | \$ 25.00 |

* * * Land Surveying * * *

Sec. 30. 26 V.S.A. § 2543 is amended to read:

§ 2543. BOARD MEETINGS

(a) The board shall meet, at least two times each year, at the call of the chairperson or upon the request of any other two members.

(b) ~~Meetings shall be warned and conducted in accordance with chapter 5 of Title 1. [Repealed.]~~

(c) A majority of the members of the board shall be a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.

(d) The provisions of the Vermont Administrative Procedure Act, 3 V.S.A. chapter 25, relating to contested cases, shall apply to proceedings under this chapter.

(e) Fees for the service of process and attendance before the board shall be the same as the fees paid sheriffs and witnesses in superior court.

Sec. 31. 26 V.S.A. § 2592 is amended to read:

§ 2592. ~~QUALIFICATIONS~~ LICENSURE BY EXAMINATION

(a) Any person shall be eligible for licensure as a land surveyor if the person qualifies under one of the following provisions, as established by the board by rule:

~~(1) Comity or endorsement. — A person holding a certificate of registration or a license to engage in the practice of land surveying issued on the basis of an examination, satisfactory to the board, by proper authority of a state, territory or possession of the United States, the District of Columbia, or another country, based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter, in the opinion of the board, may be examined relative to land surveying matters peculiar to Vermont and granted a license at the direction of the board~~ Bachelor's degree in land surveying, internship, portfolio, and examination. A person who has graduated with a bachelor's degree in land surveying from a program accredited by the Accreditation Board for Engineering and Technology (ABET), completed a 24-month internship, successfully completed a portfolio, and successfully completed the examinations required by the board may be granted a license.

~~(2) Graduation and examination. — An applicant who has graduated from a surveying curriculum of four years or more approved by the Accreditation Board for Engineering and Technology (ABET), followed by at least 24 months of experience in land surveying, under the supervision of a land surveyor, and who has passed an examination satisfactory to the board, may be granted a license~~ Associate's degree in land surveying, internship, portfolio, and examination. A person who has graduated with an associate's degree in land surveying from a program accredited by the ABET, completed a 36-month internship, successfully completed a portfolio, and successfully completed the examinations required by the board may be granted a license.

~~(3) Education and examination. — An applicant, who has attended an accredited college or school of higher education, approved by the board, who has satisfactorily completed 30 credit hours of formal instruction in land surveying, followed by at least 36 months of experience in land surveying, under the supervision of a land surveyor, and who has passed an examination satisfactory to the board, may be granted a license.~~

~~(4) Experience~~ Internship, portfolio, and examination examinations. An applicant who has completed ~~four or more years of experience in land surveying, under the supervision of a land surveyor, and who has a 72-month internship, successfully completed a portfolio, and passed an examination which is satisfactory to~~ the examinations required by the board; may be granted a license.

~~(b) The fundamentals of land surveying examination may be taken with board approval after an applicant for licensure submits the initial application.~~

~~(e) The principles and practice of land surveying examination may be taken before the applicant completes the educational and experience requirements established by this chapter, provided that the applicant has completed all but the final year of required practical experience. Notification of the results of such examinations shall be mailed to each candidate within 30 days of the day the results of any national examination are received by the board. A candidate failing to pass the examinations may apply for reexamination under the rules of the board and may sit for reexamination as many times as the candidate chooses to do so. If an applicant does not pass the entire examination, the applicant need not take again any portion of an examination which the applicant previously passed.~~

~~(d)(1) A person who has undertaken work in the office of a land surveyor shall notify the board:~~

~~(A) within six months of commencing work;~~

~~(B) within 30 days of making any change in the person supervising that work; and~~

~~(C) upon 30 days of completing the experience requirements for licensure.~~

~~(e) [Deleted.]~~

~~(f) License examinations may consist of a national surveying examination selected by the board plus a Vermont portion. The Vermont portion shall be limited to those subjects and skills necessary to perform land surveying.~~

~~(g) The board may conduct a personal interview of an applicant. A personal interview shall be for the limited purposes of assisting the applicant to obtain licensure and to verify the applicant's educational qualifications and that the applicant completed the experience requirements for licensure. A personal interview shall not serve directly or indirectly as an oral examination of the applicant's substantive knowledge of surveying. An interview conducted under this section shall be taped and, at the request of the applicant, shall be transcribed. An applicant who is denied licensure shall be informed in writing of his or her right to have the interview transcribed free of charge. At least one of the public members of the board shall be present at any personal interview.~~

~~(h) When the board intends to deny an application for license, the director of the office of professional regulation shall send the applicant written notice of the decision by certified mail, return receipt requested. The notice shall include a specific statement of the reasons for the action. Within 30 days of the date that an applicant receives such notice, the applicant may file a petition with the board for review of its preliminary decision. At the hearing to review~~

~~the preliminary decision, the burden shall be on the applicant to show that a license should be issued. After the hearing, the board shall affirm or reverse the preliminary denial. The applicant may appeal a final denial by the board to the appellate officer.~~

Sec. 32. 26 V.S.A. § 2592a is added to read:

§ 2592a. LICENSURE BY ENDORSEMENT

Upon an applicant's successful completion of the Vermont portion of the licensing examination, the board may issue a license to an applicant who is licensed or registered and currently in good standing in a United States or Canadian jurisdiction having licensing requirements which are substantially equivalent to the requirements of this chapter. The absence of a portfolio requirement in another jurisdiction shall not prevent the board from finding substantial equivalence.

Sec. 33. REPEAL

26 V.S.A. § 2594 (licenses generally) is repealed.

Sec. 34. 26 V.S.A. § 2595 is amended to read:

§ 2595. EXCEPTIONS

(a) The work of an employee or subordinate of a person having a license under this chapter is exempted from the licensing provisions of this chapter if such work is done under the supervision of and is verified by a licensee.

* * *

Sec. 35. 26 V.S.A. § 2598 is amended to read:

§ 2598. UNPROFESSIONAL CONDUCT

(a) Unprofessional conduct is the conduct prohibited by this section and by 3 V.S.A. § 129a.

(b) Unprofessional conduct includes the following actions by a licensee:

* * *

~~(4) agreeing with any other person or organization, or subscribing to any code of ethics or organizational bylaws, when the intent or primary effect of that agreement, code or bylaw is to restrict or limit the flow of information concerning alleged or suspected unprofessional conduct to the board; [Repealed.]~~

(5) ~~wilfully~~ willfully acting, while serving as a board member, in any way to contravene the provisions of this chapter and thereby artificially restrict the entry of qualified persons into the profession;

(6) using the licensee's seal on documents prepared by others not in the licensee's direct ~~employ~~ supervision, or use the seal of another.

(7) ~~[Deleted.]~~

Sec. 36. REPEAL

26 V.S.A. § 2599 (discipline of licensees) is repealed.

Sec. 37. 26 V.S.A. § 2601 is amended to read:

§ 2601. RENEWALS

(a) Licenses shall be renewed every two years upon payment of the renewal fee following the procedure established by the office of professional regulation.

(b) ~~Biennially, the board shall forward a renewal form to each licensee. Upon receipt of the completed form and the renewal fee, the board shall issue a new license. [Repealed.]~~

(c) A license which has lapsed for a period of three years or less may be renewed upon application and payment of the renewal fee and the late penalty fee.

(d) As a condition of renewal, the board shall require that a licensee establish that he or she has completed continuing education, as approved by the board not to exceed 15 hours for each year of renewal.

(e) The board may renew the license of an individual whose license has lapsed for more than three years upon payment of the required fee, and the late renewal penalty, provided the individual has satisfied all the requirements for renewal, including continuing education established by the board by rule.

* * * Radiologic Technology * * *

Sec. 38. 26 V.S.A. § 2801 is amended to read:

§ 2801. DEFINITIONS

As used in this chapter:

* * *

(3) "Practice of radiography" means the direct application of ionizing radiation to human beings ~~for diagnostic purposes.~~

(4) "Practice of nuclear medicine technology" means the act of giving a radioactive substance to a human being ~~for diagnostic purposes,~~ or the act of performing associated imaging procedures, or both.

(5) "Practice of radiation therapy" means the direct application of ionizing radiation to human beings for therapeutic purposes or the act of performing associated imaging procedures, or both.

* * *

(11) "ARRT" means the American Registry of Radiologic Technologists.

(12) "NMTCB" means the Nuclear Medicine Technologist Certification Board.

Sec. 39. 26 V.S.A. § 2802 is amended to read:

§ 2802. PROHIBITIONS

(a) ~~For purposes of this section, the word "license" includes temporary permits under section 2825 of this title. [Repealed.]~~

(b) No person shall practice radiologic technology unless he or she is licensed in accordance with the provisions of this chapter.

(c) No person shall practice radiography without a license for radiography from the board unless exempt under section 2803 of this title.

(d) ~~No person who holds a limited radiography license from the board shall apply ionizing radiation to human beings for diagnostic or therapeutic purposes or take radiographs, except as follows:~~

~~(1) A person who holds an endorsement for chest radiography may radiograph the thorax for the purpose of demonstrating the heart or lungs; and~~

~~(2) A person who holds an endorsement for extremities radiography may radiograph the hands and arms, including the shoulder girdle, the feet, and the legs up to the mid point of the femur. [Repealed.]~~

(e) No person shall practice nuclear medicine technology without a license for that purpose from the board unless exempt under section 2803 of this title.

(f) No person shall practice radiation therapy technology without a license for that purpose from the board unless exempt under section 2803 of this title.

Sec. 40. 26 V.S.A. § 2803 is amended to read:

§ 2803. EXEMPTIONS

The prohibitions in section 2802 of this ~~title~~ chapter shall not apply to dentists licensed under chapter ~~13~~ 12 of this title and actions within their scope of practice nor to:

* * *

~~(6) Individuals who are completing a course of training for limited radiographic licensure as required in subsection 2821(c) of this title and who work under direct personal supervision of a licensed practitioner. The exemption authorized by this subdivision shall be for one time only and for no more than six months. The licensed practitioner is professionally and legally responsible for work performed by the person completing the course of training.~~ Licensees certified in one of the three primary modalities set forth in section 2821a of this chapter preparing for postprimary certification in accordance with ARRT or NMTCB under the direct personal supervision of a licensee already certified in the specific postprimary modality at issue.

(7) Researchers operating bone densitometry equipment for body composition upon successful completion of courses on body composition and radiation safety approved by the board. The board shall not require this coursework to exceed eight hours. The board may consider other exemptions from licensure for bona fide research projects subject to course and examination requirements as deemed necessary for public protection.

Sec. 41. 26 V.S.A. § 2804 is amended to read:

§ 2804. COMPETENCY REQUIREMENTS OF CERTAIN LICENSED PRACTITIONERS

Unless the requirements of subdivision 2803(1) of this title have been satisfied, no physician, as defined in chapter 23 of this title, podiatrist, as defined in chapter 7 of this title, osteopathic physician, as defined in chapter 33 of this title, naturopathic physician as defined in chapter 81 of this title, or chiropractor, as defined in chapter ~~9~~ 10 of this title, shall apply ionizing radiation to human beings ~~for diagnostic purposes~~, without first having satisfied the board of his or her competency to do so. The board shall consult with the appropriate licensing boards concerning suitable performance standards. The board shall, by rule, provide for periodic recertification of competency. A person subject to the provisions of this section shall be subject to the fees established under subdivisions 2814(4) and (5) of this title. This section does not apply to radiologists who are certified or eligible for certification by the American Board of Radiology.

Sec. 42. 26 V.S.A. § 2811 is amended to read:

§ 2811. BOARD OF RADIOLOGIC TECHNOLOGY

(a) A board of radiologic technology is created, consisting of ~~five~~ six members. The board shall be attached to the office of professional regulation.

(b) One member of the board shall be a member of the public who has no financial interest in radiologic technology other than as a consumer or possible

consumer of its services. The public member shall have no financial interest personally or through a spouse.

(c) One member of the board shall be a radiologist certified by the American Board of Radiology.

(d) ~~Two~~ Three members of the board shall be licensed under this chapter, one representing each of the three following primary modalities: radiography; nuclear medicine technology; and radiation therapy.

(e) One member of the board shall be a representative from the radiological health program of the Vermont department of health.

(f) Board members shall be appointed by the governor.

Sec. 43. 26 V.S.A. § 2812 is amended to read:

§ 2812. POWERS AND DUTIES

(a) The board shall adopt rules necessary for the performance of its duties, including:

(1) a definition of the practice of radiologic technology, interpreting section 2801 of this title;

(2) qualifications for obtaining licensure, interpreting section 2821 of this ~~title~~ chapter;

(3) explanations of appeal and other significant rights given to applicants and the public;

(4) procedures for disciplinary and reinstatement cases;

(5) ~~procedures for certifying persons using special equipment;~~ [Repealed.]

(6) procedures for mandatory reporting of unsafe radiologic conditions or practices;

(7) procedures for continued competency evaluation;

(8) procedures for radiation safety;

(9) procedures for competency standards for license applications and renewals.

(b) The board shall:

(1) ~~If applications for licensure by examination are pending, offer examinations at least twice each year and pass upon the qualifications of applicants for licensing.~~ [Repealed.]

(2) Use the administrative and legal services provided by the office of professional regulation under 3 V.S.A. chapter 5.

(3) Investigate suspected unprofessional conduct.

(4) Periodically determine whether a sufficient supply of good quality radiologic technology services is available in Vermont at a competitive and reasonable price; and take suitable action, within the scope of its powers, to solve or bring public and professional attention to any problem which it finds in this area.

(5) As a condition of renewal require that a licensee establish that he or she has completed a minimum of 24 hours of continuing education as approved by the board ~~not to exceed 24 hours in a two-year renewal.~~

* * *

Sec. 44. 26 V.S.A. § 2814 is amended to read:

§ 2814. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- (1) Application for ~~temporary permit and~~ primary licensure \$ 100.00
- (2) Biennial renewal
 - (A) renewal of a single primary license \$ 110.00
 - (B) renewal of each additional primary license \$ 15.00
- (3) Initial competency endorsement under section 2804 of this title \$ 100.00
- (4) Biennial renewal of competency endorsement under section 2804 of this title \$ 110.00
- (5) Evaluation \$ 125.00

Sec. 45. REPEAL

26 V.S.A. § 2821 (licensing) is repealed.

Sec. 46. TRANSITIONAL PROVISION

A person granted a limited radiography license by the board of radiologic technology under 26 V.S.A. § 2821 prior to the effective date of this act may continue to practice as permitted by that license and board rules.

Sec. 47. 26 V.S.A. § 2821a is added to read:

§ 2821a. LICENSE FOR PRIMARY MODALITIES

Common Requirements. The board shall recognize and follow the ARRT and the NMTCB primary certification process. The board shall issue a license to practice in one of the following three primary modalities to any person who

in addition to the other requirements of this section, has reached the age of majority and has completed preliminary education equivalent to at least four years of high school:

(1) Radiography. The board shall issue a radiography license to any person who, in addition to meeting the general requirements of this section:

(A) has graduated from a radiologic technology training program offered by a school of radiologic technology approved by ARRT; and

(B) has obtained primary certification in radiography from ARRT.

(2) Nuclear medicine technology. The board shall issue a nuclear medicine technology license to any person who, in addition to meeting the general requirements of this section:

(A) has graduated from a nuclear medicine technology program offered by a school of nuclear medicine technology approved by ARRT or NMTCB; and

(B) has obtained primary certification in nuclear medicine technology from ARRT or NMTCB.

(3) Radiation therapy. The board shall issue a radiation therapy license to any person who, in addition to meeting the general requirements of this section:

(A) has graduated from a radiation therapy training program offered by a school of radiologic technology approved by ARRT; and

(B) has obtained primary certification in radiation therapy from the ARRT.

Sec. 48. 26 V.S.A. § 2821b is added to read:

§ 2821b. LICENSE FOR POSTPRIMARY MODALITIES

(a) The board recognizes and follows the ARRT postprimary certification process for the following postprimary practice categories: mammography, computed tomography (“CT”), cardiac-interventional radiography, and vascular-interventional radiography.

(b) In order for a licensee who has obtained one of the three primary ARRT or NMTCB certifications set forth in section 2821a of this subchapter to practice in one of the postprimary modalities set forth in subsection (a) of this section, the licensee must first obtain postprimary certification from ARRT for that category, except:

(1) a person with a primary license in radiation therapy may perform CT for treatment simulation; and

(2) a person with a primary license in nuclear medicine technology may perform CT for attenuation correction on hybrid imaging equipment, such as PET/CT and SPECT/CT scanners.

(c) In order to practice bone densitometry or apply ionizing radiation using bone densitometry equipment, a primary certification and license in radiography is required, with the exception that individuals who perform quantitative computed tomography (“QCT”) bone densitometry must obtain postprimary certification in CT in addition to primary certification.

Sec. 49. 26 V.S.A. § 2823 is amended to read:

§ 2823. RENEWAL AND PROCEDURE FOR NONRENEWAL

(a) Licenses shall be renewed every two years without examination and on payment of the required fees. Each radiographer, nuclear medicine technologist, and radiation therapist licensed to practice by the board shall apply biennially for the renewal of a license. One month prior to the renewal date, the office of professional regulation shall send to each of those licensees a license renewal application form and a notice of the date on which the existing license will expire. The licensee shall file the application for license renewal and pay a renewal fee. In order to be eligible for renewal, an applicant shall document completion of no fewer than 24 hours of board-approved continuing education. Required accumulation of continuing education hours shall begin on the first day of the first full biennial licensing period following initial licensure.

(b) A license which has expired because a licensee has not sought renewal may be reinstated on payment of a renewal fee and a late renewal penalty. The licensee shall not be required to pay renewal fees during periods when the license was expired. However, if such a license remains expired for a period of ten years, the board shall send notice under this section to the former licensee at his last known address. Thirty days after the notice is sent, the right to renew the license without examination is suspended. Once the right to renew is suspended, it may be reinstated only by decision of the board acting on petition of the former licensee. During that proceeding, the board may require re-examination of the licensee, as well as payment of a renewal fee, late renewal penalty and a reinstatement fee. A person who practices radiography, nuclear medicine technology, or radiation therapy and who fails to renew a license or registration or fails to pay the fees required by this chapter shall be an illegal practitioner and shall forfeit the right to practice until reinstated by the board.

(c) The board shall adopt rules setting forth qualifications for reinstating lapsed licenses.

Sec. 50. REPEAL

26 V.S.A. § 2825 (temporary permits) is repealed.

Sec. 51. 26 V.S.A. § 2825a is added to read:

§ 2825a. LICENSURE BY ENDORSEMENT

The board may grant a license to an applicant who possesses a license in good standing in another state and possesses the applicable ARRT or NMTCB primary and postprimary certifications as set forth in sections 2821a and 2821b of this subchapter, respectively.

* * * Psychology * * *

Sec. 52. 26 V.S.A. § 3011a is amended to read:

§ 3011a. APPLICATIONS

(a) Any person desiring to obtain a license as a psychologist shall make application therefor to the board upon such form and in such manner as the board prescribes and shall furnish evidence satisfactory to the board that he or she:

(1) is at least 18 years of age;

~~(2)(A) has had two years of experience, or their equivalent, in the practice of clinical psychology under the supervision of a person who is licensed or who is qualified to be licensed under this chapter;~~ possesses a doctoral degree in psychology and has completed 4,000 hours of supervised practice as defined by the board by rule, of which no fewer than 2,000 hours were completed after the doctoral degree in psychology was received; or

~~(3) has successfully completed each examination that is required pursuant to section 3013 of this title; and~~

~~(A) possesses a doctoral degree in psychology obtained through a professional psychology training program awarded by an institution of higher education;~~

~~(B) possesses a master's degree in psychology obtained through a professional psychology training program awarded by an institution of higher education; and has completed 4,000 hours of supervised practice as defined by the board by rule of which no fewer than 2,000 hours were completed after the master's degree in psychology was received; and~~

~~(C) possesses a master's degree in psychology awarded by an institution of higher education provided the person was enrolled as a candidate for the master's degree no later than December 31, 1993; or~~

~~(D) possesses a degree in psychology awarded by an institution of higher education based on a program that the board determines to be equivalent to that required in subdivisions (A) and (B) of this subdivision (3)~~

(3) has successfully completed the examinations designated by the board.

(b) In exceptional cases, the board may waive any requirement of this section if in its judgment the applicant demonstrates appropriate qualifications.

* * * Clinical Social Work * * *

Sec. 53. 26 V.S.A. § 3201 is amended to read:

§ 3201. DEFINITIONS

As used in this chapter:

(1) “Clinical social work” is defined as providing a service, for a consideration, which is primarily drawn from the academic discipline of social work theory, in which a special knowledge of social resources, human capabilities, and the part that motivation plays in determining behavior, is directed at helping people to achieve a more adequate, satisfying, and productive psychosocial adjustment. The application of social work principles and methods includes, but is not restricted to assessment, diagnosis, prevention and amelioration of adjustment problems and emotional and mental disorders of individuals, families and groups. The scope of practice for licensed clinical social workers includes the provision of psychotherapy.

* * *

Sec. 54. 26 V.S.A. § 3205 is amended to read:

§ 3205. ELIGIBILITY

To be eligible for licensing as a clinical social worker an applicant must have:

(1) received a master’s degree or doctorate from an accredited social work education program;

(2) [Deleted.]

(3) ~~had two years of post-master’s experience in the practice of clinical social work or the equivalent in part-time experience~~ completed 3,000 hours of supervised practice of clinical social work as defined by rule under the supervision of a licensed physician or a licensed osteopathic physician who has completed a residency in psychiatry, a licensed psychologist, a licensed clinical mental health counselor, a person licensed or certified under this chapter, or a person licensed or certified in another state or Canada in one of these professions or their substantial equivalent. Persons engaged in post

masters supervised practice in Vermont shall be entered on the roster of nonlicensed, noncertified psychotherapists;

(4) submitted the names and addresses of three persons who can attest to the applicant's professional competence. Such person shall be a licensed physician or a licensed osteopathic physician who has completed a residency in psychiatry, a licensed psychologist, a licensed clinical mental health counselor, a person licensed or certified under this chapter, or a person licensed in another state or Canada in one of these professions; and

(5) passed an examination to the satisfaction of the director of the office of professional regulation.

* * * Dietetics * * *

Sec. 55. 26 V.S.A. § 3381 is amended to read:

§ 3381. DEFINITIONS

As used in this chapter:

(1) "~~American Dietetic Association~~ Academy of Nutrition and Dietetics" means the national professional organization of dietitians that provides direction and leadership for quality dietetic practice, education and research.

* * *

Sec. 56. 26 V.S.A. § 3385 is amended to read:

§ 3385. ELIGIBILITY

To be eligible for certification as a dietitian, an applicant:

(1) shall not be in violation of any of the provisions of this chapter or rule adopted in accordance with the provisions of the chapter; and

(2)(A) shall have proof of registration as a registered dietitian by the Commission on Dietetic Registration; or

(B) shall have:

(i) received a bachelor of arts or science or a higher degree in dietetics from an accredited college or university; and

(ii) satisfactorily completed a minimum of 900 practicum hours of supervision under an ~~American Dietetic Association~~ Academy of Nutrition and Dietetics dietitian registered by the Commission on Dietetic Registration; and

(iii) passed an examination to the satisfaction of the director.

* * * Naturopathic Medicine * * *

Sec. 57. 26 V.S.A. § 4121 is amended to read:

§ 4121. DEFINITIONS

As used in this chapter:

* * *

(7) ~~“Naturopathic formulary examination” means an examination, administered by the director or the director’s designee, which tests an applicant’s knowledge of the pharmacology, clinical use, side effects, and drug interactions of agents in the naturopathic formulary. [Repealed.]~~

(8) “Naturopathic medicine” or “the practice of naturopathic medicine” means a system of health care that utilizes education, natural medicines, and natural therapies to support and stimulate a patient’s intrinsic self-healing processes and to prevent, diagnose, and treat human health conditions, injuries, and pain. In connection with such system of health care, an individual licensed under this chapter may:

(A) Administer or provide for preventative and therapeutic purposes nonprescription medicines, topical medicines, botanical medicines, homeopathic medicines, counseling, hypnotherapy, nutritional and dietary therapy, naturopathic physical medicine, naturopathic childbirth, therapeutic devices, barrier devices for contraception, and prescription medicines authorized by this chapter ~~or by the formulary established under subsection 4125(e) of this title.~~

(B) Use diagnostic procedures commonly used by physicians in general practice, including physical and orificial examinations, electrocardiograms, diagnostic imaging techniques, phlebotomy, clinical laboratory tests and examinations, and physiological function tests.

* * *

(13) “Naturopathic pharmacology examination” means a test administered by the director or the director’s designee, the passage of which is required to obtain the special license endorsement under subsection 4125(d) of this chapter.

Sec. 58. 26 V.S.A. § 4122 is amended to read:

§ 4122. PROHIBITIONS AND PENALTIES

(a) No person shall perform any of the following acts:

(1) Practice naturopathic medicine in this state without a valid license issued in accordance with this chapter except as provided in section 4123 of this title.

(2) Use, in connection with the person's name any letters, words, or insignia indicating or implying that the person is a naturopathic physician unless the person is licensed in accordance with this chapter. A person licensed under this chapter may use the designations "N.D.," "doctor of naturopathic medicine," "naturopathic doctor," "doctor of naturopathy," or "naturopathic physician."

(b) A person licensed under this chapter shall not perform any of the following acts:

(1) Prescribe, dispense, or administer any prescription medicines ~~except those medicines authorized by this chapter~~ without obtaining from the director the special license endorsement under subsection 4125(d) of this chapter.

(2) Perform surgical procedures, except for episiotomy and perineal repair associated with naturopathic childbirth.

(3) Use for therapeutic purposes, any device regulated by the United States Food and Drug Administration (FDA) that has not been approved by the FDA.

(4) Perform naturopathic childbirth without obtaining ~~an endorsement~~ from the director the special license endorsement under subsection 4125(b) of this chapter.

(c) A person who violates any of the provisions of this section shall be subject to the penalties provided in 3 V.S.A. § 127(c).

Sec. 59. 26 V.S.A. § 4123 is amended to read:

§ 4123. EXEMPTIONS

(a) Nothing in this chapter shall be construed to prohibit any of the following:

(1) The practice of a profession by a person who is licensed, certified, or registered under other laws of this state and is performing services within the authorized scope of practice of that profession.

(2) The practice of naturopathic medicine by a person duly licensed to engage in the practice of naturopathic medicine in another state, territory, or the District of Columbia who is called into this state for consultation with a naturopathic physician licensed under this chapter.

(3) The practice of naturopathic medicine by a student enrolled in an approved naturopathic medical college. The performance of services shall be pursuant to a course of instruction and under the supervision of an instructor, who shall be a naturopathic physician licensed in accordance with this chapter.

(4) The use or administration of over-the-counter medicines or other nonprescription agents, ~~regardless of whether the over the counter medicine or agent is on the naturopathic formulary.~~

(b) The provisions of subdivision 4122(a)(1) of this ~~title~~ chapter, relating to the practice of naturopathic medicine, shall not be construed to limit or restrict in any manner the right of a practitioner of another health care profession from carrying on in the usual manner any of the functions related to that profession.

Sec. 60. 26 V.S.A. § 4125 is amended to read:

§ 4125. DIRECTOR; DUTIES

(a) The director, with the advice of the advisor appointees, shall:

(1) Provide general information to applicants for licensure as naturopathic physicians.

(2) Administer fees collected under this chapter.

(3) Administer examinations.

(4) Explain appeal procedures to naturopathic physicians and applicants for licensure and complaint procedures to the public.

(5) Receive applications for licensure under this chapter; issue and renew licenses; and revoke, suspend, reinstate, or condition licenses as ordered by an administrative law officer.

(6) Refer all disciplinary matters to an administrative law officer.

(b) The director, with the advice of the advisor appointees, shall adopt rules necessary to perform the director's duties under this section, which shall include rules regulating ~~the naturopathic formulary, the naturopathic formulary examination, and~~ a special license endorsement to practice naturopathic childbirth.

(c) ~~At least annually, in consultation with the commissioner of health and in accordance with consultation procedures adopted by the director by rule, the director with the advice of the advisor appointees, shall review and update the formulary of prescription medicines naturopathic physicians may use consistent with their scope of practice and training. Nonnatural substances found to be substantially safer in treatment or without which a patient's primary care would be compromised may be added to the formulary. The formulary shall include prescription medicines necessary for naturopathic practice and naturopathic childbirth. [Repealed.]~~

(d) The director, in consultation with the commissioner of health, shall adopt rules consistent with the commissioner's recommendations regulating a special license endorsement which shall authorize a naturopathic physician to

prescribe, dispense, and administer prescription medicines. These rules shall require a naturopathic physician to pass a naturopathic pharmacology examination in order to obtain this special license endorsement. The naturopathic pharmacology examination shall be administered by the director or the director's designee and shall test an applicant's knowledge of the pharmacology, clinical use, side effects, and drug interactions of prescription medicines, including substances in the Vermont department of health's regulated drugs rule.

Sec. 61. 26 V.S.A. § 4127 is amended to read:

§ 4127. ELIGIBILITY FOR LICENSURE

To be eligible for licensure as a naturopathic physician, an applicant shall satisfy all the following:

(1) Have been granted a degree of doctor of naturopathic medicine, or a degree determined by the director to be essentially equivalent to such degree, from an approved naturopathic medical college.

(2) Be physically and mentally fit to practice naturopathic medicine.

(3) Pass a licensing examination approved by the director ~~pursuant to subsection 4129(a) of this title~~ by rule, unless the applicant is exempt from examination pursuant to ~~subsection 4129(b)~~ section 4129 of this ~~title~~ chapter.

(4) ~~Pass the naturopathic formulary examination administered by the director or the director's designee, unless the applicant is exempt from examination pursuant to the standards set forth in subsection 4129(b) of this title. [Repealed.]~~

Sec. 62. 26 V.S.A. § 4129 is amended to read:

§ 4129. WAIVER OF LICENSING EXAMINATION REQUIREMENT

~~(a) The director, or designee, shall administer the licensing examination to applicants at least twice each year if applications are pending. Examinations administered by the director and the procedures of administration shall be fair and reasonable and shall be designed and implemented to ensure that all applicants are granted a license if they demonstrate that they possess minimal professional qualifications which are consistent with the public health, safety and welfare. The examination shall not be designed or implemented for the purpose of limiting the number of licenses issued.~~

~~(b)~~ The director shall waive the examination requirement if the applicant is a naturopathic physician regulated under the laws of another jurisdiction who is in good standing to practice naturopathic medicine in that jurisdiction and, in the opinion of the director, the standards and qualifications required for

regulation in that jurisdiction are at least equal to those required by this chapter.

Sec. 63. 26 V.S.A. § 4130 is amended to read:

§ 4130. BIENNIAL LICENSE RENEWAL; CONTINUING EDUCATION

(a) The license to practice naturopathic medicine shall be renewed every two years by filing a renewal application on a form provided by the director. The application shall be accompanied by the required fee and evidence of compliance with subsection (b) of this section. ~~The director may require licensees who have not previously passed the naturopathic physician formulary examination to pass the examination as a condition of license renewal.~~

(b) As a condition of renewal, a naturopathic physician shall complete a program of continuing education, approved by the director, during the preceding two years. The director shall not require more than 30 hours of continuing education biennially.

Sec. 64. TRANSITIONAL PROVISIONS

(a) Naturopathic pharmacology examination establishment. The naturopathic pharmacology examination set forth in 26 V.S.A. § 4125(d) shall be established and made available by July 1, 2013.

(b) Formulary authorization. Notwithstanding the provisions of 26 V.S.A. § 4122(b)(1) and except as provided in subsection (c) of this section, any naturopathic physician licensed under 26 V.S.A. chapter 81 who is authorized to prescribe, dispense, and administer any prescription medicines pursuant to the 2009 naturopathic physician formulary prior to the establishment of the naturopathic pharmacology examination set forth in 26 V.S.A. § 4125(d) may continue to prescribe, dispense, and administer those medicines consistent with his or her scope of practice and training and without obtaining from the director of the office of professional regulation the special license endorsement required under 26 V.S.A. § 4125(d).

(c) Formulary review. In consultation with the commissioner of health and with the advice of the advisor appointees appointed pursuant to 26 V.S.A. § 4126, the director may review and eliminate or add prescription medicines on the 2009 naturopathic physician formulary that authorized naturopathic physicians are permitted to prescribe, dispense, and administer if it is determined that such a change is necessary for patient health and safety.

(d) Formulary sunset; transition to examination.

(1) Subsection (b) of this section (formulary authorization) shall be repealed on July 1, 2015.

(2) Any naturopathic physician who is authorized to prescribe, dispense, and administer any prescription medicines under subsection (b) of this section shall have until July 1, 2015 to successfully complete the naturopathic pharmacology examination set forth in 26 V.S.A. § 4125(d) in order to be able to continue to prescribe, dispense, and administer any prescription medicines.

* * * Boxing * * *

Sec. 65. 31 V.S.A. § 1101 is amended to read:

§ 1101. DEFINITIONS

As used in this chapter:

(1) “Boxer” means an individual who participates in a boxing match.

(2) “Boxing match” or “match” means a contest or training exhibition for a prize or purse where an admission fee is charged and where individuals score points by striking the head and upper torso of an opponent with padded fists. An amateur ~~boxing~~ match is a match held under the supervision of a school, college, or university ~~or~~; under the supervision of United States Amateur Boxing, Inc. or its successor as the ~~nationally designated~~ nationally designated governing body for amateur boxing; or, for any other amateur match, under the supervision of a nationally designated governing body. All other matches shall be considered professional ~~boxing~~ matches. Kickboxing, martial arts, and mixed martial arts, as defined in this section, shall be considered “matches” for the purposes of this chapter.

(3) “Director” means the director of the office of professional regulation.

(4) “Disciplinary action” includes any action by the administrative law officer appointed under ~~section 129 of Title 3 V.S.A. § 129,~~ premised upon a finding of wrongdoing. It includes all sanctions of any kind, including denying, suspending, or revoking, a registration and issuing warnings and other sanctions.

(5) “Health care provider” means a health care practitioner licensed in Vermont who is permitted under his or her statutory or regulatory scope of practice to conduct the types of examinations set forth in this chapter.

(6) “Kickboxing” means unarmed combat involving the use of striking techniques delivered with the upper and lower body and in which the competitors remain standing while striking;

(7) “Martial arts” means any form of unarmed combative sport or unarmed combative entertainment that allows contact striking, except boxing or wrestling;

(8) “Mixed martial arts” means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts, including grappling, submission holds, and strikes with the upper and lower body.

(9) “Manager” means a person who receives compensation for service as an agent or representative of a professional boxer.

~~(6)~~(10) “National boxer registry” means an entity certified by the Association of Boxing Commissions for the purpose of maintaining records for the identification of professional boxers and for tracking their records and suspensions.

~~(7)~~(11) “Participant” means managers, seconds, referees, and judges in a professional boxing match.

~~(8)~~(12) “Promoter” means a person that organizes, holds, advertises, or otherwise conducts a professional boxing match.

Sec. 66. 31 V.S.A. § 1102 is amended to read:

§ 1102. DIRECTOR; POWERS; DUTIES

(a) The director shall have jurisdiction over professional boxing matches. The director’s power to supervise professional boxing matches includes the power to suspend a match immediately if there is a serious and immediate danger to the public, boxers, promoters, or participants.

~~(b)~~(1) Except as provided in this subsection, the director shall not have jurisdiction over amateur boxing matches. Amateur boxing matches shall be conducted according to the rules of United States Amateur Boxing, Inc., the national governing body for amateur boxing of the United States Olympic Committee or its successor as the nationally-designated governing body for amateur boxing. However, upon a finding that the health and safety of the boxers and participants in an amateur match are not being sufficiently safeguarded, the director shall assume jurisdiction over and supervisory responsibility for the match. The director’s decision may be appealed to the administrative law officer appointed under ~~section 129 of Title 3~~ V.S.A. § 129 within 10 days of the date the finding is issued. If the director assumes jurisdiction under this subsection, the match shall continue to be conducted in accordance with the rules of United States Amateur Boxing, Inc.

(2) For the purposes of this subsection, an “amateur boxing match” means a match held under the supervision of a school, college, or university or under the supervision of United States Amateur Boxing, Inc. or its successor as the nationally designated governing body for amateur boxing.

(c) The director shall:

- (1) provide information to applicants for registration;
- (2) administer fees collected under this chapter;
- (3) explain appeal procedures to registrants and applicants and complaint procedures to the public;
- (4) receive applications for registration, grant registration under this chapter, renew registrations and deny, revoke, suspend, reinstate, or condition registrations as directed by an administrative law officer;
- (5) refer all complaints and disciplinary matters to an administrative law officer appointed under ~~section 129 of Title 3~~ V.S.A. § 129.

(d) The director may adopt rules necessary to perform his or her duties under this chapter. The uniform rules of the Association of Boxing Commissions as adopted on June 6, 1998, and as amended from time to time, shall apply to professional boxing matches conducted under this chapter to the extent those rules address matters not covered by rules adopted by the director.

Sec. 67. 31 V.S.A. § 1107 is amended to read:

§ 1107. MATCHES; MEDICAL SUSPENSIONS

Medical suspensions of professional boxers shall be determined by following the guidelines issued by the Association of Boxing Commissions as adopted and as may be amended from time to time. A boxer may be suspended for a recent knockout, a series of losses, a required medical procedure, a ~~physician's~~ health care provider's denial of certification, the failure of a drug test, or for other reasons outlined in this chapter or rules adopted under this chapter.

Sec. 68. 31 V.S.A. § 1108 is amended to read:

§ 1108. MATCHES; SPECIAL PROVISIONS

* * *

(b) Before a professional match, the promoter shall insure that each boxer is examined by a ~~physician licensed in this state~~ health care provider for the purpose of certifying that the boxer is physically fit to compete safely. Copies of the ~~physician's~~ health care provider's certificate shall be filed with the director prior to the match. In addition, at any time prior to a professional match, the director may require that a boxer undergo a physical examination, which may include neurological tests and procedures.

(c) A ~~physician~~ health care provider approved by the director must be continuously present at ringside during every professional boxing match to observe the physical condition of the boxers. The ~~physician~~ health care provider shall advise the referee on the condition of the boxers.

* * *

(e) A person under the age of 18 shall not participate in any professional match, as that term is described in subdivision 1101(2) of this chapter.

Sec. 66. EFFECTIVE DATES

This act shall take effect on July 1, 2012 except that:

(1) this section and Sec. 62(c) (transitional provision; formulary review) of this act shall take effect on passage; and

(2) Sec. 46, 26 V.S.A. § 2821b(b) (practice in postprimary modalities), of this act shall take effect on May 31, 2015.

* * * Funeral Service * * *

Sec. 69. STUDY OF LIMITED LICENSES FOR LIMITED PRACTICES OF FUNERAL SERVICE

(a)(1) The board of funeral service shall study whether it should issue limited licenses for limited practices of funeral services, including whether the board should issue limited licenses for the following limited practices of funeral service:

(A) removal or transportation;

(B) refrigeration;

(C) embalming;

(D) cremation;

(E) disposition;

(F) monument sales; and

(G) cemetery operation.

(2) During its study, the board shall consider the evolving nature of the funeral industry; changes in consumer demand; and the continuing need to track deaths and protect the public.

(b) By November 1, 2012, the committee shall report to the house committees on general, housing and military affairs and on government operations and the senate committees on economic development, housing and general affairs and on government operations its findings and any recommendations for legislative action.

* * * Director of the Office of Professional Regulation; Preliminary Assessments * * *

Sec. 70. DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION; PRELIMINARY ASSESSMENTS

Pursuant to 26 V.S.A. § 3105, the director of the office of professional regulation shall make a preliminary assessment of whether the following professions should be regulated:

- (1) home inspection;
- (2) roofing; and
- (3) solar equipment installation.

and that after passage the title of the bill be amended to read: “An act relating to the secretary of state and to the regulation of professions and occupations”

(Committee vote: 3-1-1)

(For House amendments, see House Journal for March 14, 2012, page 635.)

H. 691.

An act relating to prohibiting collusion as an antitrust violation.

Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.

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

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

§ 2451. PURPOSE

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

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

§ 2451a. DEFINITIONS

For the purposes of this chapter:

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

benefit of his or her business or in connection with the operation of his or her business.

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

* * *

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

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

§ 2453a. PRACTICES PROHIBITED; CRIMINAL ANTITRUST VIOLATIONS

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

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

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

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

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

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

§ 2453b. RETALIATION PROHIBITED

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

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

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

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

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

Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

(For House amendments, see House Journal for March 20, 2012, page 738.)

H. 751.

An act relating to jurisdiction of delinquency proceedings.

Reported favorably with recommendation of proposal of amendment by Senator Sears for the Committee on Judiciary.

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

Sec. 1. 33 V.S.A. § 5103 is amended to read:

§ 5103. JURISDICTION

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

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

(c)(1) Except as otherwise provided by this title and by subdivision (2) of this subsection, jurisdiction over a child shall not be extended beyond the child's 18th birthday.

(2)(A) Jurisdiction over a child who has been adjudicated delinquent

may be extended until six months beyond the child's 18th birthday if the offense for which the child has been adjudicated delinquent is a nonviolent misdemeanor and the child was 17 years old when he or she committed the offense.

(B) In no case shall custody of a child aged 18 years or older be retained by or transferred to the commissioner for children and families.

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

(D) As used in this subdivision, "nonviolent misdemeanor" means a misdemeanor offense which is not a listed crime as defined in 13 V.S.A. § 5301(7), an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64, or an offense involving violation of a protection order in violation of 13 V.S.A. § 1030.

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

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

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

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

Sec. 2. 33 V.S.A. § 5201 is amended to read:

§ 5201. COMMENCEMENT OF DELINQUENCY PROCEEDINGS

* * *

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

* * *

Sec. 3. 33 V.S.A. § 5203 is amended to read:

§ 5203. TRANSFER FROM OTHER COURTS

(a) If it appears to a criminal division of the superior court that the defendant was under the age of 16 years at the time the offense charged was

alleged to have been committed and the offense charged is not one of those specified in subsection 5204(a) of this title, that court shall forthwith transfer the case to the ~~juvenile~~ family division of the superior court under the authority of this chapter.

(b) If it appears to a criminal division of the superior court that the defendant was over the age of 16 years and under the age of 18 years at the time the offense charged was alleged to have been committed, or that the defendant had attained the age of 14 but not the age of 16 at the time an offense specified in subsection 5204(a) of this title was alleged to have been committed, that court may forthwith transfer the proceeding to the ~~juvenile~~ family division of the superior court under the authority of this chapter, and the minor shall thereupon be considered to be subject to this chapter as a child charged with a delinquent act.

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

* * *

Sec. 4. 33 V.S.A. § 5204 is amended to read:

§ 5204. TRANSFER FROM JUVENILE COURT

(a) After a petition has been filed alleging delinquency, upon motion of the state's attorney and after hearing, the ~~juvenile~~ family division of the superior court may transfer jurisdiction of the proceeding to the criminal division of the superior court, if the child had attained the age of 16 but not the age of 18 at the time the act was alleged to have occurred and the delinquent act set forth in the petition was not one of those specified in subdivision (1)–(12) of this subsection or if the child had attained the age of 10 but not the age of 14 at the time the act was alleged to have occurred, and if the delinquent act set forth in the petition was any of the following:

- (1) arson causing death as defined in 13 V.S.A. § 501;
- (2) assault and robbery with a dangerous weapon as defined in 13 V.S.A. § 608(b);

- (3) assault and robbery causing bodily injury as defined in 13 V.S.A. 608(c);
- (4) aggravated assault as defined in 13 V.S.A. § 1024;
- (5) murder as defined in 13 V.S.A. § 2301;
- (6) manslaughter as defined in 13 V.S.A. § 2304;
- (7) kidnapping as defined in 13 V.S.A. § 2405;
- (8) unlawful restraint as defined in 13 V.S.A. § 2406 or 2407;
- (9) maiming as defined in 13 V.S.A. § 2701;
- (10) sexual assault as defined in 13 V.S.A. § 3252(a)(1) or (a)(2);
- (11) aggravated sexual assault as defined in 13 V.S.A. § 3253; or
- (12) burglary into an occupied dwelling as defined in 13 V.S.A. § 1201(c).

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

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

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

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

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

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

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

(3) The nature of past treatment efforts and the nature of the child's

response to them.

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

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

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

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

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

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

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

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

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

this subsection, the court shall order the sealing of all applicable files and records of the court, and such order shall be carried out as provided in subsection 5119(e) of this title.

(i) The record of a hearing conducted under subsection (c) of this section and any related files shall be open to inspection only by persons specified in subsections 5117(b) and (c) of this title in accordance with section 5119 of this title and by the attorney for the child.

Sec. 5. 33 V.S.A. § 5232 is amended to read:

§ 5232. DISPOSITION ORDER

* * *

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

* * *

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

* * *

Sec. 6. 33 V.S.A. § 4913 is amended to read:

§ 4913. REPORTING CHILD ABUSE AND NEGLECT; REMEDIAL ACTION

(a) Any physician, surgeon, osteopath, chiropractor, or physician's assistant licensed, certified, or registered under the provisions of Title 26, any resident physician, intern, or any hospital administrator in any hospital in this state, whether or not so registered, and any registered nurse, licensed practical nurse, medical examiner, emergency medical personnel as defined in 24 V.S.A. § 2651(6), dentist, psychologist, pharmacist, any other health care provider, child care worker, school superintendent, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is regularly employed by a school district, or who is contracted and paid by a school district to provide student services for five or more hours per week during the school year, mental health professional, social worker, probation officer, any employee, contractor, and grantee of the agency of human services who have contact with clients, police officer, camp owner,

camp administrator, camp counselor, or member of the clergy who has reasonable cause to believe that any child has been abused or neglected shall report or cause a report to be made in accordance with the provisions of section 4914 of this title within 24 hours. As used in this subsection, "camp" includes any residential or nonresidential recreational program.

* * *

Sec. 7. REPORT

(a)(1) A committee is established to study the effectiveness of the juvenile justice system in reducing crime and recidivism. The committee shall study changes to the juvenile justice system that could result in reducing recidivism, including the extension of jurisdiction beyond the age of 18 for the purposes of juvenile probation and the automatic expungement of criminal convictions for nonviolent offenses committed by children under 18.

(2) If funding is available, the study shall include consideration of:

(A) the number of 16- and 17-year-olds adjudicated delinquent in the family division during fiscal year 2009 who have been subsequently convicted of an adult offense within three years of the date of disposition of the delinquency;

(B) the number of 16- and 17-year-olds convicted of an adult offense in the criminal division during fiscal year 2009 who have been subsequently convicted of another adult offense; and

(C) the number of children adjudicated delinquent during fiscal year 2009 who are placed in the custody of the department for children and families at disposition, remain in the department's custody for 30 or more days after disposition, and who within three years of the date of sentencing on the first offense become incarcerated or subject to supervision by the department of corrections as a result of another offense.

(b)(1) The committee shall be composed of the following members:

(A) The commissioner for children and families or designee.

(B) The commissioner of corrections or designee.

(C) The administrative judge or designee.

(D) The executive director of state's attorneys and sheriffs or designee.

(E) The defender general or designee.

(2) The committee shall consult with the joint fiscal office regarding the costs and savings associated with the juvenile justice system and monitor the

impact on those costs and savings that result from the extension of jurisdiction authorized in this section.

(c) On or before December 1, 2012, the committee shall report its findings, together with any recommendations for changes in law, to the senate and house committees on judiciary, the house committee on human services, and the senate committee on health and welfare.

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2012.

(Committee vote: 4-0-1)

(No House amendments.)

House Proposal of Amendment

S. 189

An act relating to expanding confidentiality of cases accepted by the court diversion project.

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

Sec. 1. 3 V.S.A. § 164(c)(1) is amended to read:

(c) All adult court diversion projects receiving financial assistance from the attorney general shall adhere to the following provisions:

(1) The diversion project shall accept only persons against whom charges have been filed and the court has found probable cause, but are not yet adjudicated. The state's attorney shall notify in writing the diversion program and the court of his or her intention to refer the person to diversion. If the prosecuting attorney refers a case to diversion, ~~the information and affidavit~~ prosecuting attorney may release information to the victim upon a showing of legitimate need and subject to an appropriate protective agreement defining the purpose for which the information is being released and in all other respects maintaining the confidentiality of the information; otherwise files held by the court, the state's attorney, and the law enforcement agency related to the charges shall be confidential and shall remain confidential unless:

(A) the board declines to accept the case;

(B) the person declines to participate in diversion; ~~or~~

(C) the board accepts the case, but the person does not successfully complete diversion;

(D) the state's attorney recalls the referral to diversion.

Sec. 2. 3 V.S.A. § 164a is added to read:

§ 164a. RESTITUTION

(a) A diversion program may refer an individual who has suffered a pecuniary loss as a direct result of a delinquent act or crime alleged to have been committed by a juvenile or adult accepted to its program to the restitution unit established by 13 V.S.A. § 5362 for the purpose of application for an advance payment pursuant to 13 V.S.A. § 5363(d)(1). The restitution unit may enter into a repayment contract with a juvenile or adult accepted into diversion and shall have the authority to bring a civil action to enforce the repayment contract in the event that the juvenile or adult defaults in performing the terms of the contract.

(b) The restitution unit and the diversion program shall develop a process for documenting victim loss, information sharing between the unit and diversion programs regarding the amount of restitution paid by the unit and diversion participants' contractual agreements to reimburse the unit, transmittal of payments from participants to the unit, and maintenance of the confidentiality of diversion information.

Sec. 3. 13 V.S.A. § 5362 is amended to read:

§ 5362. RESTITUTION UNIT

* * *

(c) The restitution unit shall have the authority to:

* * *

(7) Enter into a repayment contract with a juvenile or adult accepted into a diversion program and to bring a civil action to enforce the contract when a diversion program has referred an individual pursuant to 3 V.S.A. § 164a.

Sec. 4. 13 V.S.A. § 5363 is amended to read:

§ 5363. CRIME VICTIMS' RESTITUTION SPECIAL FUND

(a) There is hereby established in the state treasury a fund to be known as the crime victims' restitution special fund, to be administered by the restitution unit established by section 5362 of this title, and from which payments may be made to provide restitution to crime victims.

(b)(1) There shall be deposited into the fund:

(A) All monies collected by the restitution unit pursuant to section 7043 and subdivision 5362(c)(7) of this title.

(B) All fees imposed by the clerk of court and designated for deposit into the fund pursuant to section 7282 of this title.

(C) All monies donated to the restitution unit or the crime victims' restitution special fund.

(D) Such sums as may be appropriated to the fund by the general assembly.

* * *

(d)(1) The restitution unit is authorized to advance up to \$10,000.00 to a victim or to a deceased victim's heir or legal representative if the victim:

(A) was first ordered by the court to receive restitution on or after July 1, 2004;

(B) is a natural person or the natural person's legal representative; and

(C) has not been reimbursed under subdivision (2) of this subsection;

(D) is a natural person and has been referred to the restitution unit by a diversion program pursuant to 3 V.S.A. § 164a.

* * *

Sec. 5. 13 V.S.A. § 7043(n) is amended to read:

(n) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure of an offender aged 18 or older shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

Sec. 6. 13 V.S.A. § 5360 is added to read:

§ 5360. APPLICATION INFORMATION; CONFIDENTIALITY

(a) All documents reviewed by the victims' compensation board for purposes of approving an application for compensation shall be confidential and shall not be disclosed without the consent of the victim except as provided in this section and subsection 7043(c) of this title.

(b) For the purpose of requesting restitution, the amount of assistance provided by the victim's compensation board shall be established by copies of bills submitted to the victim's compensation board reflecting the amount paid by the board and stating that the services for which payment was made were for uninsured pecuniary losses.

(c) The following shall be confidential and shall be redacted by the victim's compensation board for any purpose including restitution: the victim's residential address, telephone number, and other contact information and the

victim's social security number. In cases involving stalking, sexual offense, and domestic violence, the following information shall also be confidential and shall not be disclosed by the victim's compensation board for any purpose including restitution:

(1) the victim's employer's name, telephone number, address, or any other contact information; and

(2) the victim's medical or mental health provider's name, telephone number, address, or any other contact information.

Sec. 7. 13 V.S.A. § 7043 is amended to read:

§ 7043. RESTITUTION

* * *

(b)(1) When ordered, restitution may include:

(A) return of property wrongfully taken from the victim;

(B) cash, credit card, or installment payments paid to the restitution unit; or

(C) payments in kind, if acceptable to the victim.

(2) In the event of a victim's crime-related death, the court may, at the request of the restitution unit, direct the unit to pay up to \$10,000.00 from the restitution fund to the victim's estate to cover future uninsured material losses caused by the death.

(c) Restitution hearing.

(1) Unless the amount of restitution is agreed to by the parties at the time of sentencing, the court shall set the matter for a restitution hearing.

(2) Prior to the date of the hearing, the state's attorney shall provide the defendant with a statement of the amount of restitution claimed together with copies of bills that support the claim for restitution. If any amount of the restitution claim has been paid by the victim's compensation fund, the state's attorney shall provide the defendant with copies of bills submitted by the victim's compensation board pursuant to section 5360 of this title.

(3) Absent consent of the victim, medical and mental health records submitted to the victim's compensation board shall not be discoverable for the purposes of restitution except by order of the court. If the defendant files a motion to view copies of such records, the state's attorney shall file the records with the court under seal. The court shall conduct an in camera review of the records to determine what records, if any, are relevant to the parties' dispute with respect to restitution. If the court orders disclosure of the documents, the court shall issue a protective order defining the extent of dissemination of the

documents to any person other than the defendant, the defendant's attorney, and the state's attorney. In no event shall the court permit disclosure of information in a document provided by the victim's compensation board that is confidential under subsection 5360(c) of this title.

~~(e)~~(d) In awarding restitution, the court shall make findings with respect to:

(1) The total amount of the material loss incurred by the victim. If sufficient documentation of the material loss is not available at the time of sentencing, the court shall set a hearing on the issue, and notice thereof shall be provided to the offender.

(2) The offender's current ability to pay restitution, based on all financial information available to the court, including information provided by the offender.

~~(d)~~(e)(1) An order of restitution shall establish the amount of the material loss incurred by the victim, which shall be the restitution judgment order. In the event the offender is unable to pay the restitution judgment order at the time of sentencing, the court shall establish a restitution payment schedule for the offender based upon the offender's current and reasonably foreseeable ability to pay, subject to modification under subsection ~~(k)~~(l) of this section. Notwithstanding 12 V.S.A. chapter 113 ~~of Title 12~~ or any other provision of law, interest shall not accrue on a restitution judgment.

* * *

~~(e)~~(f)(1) If not paid at the time of sentencing, restitution may be ordered as a condition of probation, supervised community sentence, furlough, preapproved furlough, or parole if the convicted person is sentenced to preapproved furlough, probation, or supervised community sentence, or is sentenced to imprisonment and later placed on parole. A person shall not be placed on probation solely for purposes of paying restitution. An offender may not be charged with a violation of probation, furlough, or parole for nonpayment of a restitution obligation incurred after July 1, 2004.

* * *

~~(f)~~(g)(1) When restitution is requested but not ordered, the court shall set forth on the record its reasons for not ordering restitution.

* * *

~~(g)~~(h) Restitution ordered under this section shall not preclude a person from pursuing an independent civil action for all claims not covered by the restitution order.

~~(h)~~(i)(1) The court shall transmit a copy of a restitution order to the restitution unit, which shall make payment to the victim in accordance with section 5363 of this title.

* * *

~~(i)~~(j) The restitution unit may bring an action, including a small claims procedure, to enforce a restitution order against an offender in the civil division of the superior court of the unit where the offender resides or in the unit where the order was issued. In an action under this subsection, a restitution order issued by the criminal division of the superior court shall be enforceable in the civil division of the superior court or in a small claims procedure in the same manner as a civil judgment. Superior and small claims filing fees shall be waived for an action under this subsection, and for an action to renew a restitution judgment.

~~(j)~~(k) All restitution payments shall be made to the restitution unit, with the exception of restitution relating to a conviction for welfare fraud ordered under this section and recouped by the economic services division. The economic services division shall provide the restitution unit with a monthly report of all restitution collected through recoupment. This subsection shall have no effect upon the collection or recoupment of restitution ordered under Title 33.

~~(k)~~(l) The sentencing court may modify the payment schedule of a restitution order if, upon motion by the restitution unit or the offender, the court finds that modification is warranted by a substantial change in circumstances.

~~(l)~~(m) If the offender fails to pay restitution as ordered by the court, the restitution unit may file an action to enforce the restitution order in superior or small claims court. After an enforcement action is filed, any further proceedings related to the action shall be heard in the court where it was filed. The court shall set the matter for hearing and shall provide notice to the restitution unit, the victim, and the offender. If the court determines the offender has failed to comply with the restitution order, the court may take any action the court deems necessary to ensure the offender will make the required restitution payment, including:

* * *

~~(m)~~(n)(1) Any monies owed by the state to an offender who is under a restitution order, including lottery winnings and tax refunds, shall be used to discharge the restitution order to the full extent of the unpaid total financial losses, regardless of the payment schedule established by the courts.

* * *

~~(n)~~(o) After restitution is ordered and prior to sentencing, the court shall order the offender to provide the court with full financial disclosure on a form approved by the court administrator. The disclosure shall include copies of the offender's most recent state and federal tax returns. The court shall provide copies of the form and the tax returns to the restitution unit.

~~(o)~~(p) An obligation to pay restitution is part of a criminal sentence and is:

* * *

~~(p)~~(q) A transfer of property made with the intent to avoid a restitution obligation shall be deemed a fraudulent conveyance for purposes of 9 V.S.A. chapter 57 of Title 9, and the restitution unit shall be entitled to the remedies of creditors provided under 9 V.S.A. § 2291.

Sec. 8. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(40) ~~Records~~ records of genealogy provided in support of an application for tribal recognition pursuant to chapter 23 of this title;

(41) documents reviewed by the victim's compensation board for purposes of approving an application for compensation pursuant to 13 V.S.A. chapter 167, except as provided by 13 V.S.A. §§ 5360 and 7043(c).

Sec. 9. EFFECTIVE DATE

(a) Sections 1, 2, 3, 4, and 5 shall take effect on July 1, 2012.

(b) Sections 6, 7, 8, and this section shall take effect on passage.

House Proposal of Amendment to Senate Proposal of Amendment

H. 785

An act relating to capital construction and state bonding budget adjustment

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

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

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

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

* * *

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

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

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

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

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

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

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

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

Eleventh: In Sec. 7a, adding a subsection (d) to Sec. 11 of No. 40 of the Act of 2011, by striking (d) and inserting in lieu thereof the following: (d) If funds are allocated in any Acts of the 2011 Adj. Sess. (2012) other than an act relating to capital construction and state bonding budget adjustment for a new Community College of Vermont facility in Brattleboro and those funds are insufficient for the full cost of construction of the new facility, to the extent the \$153,160,000 of general obligation bonds authorized by Sec. 25 of this act can be reduced by the use of bond premiums, up to \$2,000,000 of the authorized

amount that is no longer required to fund appropriations of this act as amended by capital budget adjustment shall be used to offset part of the construction cost. It is the intent of the general assembly that in the next biennium, any bond premium received shall be used to reduce state aid for school construction debt and shall be in addition to any regular capital appropriation for this purpose.

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

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

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

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

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

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

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

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

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

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

§ 44. FUNDS TRANSFER FOR ART

* * *

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

* * *

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

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

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

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

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

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

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

ORDERED TO LIE

H. 699.

An act relating to scrap metal processors.

PENDING QUESTION: Shall the bill be read the third time?

H. 774.

An act relating to meat inspection, delivery of liquid fuels, dairy operations, and animal foot baths.

PENDING ACTION: Second Reading

CONFIRMATIONS

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

David Luce of Waterbury Center – Member of the Community High School of Vermont Board- By Sen. Kittell for the Committee on Education. (1/13/12)

Patrick Flood of East Calais – Commissioner of the Department of Mental Health – By Sen. Mullin for the Committee on Health and Welfare. (2/8/12)

John Snow of Charlotte – Member of the Vermont Economic Development Authority – By Sen. Fox for the Committee on Finance. (2/8/12)

Martin Maley of Colchester – Superior Court Judge – By Sen. Sears for the Committee on Judiciary. (2/9/12)

Alison Arms of South Burlington – Superior Court Judge – By Sen. Snelli8lng for the Committee on Judiciary. (2/16/12)

Robert Bishop of St. Johnsbury – Member of the State Infrastructure Bank Board – By Sen. MacDonald for the Committee on Finance. (2/21/12)

John Valente of Rutland – Member of the Vermont Municipal Bond Bank – By Sen. McCormack for the Committee on Finance. (2/21/12)

James Volz of Plainfield – Chair of the Public Service Board – By Sen. Cummings for the Committee on Finance. (2/21/12)

Ed Amidon of Charlotte – Member of the Valuation Appeals Board – By Sen. Ashe for the Committee on Finance. (2/24/12)

Bonnie Johnson-Aten of Montpelier – Member of the State Board of Education – By Sen. Doyle for the Committee on Education. (4/20/12)

JFO 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.